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Senate

The Senate met at 10 a.m., and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Gracious Father, help us to pray what we mean and mean what we pray. May our prayers never be perfunctory. We ask You to fill this Chamber with Your holy presence and glory and acknowledge that all we do and say today, as well as our attitudes and our relationships, will be observed by You. We pray for Your inspiration for the quality of life of the Senate and realize that we are accountable to You for the depth of caring we express to one another beyond party loyalties. We intercede for our Nation and You give us vision that will require united, bipartisan support of legislation to solve problems and grasp Your larger plan. We ask for strength to work creatively and energetically and You impinge on our minds waiting for our invitation for You to empower us with Your spirit. Dear God, help us to pray with expectancy. In the name of our Lord who taught us to ask, seek, and knock in prayer, knowing that with You nothing is impossible. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader is recognized.

Mr. ASHCROFT. I thank the Chair.

SCHEDULE

Mr. ASHCROFT. On behalf of the majority leader, I announce that this morning the Senate will turn to the consideration of S. 4, the Family Friendly Workplace Act. It is also hoped that the Senate will be able to return to S. 717, the IDEA, Individuals With Disabilities Education Act, legislation and complete action on that bill today. As always, all Members will be notified as to when to anticipate any rollcall votes on either of these two matters. In addition, the Senate may also consider any other legislative or executive items that can be cleared for action. I remind all Members that the Senate will be in recess from 12:30 to 2:15 for the weekly policy luncheons to meet.

I thank my colleagues for their attention.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. INHOFE). Under the previous order, leadership time is reserved.

FAMILY FRIENDLY WORKPLACE ACT

The PRESIDING OFFICER. Under the previous order, the Senate now will proceed to the consideration of S. 4, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 4) to amend the Fair Labor Standards Act of 1938 to provide to private sector employees the same opportunities for time-and-a-half compensatory time off, biweekly work programs, and flexible credit hour programs as Federal employees currently enjoy to help balance the demands and needs of work and family, to clarify the provisions relating to exemptions of certain professionals from the minimum wage and overtime requirements of the Fair Labor Standards Act of 1938, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Labor and Human Resources, with an amendment, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic.)

S. 4

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Family Friendly Workplace Act''.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to assist working people in the United States;

(2) to balance the demands of workplaces with the needs of families;

(3) to provide such assistance and balance such demands by allowing employers to offer compensatory time off, which employees may voluntarily elect to receive, and to establish biweekly work programs and flexible credit hour programs, in which employees may voluntarily participate; and

(4) to give private sector employees the same benefits of compensatory time off, biweekly work schedules, and flexible credit hours as have been enjoyed by Federal Government employees since 1978.

SEC. 3. WORKPLACE FLEXIBILITY OPTIONS.

[(a) COMPENSATORY TIME OFF.—

[(1) IN GENERAL.—Section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) is amended by adding at the end the following:

[''(r) COMPENSATORY TIME OFF FOR PRIVATE EMPLOYEES.—

[''(1) GENERAL RULE.—

[''(A) COMPENSATORY TIME OFF.—An employee may receive, in accordance with this subsection and in lieu of monetary overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which monetary overtime compensation is required by this section.

[''(B) DEFINITION.—For purposes of this subsection, the term 'employee' does not include an employee of a public agency.

[''(2) CONDITIONS.—An employer may provide compensatory time off to employees under paragraph (1)(A) only pursuant to the following:

[''(A) Such time may be provided only in accordance with—

[''(i) applicable provisions of a collective bargaining agreement between the employer and the representative of the employees recognized as provided in section 9(a) of the National Labor Relations Act (29 U.S.C. 159(a)); or

[''(ii) in the case of employees who are not represented by a labor organization recognized as provided in section 9(a) of the National Labor Relations Act, an agreement or understanding arrived at between the employer and employee before the performance

● This ''bullet'' symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

of the work involved if such agreement or understanding was entered into knowingly and voluntarily by such employee and was not a condition of employment.

[''(B) If such employee has affirmed, in a written or otherwise verifiable statement that is made, kept, and preserved in accordance with section 11(c), that the employee has chosen to receive compensatory time off in lieu of monetary overtime compensation.

[''(C) If the employee has not accrued compensatory time off in excess of the limit applicable to the employee prescribed by paragraph (3).

[''(3) HOUR LIMIT.—

[''(A) MAXIMUM HOURS.—An employee may accrue not more than 240 hours of compensatory time off.

[''(B) COMPENSATION DATE.—Not later than January 31 of each calendar year, the employee's employer shall provide monetary compensation for any unused compensatory time off accrued during the preceding calendar year that was not used prior to December 31 of the preceding calendar year at the rate prescribed by paragraph (6). An employer may designate and communicate to the employees of the employer a 12-month period other than the calendar year, in which case such compensation shall be provided not later than 31 days after the end of such 12-month period.

[''(C) EXCESS OF 80 HOURS.—The employer may provide monetary compensation for an employee's unused compensatory time off in excess of 80 hours at any time after giving the employee at least 30 days' notice. Such compensation shall be provided at the rate prescribed by paragraph (6).

[''(D) POLICY.—An employer that has adopted a policy offering compensatory time off to employees may discontinue such policy upon giving employees 30 days' notice.

[''(E) WRITTEN REQUEST.—An employee may withdraw an agreement or understanding described in paragraph (2)(A)(ii) at any time. An employee may also request in writing that monetary compensation be provided, at any time, for all compensatory time off accrued that has not yet been used. Within 30 days after receiving the written request, the employer shall provide the employee the monetary compensation due in accordance with paragraph (6).

[''(4) PROHIBITION OF COERCION.—

[''(A) IN GENERAL.—An employer that provides compensatory time off under paragraph (1) to employees shall not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any employee for the purpose of—

[''(i) interfering with the rights of the employee under this subsection to request or not request compensatory time off in lieu of payment of monetary overtime compensation for overtime hours; or

[''(ii) requiring the employee to use such compensatory time off.

[''(B) DEFINITION.—As used in subparagraph (A), the term 'intimidate, threaten, or coerce' has the meaning given the term in section 13A(d)(3)(B).''.

[(2) REMEDIES AND SANCTIONS.—Section 16 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216) is amended—

[(A) in subsection (b), by striking ''(b) Any employer'' and inserting ''(b) Except as provided in subsection (f), any employer''; and

[(B) by adding at the end the following:

[''(f)(1) An employer that violates section 7(r)(4) shall be liable to the employee affected in an amount equal to—

[''(A) the product of—

[''(i) the rate of compensation (determined in accordance with section 7(r)(6)(A)); and

[''(ii)(I) the number of hours of compensatory time off involved in the violation that was initially accrued by the employee; minus

[''(II) the number of such hours used by the employee; and

[''(B) as liquidated damages, the product of—

[''(i) such rate of compensation; and

[''(ii) the number of hours of compensatory time off involved in the violation that was initially accrued by the employee.

[''(2) The employer shall be subject to such liability in addition to any other remedy available for such violation under this section or section 17, including a criminal penalty under subsection (a) and a civil penalty under subsection (e).''.

[(3) CALCULATIONS AND SPECIAL RULES.—Section 7(r) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(r)), as added by paragraph (1), is amended by adding at the end the following:

[''(5) TERMINATION OF EMPLOYMENT.—An employee who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon the voluntary or involuntary termination of employment, be paid for the unused compensatory time off in accordance with paragraph (6).

[''(6) RATE OF COMPENSATION FOR COMPENSATORY TIME OFF.—

[''(A) GENERAL RULE.—If compensation is to be paid to an employee for accrued compensatory time off, such compensation shall be paid at a rate of compensation not less than—

[''(i) the regular rate received by such employee when the compensatory time off was earned; or

[''(ii) the final regular rate received by such employee,

[whichever is higher.

[''(B) CONSIDERATION OF PAYMENT.—Any payment owed to an employee under this subsection for unused compensatory time off shall be considered unpaid monetary overtime compensation.

[''(7) USE OF TIME.—An employee—

[''(A) who has accrued compensatory time off authorized to be provided under paragraph (1); and

[''(B) who has requested the use of such compensatory time off,

[shall be permitted by the employer of the employee to use such time within a reasonable period after making the request if the use of the compensatory time off does not unduly disrupt the operations of the employer.

[''(8) DEFINITIONS.—The terms 'monetary overtime compensation' and 'compensatory time off' shall have the meanings given the terms 'overtime compensation' and 'compensatory time', respectively, by subsection (o)(7).''.

[(4) NOTICE TO EMPLOYEES.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Labor shall revise the materials the Secretary provides, under regulations published at 29 C.F.R. 516.4, to employers for purposes of a notice explaining the Fair Labor Standards Act of 1938 to employees so that such notice reflects the amendments made to such Act by this subsection.

[(b) BIWEEKLY WORK PROGRAMS AND FLEXIBLE CREDIT HOUR PROGRAMS.—

[(1) IN GENERAL.—The Fair Labor Standards Act of 1938 is amended by inserting after section 13 (29 U.S.C. 213) the following new section:

[''SEC. 13A. BIWEEKLY WORK PROGRAMS AND FLEXIBLE CREDIT HOUR PROGRAMS.

[''(a) PURPOSES.—The purposes of this section are—

[''(1) to assist working people in the United States;

[''(2) to balance the demands of workplaces with the needs of families;

[''(3) to provide such assistance and balance such demands by allowing employers to establish biweekly work programs and flexible credit hour programs, in which employees may voluntarily participate; and

[''(4) to give private sector employees the same benefits of biweekly work schedules and flexible credit hours as have been enjoyed by Federal Government employees since 1978.

[''(b) BIWEEKLY WORK PROGRAMS.—

[''(1) IN GENERAL.—Notwithstanding any other provision of law, an employer may establish biweekly work programs that allow the use of a biweekly work schedule—

[''(A) that consists of a basic work requirement of not more than 80 hours, over a 2-week period; and

[''(B) in which more than 40 hours of the work requirement may occur in a week of the period.

[''(2) COMPUTATION OF OVERTIME.—In the case of an employee participating in such a biweekly work program, all hours worked in excess of such a biweekly work schedule or in excess of 80 hours in the 2-week period, that are requested in advance by an employer, shall be overtime hours.

[''(3) OVERTIME COMPENSATION PROVISION.—The employee shall be compensated for each such overtime hour at a rate not less than one and one-half times the regular rate at which the employee is employed, in accordance with section 7(a)(1), or receive compensatory time off in accordance with section 7(r) for each such overtime hour.

[''(4) COMPENSATION FOR HOURS IN SCHEDULE.—Notwithstanding section 7 or any other provision of law that relates to premium pay for overtime work, the employee shall be compensated for each hour in such a biweekly work schedule at a rate not less than the regular rate at which the employee is employed.

[''(c) FLEXIBLE CREDIT HOUR PROGRAMS.—

[''(1) IN GENERAL.—Notwithstanding any other provision of law, an employer may establish flexible credit hour programs, under which, at the election of an employee, the employer and the employee jointly designate hours for the employee to work that are in excess of the basic work requirement of the employee so that the employee can accumulate flexible credit hours to reduce the hours worked in a week or a day subsequent to the day on which the flexible credit hours are worked.

[''(2) COMPUTATION OF OVERTIME.—In the case of an employee participating in such a flexible credit hour program, all hours worked in excess of 40 hours in a week that are requested in advance by an employer, other than flexible credit hours, shall be overtime hours.

[''(3) OVERTIME COMPENSATION PROVISION.—The employee shall be compensated for each such overtime hour at a rate not less than one and one-half times the regular rate at which the employee is employed, in accordance with section 7(a)(1), or receive compensatory time off in accordance with section 7(r) for each such overtime hour.

[''(4) COMPENSATION FOR FLEXIBLE CREDIT HOURS.—Notwithstanding section 7 or any other provision of law that relates to premium pay for overtime work, an employee shall be compensated for each flexible credit hour at a rate not less than the regular rate at which the employee is employed.

[''(5) ACCUMULATION AND COMPENSATION.—

[''(A) ACCUMULATION OF FLEXIBLE CREDIT HOURS.—An employee who is participating in such a flexible credit hour program can accumulate not more than 50 flexible credit hours.

[''(B) COMPENSATION FOR FLEXIBLE CREDIT HOURS OF EMPLOYEES NO LONGER SUBJECT TO PROGRAM.—Any employee who was participating in such a flexible credit hour program and who is no longer subject to such a program shall be paid at a rate not less than the regular rate at which the employee is employed on the date the employee receives such payment, for not more than 50 flexible credit hours accumulated by such employee.

[''(C) COMPENSATION FOR ANNUALLY ACCUMULATED FLEXIBLE CREDIT HOURS.—

[''(i) IN GENERAL.—Not later than January 31 of each calendar year, the employer of an employee who is participating in such a flexible credit hour program shall provide monetary compensation for any flexible credit hours accumulated as described in subparagraph (A) during the preceding calendar year that were not used prior to December 31 of the preceding calendar year at a rate not less than the regular rate at which the employee is employed on the date the employee receives such payment.

[''(ii) DIFFERENT 12-MONTH PERIOD.—An employer may designate and communicate to the employees of the employer a 12-month period other than the calendar year, in which case such compensation shall be provided not later than 31 days after the end of such 12-month period.

[''(d) PARTICIPATION.—

[''(1) IN GENERAL.—Except as provided in paragraph (2), no employee may be required to participate in a program described in this section. Participation in a program described in this section may not be a condition of employment.

[''(2) COLLECTIVE BARGAINING AGREEMENT.—In a case in which a valid collective bargaining agreement exists, an employee may only be required to participate in such a program in accordance with the agreement.

[''(3) PROHIBITION OF COERCION.—

[''(A) IN GENERAL.—An employer may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any employee for the purpose of interfering with the rights of such employee under this section to elect or not to elect to work a biweekly work schedule, to elect or not to elect to participate in a flexible credit hour program, or to elect or not to elect to work flexible credit hours (including working flexible credit hours in lieu of overtime hours).

[''(B) DEFINITION.—As used in subparagraph (A), the term 'intimidate, threaten, or coerce' includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

[''(e) APPLICATION OF PROGRAMS IN THE CASE OF COLLECTIVE BARGAINING AGREEMENTS.—

[''(1) APPLICABLE REQUIREMENTS.—In the case of employees in a unit represented by an exclusive representative, any biweekly work program or flexible credit hour program described in subsection (b) or (c), respectively, and the establishment and termination of any such program, shall be subject to the provisions of this section and the terms of a collective bargaining agreement between the employer and the exclusive representative.

[''(2) INCLUSION OF EMPLOYEES.—Employees within a unit represented by an exclusive representative shall not be included within any program under this section except to the extent expressly provided under a collective bargaining agreement between the employer and the exclusive representative.

[''(3) COLLECTIVE BARGAINING AGREEMENTS.—Nothing in this section shall be construed to diminish the obligation of an employer to comply with any collective bargaining agreement or any employment benefits program or plan that provides lesser or greater rights to employees than the benefits established under this section.

[''(f) DEFINITIONS.—As used in this section:

[''(1) BASIC WORK REQUIREMENT.—The term 'basic work requirement' means the number of hours, excluding overtime hours, that an employee is required to work or is required to account for by leave or otherwise.

[''(2) COLLECTIVE BARGAINING.—The term 'collective bargaining' means the performance of the mutual obligation of the representative of an employer and the exclusive representative of employees in an appropriate unit to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession.

[''(3) COLLECTIVE BARGAINING AGREEMENT.—The term 'collective bargaining agreement' means an agreement entered into as a result of collective bargaining.

[''(4) ELECTION.—The term 'at the election of', used with respect to an employee, means at the initiative of, and at the request of, the employee.

[''(5) EMPLOYEE.—The term 'employee' means an employee, as defined in section 3, except that the term shall not include an employee, as defined in section 6121(2) of title 5, United States Code.

[''(6) EMPLOYER.—The term 'employer' means an employer, as defined in section 3, except that the term shall not include any person acting in relation to an employee, as defined in section 6121(2) of title 5, United States Code.

[''(7) EXCLUSIVE REPRESENTATIVE.—The term 'exclusive representative' means any labor organization that—

[''(A) is certified as the exclusive representative of employees in an appropriate unit pursuant to Federal law; or

[''(B) was recognized by an employer immediately before the date of enactment of this section as the exclusive representative of employees in an appropriate unit—

[''(i) on the basis of an election; or

[''(ii) on any basis other than an election;

[and continues to be so recognized.

[''(8) FLEXIBLE CREDIT HOURS.—The term 'flexible credit hours' means any hours, within a flexible credit hour program established under subsection (c), that are in excess of the basic work requirement of an employee and that, at the election of the employee, the employer and the employee jointly designate for the employee to work so as to reduce the hours worked in a week or a day subsequent to the day on which the flexible credit hours are worked.

[''(9) OVERTIME HOURS.—The term 'overtime hours'—

[''(A) when used with respect to biweekly work programs under subsection (b), means all hours worked in excess of the biweekly work schedule involved or in excess of 80 hours in the 2-week period involved, that are requested in advance by an employer.

[''(B) when used with respect to flexible credit hour programs under subsection (c), means all hours worked in excess of 40 hours in a week that are requested in advance by an employer, but does not include flexible credit hours.

[''(10) REGULAR RATE.—The term 'regular rate' has the meaning given the term in section 7(e).''.

[(2) PROHIBITIONS.—

[(A) PURPOSES.—The purposes of this paragraph are to make violations of the biweekly work program and flexible credit hour program provisions by employers unlawful under the Fair Labor Standards Act of 1938, and to provide for appropriate remedies for such violations, including, as appropriate, fines, imprisonment, injunctive relief, and appropriate legal or equitable relief, including liquidated damages.

[(B) REMEDIES AND SANCTIONS.—Section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)) is amended by inserting before the semicolon the following: '', or to violate any of the provisions of section 13A''.

[(c) LIMITATIONS ON SALARY PRACTICES RELATING TO EXEMPT EMPLOYEES.—Section 13 of the Fair Labor Standards Act of 1938 (29 U.S.C. 213) is amended by adding at the end the following:

[''(m)(1)(A) In the case of a determination of whether an employee is an exempt employee described in subsection (a)(1), the fact that the employee is subject to deductions in compensation for—

[''(i) absences of the employee from employment of less than a full workday; or

[''(ii) absences of the employee from employment of less than a full pay period,

[shall not be considered in making such determination.

[''(B) In the case of a determination described in subparagraph (A), an actual reduction in compensation of the employee may be considered in making the determination.

[''(C) For the purposes of this paragraph, the term 'actual reduction in compensation' does not include any reduction in accrued paid leave, or any other practice, that does not reduce the amount of compensation an employee receives for a pay period.

[''(2) The payment of overtime compensation or other additions to the compensation of an employee employed on a salary basis on hours worked shall not be considered in determining if the employee is an exempt employee described in subsection (a)(1).''.]

(a) COMPENSATORY TIME OFF.—

(1) IN GENERAL.—Section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) is amended by adding at the end the following:

''(r) COMPENSATORY TIME OFF FOR PRIVATE EMPLOYEES.—

''(1) VOLUNTARY PARTICIPATION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), no employee may be required under this subsection to receive compensatory time off in lieu of monetary overtime compensation. The acceptance of compensatory time off in lieu of monetary overtime compensation may not be a condition of employment.

''(B) COLLECTIVE BARGAINING AGREEMENT.—In a case in which a valid collective bargaining agreement exists between an employer and the representative of the employees that is recognized as provided for in section 9(a) of the National Labor Relations Act (29 U.S.C. 159(a)), an employee may only be required under this subsection to receive compensatory time off in lieu of monetary overtime compensation in accordance with the agreement.

''(2) GENERAL RULE.—

''(A) COMPENSATORY TIME OFF.—An employee may receive, in accordance with this subsection and in lieu of monetary overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which monetary overtime compensation is required by this section.

''(B) DEFINITIONS.—In this subsection:

''(i) EMPLOYEE.—The term 'employee' does not include an employee of a public agency.

''(ii) EMPLOYER.—The term 'employer' does not include a public agency.

''(3) CONDITIONS.—An employer may provide compensatory time off to employees under paragraph (2)(A) only pursuant to the following:

''(A) The compensatory time off may be provided only in accordance with—

''(i) applicable provisions of a collective bargaining agreement between the employer and the representative of the employee that is recognized as provided for in section 9(a) of the National Labor Relations Act (29 U.S.C. 159(a)); or

''(ii) in the case of an employee who is not represented by a labor organization that is recognized as provided for in section 9(a) of the National Labor Relations Act, an agreement or understanding arrived at between the employer and employee before the performance of the work involved if the agreement or understanding was entered into knowingly and voluntarily by such employee and was not a condition of employment.

''(B) The compensatory time off may only be provided to an employee described in subparagraph (A)(ii) if such employee has affirmed, in a written or otherwise verifiable statement that is made, kept, and preserved in accordance with section 11(c), that the employee has chosen to receive compensatory time off in lieu of monetary overtime compensation.

''(C) An employee shall be eligible to accrue compensatory time off if such employee has not accrued compensatory time off in excess of the limit applicable to the employee prescribed by paragraph (4).

''(4) HOUR LIMIT.—

''(A) MAXIMUM HOURS.—An employee may accrue not more than 240 hours of compensatory time off.

''(B) COMPENSATION DATE.—Not later than January 31 of each calendar year, the employer of the employee shall provide monetary compensation for any unused compensatory time off accrued during the preceding calendar year that was not used prior to December 31 of the preceding calendar year at the rate prescribed by paragraph (8). An employer may designate and communicate to the employees of the employer a 12-month period other than the calendar year, in which case the compensation shall be provided not later than 31 days after the end of the 12-month period.

''(C) EXCESS OF 80 HOURS.—The employer may provide monetary compensation for an employee's unused compensatory time off in excess of 80 hours at any time after providing the employee with at least 30 days' written notice. The compensation shall be provided at the rate prescribed by paragraph (8).

''(5) DISCONTINUANCE OF POLICY OR WITHDRAWAL.—

''(A) DISCONTINUANCE OF POLICY.—An employer that has adopted a policy offering compensatory time off to employees may discontinue the policy for employees described in paragraph (3)(A)(ii) after providing 30 days' written notice to the employees who are subject to an agreement or understanding described in paragraph (3)(A)(ii).

''(B) WITHDRAWAL.—An employee may withdraw an agreement or understanding described in paragraph (3)(A)(ii) at any time, by submitting a written notice of withdrawal to the employer of the employee. An employee may also request in writing that monetary compensation be provided, at any time, for all compensatory time off accrued that has not been used. Within 30 days after receiving the written request, the employer shall provide the employee the monetary compensation due in accordance with paragraph (8).

''(6) ADDITIONAL REQUIREMENTS.—

''(A) PROHIBITION OF COERCION.—

''(i) IN GENERAL.—An employer that provides compensatory time off under paragraph (2) to an employee shall not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any employee for the purpose of—

''(I) interfering with the rights of the employee under this subsection to request or not request compensatory time off in lieu of payment of monetary overtime compensation for overtime hours;

''(II) interfering with the rights of the employee to use accrued compensatory time off in accordance with paragraph (9); or

''(III) requiring the employee to use the compensatory time off.

''(ii) DEFINITION.—In clause (i), the term 'intimidate, threaten, or coerce' has the meaning given the term in section 13A(d)(2).

''(B) ELECTION OF OVERTIME COMPENSATION OR COMPENSATORY TIME.—An agreement or understanding that is entered into by an employee and employer under paragraph (3)(A)(ii) shall permit the employee to elect, for an applicable workweek—

''(i) the payment of monetary overtime compensation for the workweek; or

''(ii) the accrual of compensatory time off in lieu of the payment of monetary overtime compensation for the workweek.''.

(2) REMEDIES AND SANCTIONS.—Section 16 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216) is amended by adding at the end the following:

''(f)(1) In addition to any amount that an employer is liable under subsection (b) for a violation of a provision of section 7, an employer that violates section 7(r)(6)(A) shall be liable to the employee affected in an amount equal to—

''(A) the product of—

''(i) the rate of compensation (determined in accordance with section 7(r)(8)(A)); and

''(ii)(I) the number of hours of compensatory time off involved in the violation that was initially accrued by the employee; minus

''(II) the number of such hours used by the employee; and

''(B) as liquidated damages, the product of—

''(i) such rate of compensation; and

''(ii) the number of hours of compensatory time off involved in the violation that was initially accrued by the employee.

''(2) The employer shall be subject to such liability in addition to any other remedy available for such violation under this section or section 17, including a criminal penalty under subsection (a) and a civil penalty under subsection (e).''.

(3) CALCULATIONS AND SPECIAL RULES.—Section 7(r) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(r)), as added by paragraph (1), is amended by adding at the end the following:

''(7) TERMINATION OF EMPLOYMENT.—An employee who has accrued compensatory time off authorized to be provided under paragraph (2) shall, upon the voluntary or involuntary termination of employment, be paid for the unused compensatory time off in accordance with paragraph (8).

''(8) RATE OF COMPENSATION FOR COMPENSATORY TIME OFF.—

''(A) GENERAL RULE.—If compensation is to be paid to an employee for accrued compensatory time off, the compensation shall be paid at a rate of compensation not less than—

''(i) the regular rate received by such employee when the compensatory time off was earned; or

''(ii) the final regular rate received by such employee,

whichever is higher.

''(B) CONSIDERATION OF PAYMENT.—Any payment owed to an employee under this subsection for unused compensatory time off shall be considered unpaid monetary overtime compensation.

''(9) USE OF TIME.—An employee—

''(A) who has accrued compensatory time off authorized to be provided under paragraph (2); and

''(B) who has requested the use of the accrued compensatory time off,

shall be permitted by the employer of the employee to use the accrued compensatory time off within a reasonable period after making the request if the use of the accrued compensatory time off does not unduly disrupt the operations of the employer.

''(10) DEFINITIONS.—The terms 'monetary overtime compensation' and 'compensatory time off' shall have the meanings given the terms 'overtime compensation' and 'compensatory time', respectively, by subsection (o)(7).''.

(4) NOTICE TO EMPLOYEES.—Not later than 30 days after the date of enactment of this Act, the Secretary of Labor shall revise the materials the Secretary provides, under regulations contained in section 516.4 of title 29, Code of Federal Regulations, to employers for purposes of a notice explaining the Fair Labor Standards Act of 1938 to employees so that the notice reflects the amendments made to the Act by this subsection.

(b) BIWEEKLY WORK PROGRAMS AND FLEXIBLE CREDIT HOUR PROGRAMS.—

(1) IN GENERAL.—The Fair Labor Standards Act of 1938 is amended by inserting after section 13 (29 U.S.C. 213) the following:

''SEC. 13A. BIWEEKLY WORK PROGRAMS AND FLEXIBLE CREDIT HOUR PROGRAMS.

''(a) VOLUNTARY PARTICIPATION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), no employee may be required to participate in a program described in this section. Participation in a program described in this section may not be a condition of employment.

''(2) COLLECTIVE BARGAINING AGREEMENT.—In a case in which a valid collective bargaining agreement exists, an employee may only be required to participate in such a program in accordance with the agreement.

''(b) BIWEEKLY WORK PROGRAMS.—

''(1) IN GENERAL.—Notwithstanding section 7, an employer may establish biweekly work programs that allow the use of a biweekly work schedule—

''(A) that consists of a basic work requirement of not more than 80 hours, over a 2-week period; and

''(B) in which more than 40 hours of the work requirement may occur in a week of the period.

''(2) CONDITIONS.—An employer may carry out a biweekly work program described in paragraph (1) for employees only pursuant to the following:

''(A) AGREEMENT OR UNDERSTANDING.—The program may be carried out only in accordance with—

''(i) applicable provisions of a collective bargaining agreement between the employer and the representative of the employees that is recognized as provided for in section 9(a) of the National Labor Relations Act (29 U.S.C. 159(a)); or

''(ii) in the case of an employee who is not represented by a labor organization that is recognized as provided for in section 9(a) of the National Labor Relations Act, an agreement or understanding arrived at between the employer and employee before the performance of the work involved if the agreement or understanding was entered into knowingly and voluntarily by such employee and was not a condition of employment.

''(B) STATEMENT.—The program shall apply to an employee described in subparagraph (A)(ii) if such employee has affirmed, in a written or otherwise verifiable statement that is made, kept, and preserved in accordance with section 11(c), that the employee has chosen to participate in the program.

''(3) COMPENSATION FOR HOURS IN SCHEDULE.—Notwithstanding section 7, in the case of an employee participating in such a biweekly work program, the employee shall be compensated for each hour in such a biweekly work schedule at a rate not less than the regular rate at which the employee is employed.

''(4) COMPUTATION OF OVERTIME.—All hours worked by the employee in excess of such a biweekly work schedule or in excess of 80 hours in the 2-week period, that are requested in advance by the employer, shall be overtime hours.

''(5) OVERTIME COMPENSATION PROVISION.—The employee shall be compensated for each such overtime hour at a rate not less than one and one-half times the regular rate at which the

employee is employed, in accordance with section 7(a)(1), or receive compensatory time off in accordance with section 7(r) for each such overtime hour.

''(6) DISCONTINUANCE OF PROGRAM OR WITHDRAWAL.—

''(A) DISCONTINUANCE OF PROGRAM.—An employer that has established a biweekly work program under paragraph (1) may discontinue the program for employees described in paragraph (2)(A)(ii) after providing 30 days' written notice to the employees who are subject to an agreement or understanding described in paragraph (2)(A)(ii).

''(B) WITHDRAWAL.—An employee may withdraw an agreement or understanding described in paragraph (2)(A)(ii) at the end of any 2–week period described in paragraph (1)(A), by submitting a written notice of withdrawal to the employer of the employee.

''(c) FLEXIBLE CREDIT HOUR PROGRAMS.—

''(1) IN GENERAL.—Notwithstanding section 7, an employer may establish flexible credit hour programs, under which, at the election of an employee, the employer and the employee jointly designate hours for the employee to work that are in excess of the basic work requirement of the employee so that the employee can accrue flexible credit hours to reduce the hours worked in a week or a day subsequent to the day on which the flexible credit hours are worked.

''(2) CONDITIONS.—An employer may carry out a flexible credit hour program described in paragraph (1) for employees only pursuant to the following:

''(A) AGREEMENT OR UNDERSTANDING.—The program may be carried out only in accordance with—

''(i) applicable provisions of a collective bargaining agreement between the employer and the representative of the employees that is recognized as provided for in section 9(a) of the National Labor Relations Act (29 U.S.C. 159(a)); or

''(ii) in the case of an employee who is not represented by a labor organization that is recognized as provided for in section 9(a) of the National Labor Relations Act, an agreement or understanding arrived at between the employer and employee before the performance of the work involved if the agreement or understanding was entered into knowingly and voluntarily by such employee and was not a condition of employment.

''(B) STATEMENT.—The program shall apply to an employee described in subparagraph (A)(ii) if such employee has affirmed, in a written or otherwise verifiable statement that is made, kept, and preserved in accordance with section 11(c), that the employee has chosen to participate in the program.

''(C) HOURS.—An agreement or understanding that is entered into under subparagraph (A) shall provide that, at the election of an employee, the employer and the employee will jointly designate, for an applicable workweek, flexible credit hours for the employee to work.

''(D) LIMIT.—An employee shall be eligible to accrue flexible credit hours if the employee has not accrued flexible credit hours in excess of the limit applicable to the employee prescribed by paragraph (3).

''(3) HOUR LIMIT.—

''(A) MAXIMUM HOURS.—An employee who is participating in such a flexible credit hour program may accrue not more than 50 flexible credit hours.

''(B) COMPENSATION DATE.—Not later than January 31 of each calendar year, the employer of an employee who is participating in such a flexible credit hour program shall provide monetary compensation for any flexible credit hours accrued during the preceding calendar year that were not used prior to December 31 of the preceding calendar year at a rate not less than the regular rate at which the employee is employed on the date the employee receives the compensation. An employer may designate and communicate to the employees of the employer a 12-month period other than the calendar year, in which case the compensation shall be provided not later than 31 days after the end of the 12-month period.

''(4) COMPENSATION FOR FLEXIBLE CREDIT HOURS.—Notwithstanding section 7, in the case of an employee participating in such a flexible credit hour program, the employee shall be compensated for each flexible credit hour at a rate not less than the regular rate at which the employee is employed.

''(5) COMPUTATION OF OVERTIME.—All hours worked by the employee in excess of 40 hours in a week that are requested in advance by the employer, other than flexible credit hours, shall be overtime hours.

''(6) OVERTIME COMPENSATION PROVISION.—The employee shall be compensated for each such overtime hour at a rate not less than one and one-half times the regular rate at which the employee is employed, in accordance with section 7(a)(1), or receive compensatory time off in accordance with section 7(r) for each such overtime hour.

''(7) USE OF TIME.—An employee—

''(A) who has accrued flexible credit hours; and

''(B) who has requested the use of the accrued flexible credit hours,

shall be permitted by the employer of the employee to use the accrued flexible credit hours within a reasonable period after making the request if the use of the accrued flexible credit hours does not unduly disrupt the operations of the employer.

''(8) DISCONTINUANCE OF PROGRAM OR WITHDRAWAL.—

''(A) DISCONTINUANCE OF PROGRAM.—An employer that has established a flexible credit hour program under paragraph (1) may discontinue the program for employees described in paragraph (2)(A)(ii) after providing 30 days' written notice to the employees who are subject to an agreement or understanding described in paragraph (2)(A)(ii).

''(B) WITHDRAWAL.—An employee may withdraw an agreement or understanding described in paragraph (2)(A)(ii) at any time, by submitting a written notice of withdrawal to the employer of the employee. An employee may also request in writing that monetary compensation be provided, at any time, for all flexible credit hours accrued that have not been used. Within 30 days after receiving the written request, the employer shall provide the employee the monetary compensation due at a rate not less than the regular rate at which the employee is employed on the date the employee receives the compensation.

''(d) PROHIBITION OF COERCION.—

''(1) IN GENERAL.—An employer shall not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any employee for the purpose of—

''(A) interfering with the rights of the employee under this section to elect or not to elect to work a biweekly work schedule;

''(B) interfering with the rights of the employee under this section to elect or not to elect to participate in a flexible credit hour program, or to elect or not to elect to work flexible credit hours (including working flexible credit hours in lieu of overtime hours);

''(C) interfering with the rights of the employee under this section to use accrued flexible credit hours in accordance with subsection (c)(7); or

''(D) requiring the employee to use the flexible credit hours.

''(2) DEFINITION.—In paragraph (1), the term 'intimidate, threaten, or coerce' includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

''(e) DEFINITIONS.—In this section:

''(1) BASIC WORK REQUIREMENT.—The term 'basic work requirement' means the number of hours, excluding overtime hours, that an employee is required to work or is required to account for by leave or otherwise.

''(2) COLLECTIVE BARGAINING.—The term 'collective bargaining' means the performance of the mutual obligation of the representative of an employer and the representative of employees of the employer that is recognized as provided for in section 9(a) of the National Labor Relations Act (29 U.S.C. 159(a)) to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph shall not compel either party to agree to a proposal or to make a concession.

''(3) COLLECTIVE BARGAINING AGREEMENT.—The term 'collective bargaining agreement' means an agreement entered into as a result of collective bargaining.

''(4) ELECTION.—The term 'at the election of', used with respect to an employee, means at the initiative of, and at the request of, the employee.

''(5) EMPLOYEE.—The term 'employee' does not include an employee of a public agency.

''(6) EMPLOYER.—The term 'employer' does not include a public agency.

''(7) FLEXIBLE CREDIT HOURS.—The term 'flexible credit hours' means any hours, within a flexible credit hour program established under subsection (c), that are in excess of the basic work requirement of an employee and that, at the election of the employee, the employer and the employee jointly designate for the employee to work so as to reduce the hours worked in a week or a day subsequent to the day on which the flexible credit hours are worked.

''(8) OVERTIME HOURS.—The term 'overtime hours'—

''(A) when used with respect to biweekly work programs under subsection (b), means all hours worked in excess of the biweekly work schedule involved or in excess of 80 hours in the 2-week period involved, that are requested in advance by an employer; or

''(B) when used with respect to flexible credit hour programs under subsection (c), means all hours worked in excess of 40 hours in a week that are requested in advance by an employer, but does not include flexible credit hours.

''(9) REGULAR RATE.—The term 'regular rate' has the meaning given the term in section 7(e).''.

(2) PROHIBITIONS.—Section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)) is amended—

(A) by inserting ''(A)'' after ''(3)'';

(B) by adding ''or'' after the semicolon; and

(C) by adding at the end the following:

''(B) to violate any of the provisions of section 13A;''.

(c) LIMITATIONS ON SALARY PRACTICES RELATING TO EXEMPT EMPLOYEES.—

(1) IN GENERAL.—Section 13 of the Fair Labor Standards Act of 1938 (29 U.S.C. 213) is amended by adding at the end the following:

''(m)(1)(A) In the case of a determination of whether an employee is an exempt employee described in subsection (a)(1), the fact that the employee is subject to deductions in pay for—

''(i) absences of the employee from employment of less than a full workday; or

''(ii) absences of the employee from employment of less than a full pay period,

shall not be considered in making such determination.

''(B) In the case of a determination described in subparagraph (A), an actual reduction in pay of the employee may be considered in making the determination for that employee.

''(C) For the purposes of this paragraph, the term 'actual reduction in pay' does not include

any reduction in accrued paid leave, or any other practice, that does not reduce the amount of pay an employee receives for a pay period.

''(2) The payment of overtime compensation or other additions to the compensation of an employee employed on a salary based on hours worked shall not be considered in determining if the employee is an exempt employee described in subsection (a)(1).''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of enactment of this Act and shall apply to any civil action—

(A) that involves an issue with respect to section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)); and

(B) in which a final judgment has not been made prior to such date.

The PRESIDING OFFICER. The Senator from Vermont.

MODIFICATION OF COMMITTEE AMENDMENT

Mr. JEFFORDS. On behalf of the committee, I modify the committee amendment as follows, and I send the modified committee amendment to the desk.

The PRESIDING OFFICER. The amendment is so modified.

The modification is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Family Friendly Workplace Act''.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to assist working people in the United States;

(2) to balance the demands of workplaces with the needs of families;

(3) to provide such assistance and balance such demands by allowing employers to offer compensatory time off, which employees may voluntarily elect to receive, and to establish biweekly work programs and flexible credit hour programs, in which employees may voluntarily participate; and

(4) to give private sector employees the same benefits of compensatory time off, biweekly work schedules, and flexible credit hours as have been enjoyed by Federal Government employees since 1978.

SEC. 3. WORKPLACE FLEXIBILITY OPTIONS.

(a) COMPENSATORY TIME OFF.—

(1) IN GENERAL.—Section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) is amended by adding at the end the following:

''(r)(1)(A) Except as provided in subparagraph (B), no employee may be required under this subsection to receive compensatory time off in lieu of monetary overtime compensation. The acceptance of compensatory time off in lieu of monetary overtime compensation may not be a condition of employment.

''(B) In a case in which a valid collective bargaining agreement exists between an employer and the labor organization that has been certified or recognized as the representative of the employees of the employer under applicable law, an employee may only be required under this subsection to receive compensatory time off in lieu of monetary overtime compensation in accordance with the agreement.

''(2)(A) An employee may receive, in accordance with this subsection and in lieu of monetary overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which monetary overtime compensation is required by this section.

''(B) In this subsection:

''(i) The term 'employee' means an individual—

''(I) who is an employee (as defined in section 3);

''(II) who is not an employee of a public agency; and

''(III) to whom subsection (a) applies.

''(ii) The term 'employer' does not include a public agency.

''(3) An employer may provide compensatory time off to employees under paragraph (2)(A) only pursuant to the following:

''(A) The compensatory time off may be provided only in accordance with—

''(i) applicable provisions of a collective bargaining agreement between the employer and the labor organization that has been certified or recognized as the representative of the employees under applicable law; or

''(ii) in the case of an employee who is not represented by a labor organization described in clause (i), an agreement or understanding arrived at between the employer and employee before the performance of the work involved if the agreement or understanding was entered into knowingly and voluntarily by such employee and was not a condition of employment.

''(B) The compensatory time off may only be provided to an employee described in subparagraph (A)(ii) if such employee has affirmed, in a written or otherwise verifiable statement that is made, kept, and preserved in accordance with section 11(c), that the employee has chosen to receive compensatory time off in lieu of monetary overtime compensation.

''(C) No employee may receive, or agree to receive, the compensatory time off unless the employee has been employed for at least 12 months by the employer, and for at least 1,250 hours of service with the employer during the previous 12-month period.

''(D) An employee shall be eligible to accrue compensatory time off if such employee has not accrued compensatory time off in excess of the limit applicable to the employee prescribed by paragraph (4).

''(4)(A) An employee may accrue not more than 240 hours of compensatory time off.

''(B) Not later than January 31 of each calendar year, the employer of the employee shall provide monetary compensation for any unused compensatory time off accrued during the preceding calendar year that was not used prior to December 31 of the preceding calendar year at the rate prescribed by paragraph (8). An employer may designate and communicate to the employees of the employer a 12-month period other than the calendar year, in which case the compensation shall be provided not later than 31 days after the end of the 12-month period.

''(C) The employer may provide monetary compensation for an employee's unused compensatory time off in excess of 80 hours at any time after providing the employee with at least 30 days' written notice. The compensation shall be provided at the rate prescribed by paragraph (8).

''(5)(A) An employer that has adopted a policy offering compensatory time off to employees may discontinue the policy for employees described in paragraph (3)(A)(ii) after providing 30 days' written notice to the employees who are subject to an agreement or understanding described in paragraph (3)(A)(ii).

''(B) An employee may withdraw an agreement or understanding described in paragraph (3)(A)(ii) at any time, by submitting a written notice of withdrawal to the employer of the employee. An employee may also request in writing that monetary compensation be provided, at any time, for all compensatory time off accrued that has not been used. Within 30 days after receiving the written request, the employer shall provide the employee the monetary compensation due in accordance with paragraph (8).

''(6)(A)(i) An employer that provides compensatory time off under paragraph (2) to an employee shall not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any employee for the purpose of—

''(I) interfering with the rights of the employee under this subsection to request or not request compensatory time off in lieu of payment of monetary overtime compensation for overtime hours;

''(II) interfering with the rights of the employee to use accrued compensatory time off in accordance with paragraph (9); or

''(III) requiring the employee to use the compensatory time off.

''(ii) In clause (i), the term 'intimidate, threaten, or coerce' has the meaning given the term in section 13A(d)(2).

''(B) An agreement or understanding that is entered into by an employee and employer under paragraph (3)(A)(ii) shall permit the employee to elect, for an applicable workweek—

''(i) the payment of monetary overtime compensation for the workweek; or

''(ii) the accrual of compensatory time off in lieu of the payment of monetary overtime compensation for the workweek.''.

(2) REMEDIES AND SANCTIONS.—Section 16 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216) is amended by adding at the end the following:

''(f)(1) In addition to any amount that an employer is liable under subsection (b) for a violation of a provision of section 7, an employer that violates section 7(r)(6)(A) shall be liable to the employee affected in an amount equal to—

''(A) the product of—

''(i) the rate of compensation (determined in accordance with section 7(r)(8)(A)); and

''(ii)(I) the number of hours of compensatory time off involved in the violation that was initially accrued by the employee; minus

''(II) the number of such hours used by the employee; and

''(B) as liquidated damages, the product of—

''(i) such rate of compensation; and

''(ii) the number of hours of compensatory time off involved in the violation that was initially accrued by the employee.

''(2) The employer shall be subject to such liability in addition to any other remedy available for such violation under this section or section 17, including a criminal penalty under subsection (a) and a civil penalty under subsection (e).''.

(3) CALCULATIONS AND SPECIAL RULES.—Section 7(r) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(r)), as added by paragraph (1), is amended by adding at the end the following:

''(7) An employee who has accrued compensatory time off authorized to be provided under paragraph (2) shall, upon the voluntary or involuntary termination of employment, be paid for the unused compensatory time off in accordance with paragraph (8).

''(8)(A) If compensation is to be paid to an employee for accrued compensatory time off, the compensation shall be paid at a rate of compensation not less than—

''(i) the regular rate received by such employee when the compensatory time off was earned; or

''(ii) the final regular rate received by such employee;

whichever is higher.

''(B) Any payment owed to an employee under this subsection for unused compensatory time off shall be considered unpaid monetary overtime compensation.

''(9) An employee—

''(A) who has accrued compensatory time off authorized to be provided under paragraph (2); and

''(B) who has requested the use of the accrued compensatory time off;

shall be permitted by the employer of the employee to use the accrued compensatory time off within a reasonable period after making the request if the use of the accrued compensatory time off does not unduly disrupt the operations of the employer.

''(10) The terms 'monetary overtime compensation' and 'compensatory time off' shall have the meanings given the terms 'overtime compensation' and 'compensatory time', respectively, by subsection (o)(7).''.

(4) NOTICE TO EMPLOYEES.—Not later than 30 days after the date of enactment of this Act, the Secretary of Labor shall revise the materials the Secretary provides, under regulations contained in section 516.4 of title 29, Code of Federal Regulations, to employers for purposes of a notice explaining the Fair Labor Standards Act of 1938 to employees so that the notice reflects the amendments made to the Act by this subsection.

(b) BIWEEKLY WORK PROGRAMS AND FLEXIBLE CREDIT HOUR PROGRAMS.—

(1) IN GENERAL.—The Fair Labor Standards Act of 1938 is amended by inserting after section 13 (29 U.S.C. 213) the following:

''SEC. 13A. BIWEEKLY WORK PROGRAMS AND FLEXIBLE CREDIT HOUR PROGRAMS.

''(a) VOLUNTARY PARTICIPATION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), no employee may be required to participate in a program described in this section. Participation in a program described in this section may not be a condition of employment.

''(2) COLLECTIVE BARGAINING AGREEMENT.—In a case in which a valid collective bargaining agreement exists between an employer and the labor organization that has been certified or recognized as the representative of the employees of the employer under applicable law, an employee may only be required to participate in such a program in accordance with the agreement.

''(b) BIWEEKLY WORK PROGRAMS.—

''(1) IN GENERAL.—Notwithstanding section 7, an employer may establish biweekly work programs that allow the use of a biweekly work schedule—

''(A) that consists of a basic work requirement of not more than 80 hours, over a 2-week period; and

''(B) in which more than 40 hours of the work requirement may occur in a week of the period.

''(2) CONDITIONS.—An employer may carry out a biweekly work program described in paragraph (1) for employees only pursuant to the following:

''(A) AGREEMENT OR UNDERSTANDING.—The program may be carried out only in accordance with—

''(i) applicable provisions of a collective bargaining agreement between the employer and the labor organization that has been certified or recognized as the representative of the employees under applicable law; or

''(ii) in the case of an employee who is not represented by a labor organization described in clause (i), an agreement or understanding arrived at between the employer and employee before the performance of the work involved if the agreement or understanding was entered into knowingly and voluntarily by such employee and was not a condition of employment.

''(B) STATEMENT.—The program shall apply to an employee described in subparagraph (A)(ii) if such employee has affirmed, in a written or otherwise verifiable statement that is made, kept, and preserved in accordance with section 11(c), that the employee has chosen to participate in the program.

''(C) MINIMUM SERVICE.—No employee may participate, or agree to participate, in the program unless the employee has been employed for at least 12 months by the employer, and for at least 1,250 hours of service with the employer during the previous 12-month period.

''(3) COMPENSATION FOR HOURS IN SCHEDULE.—Notwithstanding section 7, in the case of an employee participating in such a biweekly work program, the employee shall be compensated for each hour in such a biweekly work schedule at a rate not less than the regular rate at which the employee is employed.

''(4) COMPUTATION OF OVERTIME.—All hours worked by the employee in excess of such a biweekly work schedule or in excess of 80 hours in the 2-week period, that are requested in advance by the employer, shall be overtime hours.

''(5) OVERTIME COMPENSATION PROVISION.—The employee shall be compensated for each such overtime hour at a rate not less than one and one-half times the regular rate at which the employee is employed, in accordance with section 7(a)(1), or receive compensatory time off in accordance with section 7(r) for each such overtime hour.

''(6) DISCONTINUANCE OF PROGRAM OR WITHDRAWAL.—

''(A) DISCONTINUANCE OF PROGRAM.—An employer that has established a biweekly work program under paragraph (1) may discontinue the program for employees described in paragraph (2)(A)(ii) after providing 30 days' written notice to the employees who are subject to an agreement or understanding described in paragraph (2)(A)(ii).

''(B) WITHDRAWAL.—An employee may withdraw an agreement or understanding described in paragraph (2)(A)(ii) at the end of any 2–week period described in paragraph (1)(A), by submitting a written notice of withdrawal to the employer of the employee.

''(c) FLEXIBLE CREDIT HOUR PROGRAMS.—

''(1) IN GENERAL.—Notwithstanding section 7, an employer may establish flexible credit hour programs, under which, at the election of an employee, the employer and the employee jointly designate hours for the employee to work that are in excess of the basic work requirement of the employee so that the employee can accrue flexible credit hours to reduce the hours worked in a week or a day subsequent to the day on which the flexible credit hours are worked.

''(2) CONDITIONS.—An employer may carry out a flexible credit hour program described in paragraph (1) for employees only pursuant to the following:

''(A) AGREEMENT OR UNDERSTANDING.—The program may be carried out only in accordance with—

''(i) applicable provisions of a collective bargaining agreement between the employer and the labor organization that has been certified or recognized as the representative of the employees under applicable law; or

''(ii) in the case of an employee who is not represented by a labor organization described in clause (i), an agreement or understanding arrived at between the employer and employee before the performance of the work involved if the agreement or understanding was entered into knowingly and voluntarily by such employee and was not a condition of employment.

''(B) STATEMENT.—The program shall apply to an employee described in subparagraph (A)(ii) if such employee has affirmed, in a written or otherwise verifiable statement that is made, kept, and preserved in accordance with section 11(c), that the employee has chosen to participate in the program.

''(C) HOURS.—An agreement or understanding that is entered into under subparagraph (A) shall provide that, at the election of an employee, the employer and the employee will jointly designate, for an applicable workweek, flexible credit hours for the employee to work.

''(D) MINIMUM SERVICE.—No employee may participate, or agree to participate, in the program unless the employee has been employed for at least 12 months by the employer, and for at least 1,250 hours of service with the employer during the previous 12-month period.

''(E) LIMIT.—An employee shall be eligible to accrue flexible credit hours if the employee has not accrued flexible credit hours in excess of the limit applicable to the employee prescribed by paragraph (3).

''(3) HOUR LIMIT.—

''(A) MAXIMUM HOURS.—An employee who is participating in such a flexible credit hour program may accrue not more than 50 flexible credit hours.

''(B) COMPENSATION DATE.—Not later than January 31 of each calendar year, the employer of an employee who is participating in such a flexible credit hour program shall provide monetary compensation for any flexible credit hours accrued during the preceding calendar year that were not used prior to December 31 of the preceding calendar year at a rate not less than the regular rate at which the employee is employed on the date the employee receives the compensation. An employer may designate and communicate to the employees of the employer a 12-month period other than the calendar year, in which case the compensation shall be provided not later than 31 days after the end of the 12-month period.

''(4) COMPENSATION FOR FLEXIBLE CREDIT HOURS.—Notwithstanding section 7, in the case of an employee participating in such a flexible credit hour program, the employee shall be compensated for each flexible credit hour at a rate not less than the regular rate at which the employee is employed.

''(5) COMPUTATION OF OVERTIME.—All hours worked by the employee in excess of 40 hours in a week that are requested in advance by the employer, other than flexible credit hours, shall be overtime hours.

''(6) OVERTIME COMPENSATION PROVISION.—The employee shall be compensated for each such overtime hour at a rate not less than one and one-half times the regular rate at which the employee is employed, in accordance with section 7(a)(1), or receive compensatory time off in accordance with section 7(r) for each such overtime hour.

''(7) USE OF TIME.—An employee—

''(A) who has accrued flexible credit hours; and

''(B) who has requested the use of the accrued flexible credit hours;

shall be permitted by the employer of the employee to use the accrued flexible credit hours within a reasonable period after making the request if the use of the accrued flexible credit hours does not unduly disrupt the operations of the employer.

''(8) DISCONTINUANCE OF PROGRAM OR WITHDRAWAL.—

''(A) DISCONTINUANCE OF PROGRAM.—An employer that has established a flexible credit hour program under paragraph (1) may discontinue the program for employees described in paragraph (2)(A)(ii) after providing 30 days' written notice to the employees who are subject to an agreement or understanding described in paragraph (2)(A)(ii).

''(B) WITHDRAWAL.—An employee may withdraw an agreement or understanding described in paragraph (2)(A)(ii) at any time, by submitting a written notice of withdrawal

to the employer of the employee. An employee may also request in writing that monetary compensation be provided, at any time, for all flexible credit hours accrued that have not been used. Within 30 days after receiving the written request, the employer shall provide the employee the monetary compensation due at a rate not less than the regular rate at which the employee is employed on the date the employee receives the compensation.

''(9) PAYMENT ON TERMINATION OF EMPLOYMENT.—An employee who has accrued flexible credit hours under paragraph (1) shall, upon the voluntary or involuntary termination of employment, be paid for the unused flexible credit hours at a rate not less than the final regular rate received by the employee.

''(d) PROHIBITION OF COERCION.—

''(1) IN GENERAL.—An employer shall not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any employee for the purpose of—

''(A) interfering with the rights of the employee under this section to elect or not to elect to work a biweekly work schedule;

''(B) interfering with the rights of the employee under this section to elect or not to elect to participate in a flexible credit hour program, or to elect or not to elect to work flexible credit hours (including working flexible credit hours in lieu of overtime hours);

''(C) interfering with the rights of the employee under this section to use accrued flexible credit hours in accordance with subsection (c)(7); or

''(D) requiring the employee to use the flexible credit hours.

''(2) DEFINITION.—In paragraph (1), the term 'intimidate, threaten, or coerce' includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

''(e) DEFINITIONS.—In this section:

''(1) BASIC WORK REQUIREMENT.—The term 'basic work requirement' means the number of hours, excluding overtime hours, that an employee is required to work or is required to account for by leave or otherwise.

''(2) COLLECTIVE BARGAINING.—The term 'collective bargaining' means the performance of the mutual obligation of the representative of an employer and the labor organization that has been certified or recognized as the representative of the employees of the employer under applicable law to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph shall not compel either party to agree to a proposal or to make a concession.

''(3) COLLECTIVE BARGAINING AGREEMENT.—The term 'collective bargaining agreement' means an agreement entered into as a result of collective bargaining.

''(4) ELECTION.—The term 'at the election of', used with respect to an employee, means at the initiative of, and at the request of, the employee.

''(5) EMPLOYEE.—The term 'employee' means an individual—

''(A) who is an employee (as defined in section 3);

''(B) who is not an employee of a public agency; and

''(C) to whom section 7(a) applies.

''(6) EMPLOYER.—The term 'employer' does not include a public agency.

''(7) FLEXIBLE CREDIT HOURS.—The term 'flexible credit hours' means any hours, within a flexible credit hour program established under subsection (c), that are in excess of the basic work requirement of an employee and that, at the election of the employee, the employer and the employee jointly designate for the employee to work so as to reduce the hours worked in a week or a day subsequent to the day on which the flexible credit hours are worked.

''(8) OVERTIME HOURS.—The term 'overtime hours'—

''(A) when used with respect to biweekly work programs under subsection (b), means all hours worked in excess of the biweekly work schedule involved or in excess of 80 hours in the 2-week period involved, that are requested in advance by an employer; or

''(B) when used with respect to flexible credit hour programs under subsection (c), means all hours worked in excess of 40 hours in a week that are requested in advance by an employer, but does not include flexible credit hours.

''(9) REGULAR RATE.—The term 'regular rate' has the meaning given the term in section 7(e).''.

(2) PROHIBITIONS.—Section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)) is amended—

(A) by inserting ''(A)'' after ''(3)'';

(B) by adding ''or'' after the semicolon; and

(C) by adding at the end the following:

''(B) to violate any of the provisions of section 13A;''.

(3) REMEDIES AND SANCTIONS.—Section 16 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216), as amended in subsection (a)(2), is further amended—

(A) in subsection (c)—

(i) in the first sentence—

(I) by inserting after ''7 of this Act'' the following: '', or of the appropriate legal or monetary equitable relief owing to any employee or employees under section 13A''; and

(II) by striking ''wages or unpaid overtime compensation and'' and inserting ''wages, unpaid overtime compensation, or legal or monetary equitable relief, as appropriate, and'';

(ii) in the second sentence, by striking ''wages or overtime compensation and'' and inserting ''wages, unpaid overtime compensation, or legal or monetary equitable relief, as appropriate, and''; and

(iii) in the third sentence—

(I) by inserting after ''first sentence of such subsection'' the following: '', or the second sentence of such subsection in the event of a violation of section 13A,''; and

(II) by striking ''wages or unpaid overtime compensation under sections 6 and 7 or'' and inserting ''wages, unpaid overtime compensation, or legal or monetary equitable relief, as appropriate, or'';

(B) in subsection (e)—

(i) in the second sentence, by striking ''section 6 or 7'' and inserting ''section 6, 7, or 13A''; and

(ii) in the fourth sentence, in paragraph (3), by striking ''15(a)(4) or'' and inserting ''15(a)(4), a violation of section 15(a)(3)(B), or''; and

(C) by adding at the end the following:

''(g)(1) In addition to any amount that an employer is liable under the second sentence of subsection (b) for a violation of a provision of section 13A, an employer that violates section 13A(d) shall be liable to the employee affected for an additional sum equal to that amount.

''(2) The employer shall be subject to such liability in addition to any other remedy available for such violation under this section or section 17.''.

(4) NOTICE TO EMPLOYEES.—Not later than 30 days after the date of enactment of this Act, the Secretary of Labor shall revise the materials the Secretary provides, under regulations contained in section 516.4 of title 29, Code of Federal Regulations, to employers for purposes of a notice explaining the Fair Labor Standards Act of 1938 to employees so that the notice reflects the amendments made to the Act by this subsection.

(c) LIMITATIONS ON SALARY PRACTICES RELATING TO EXEMPT EMPLOYEES.—

(1) IN GENERAL.—Section 13 of the Fair Labor Standards Act of 1938 (29 U.S.C. 213) is amended by adding at the end the following:

''(m)(1)(A) In the case of a determination of whether an employee is an exempt employee described in paragraph (1) or (17) of subsection (a), the fact that the employee is subject to deductions in pay for—

''(i) absences of the employee from employment of less than a full workday; or

''(ii) absences of the employee from employment of less than a full workweek;

shall not be considered in making such determination.

''(B)(i) Except as provided in clause (ii), in the case of a determination described in subparagraph (A), an actual reduction in pay of the employee may be considered in making the determination for that employee.

''(ii) For the purposes of this subsection, an actual reduction in pay of an employee of a public agency shall not be considered in making a determination described in subparagraph (A) if such reduction is permissible under regulations prescribed by the Secretary under section 541.5d of title 29, Code of Federal Regulations (as in effect on August 19, 1992).

''(C) For the purposes of this paragraph, the term 'absences' includes absences as a result of a disciplinary suspension of an employee from employment.

''(D) For the purposes of this paragraph, the term 'actual reduction in pay' does not include any reduction in accrued paid leave, or any other practice, that does not reduce the amount of pay an employee receives for a pay period.

''(2) The payment of overtime compensation or other additions to the compensation of an employee employed on a salary based on hours worked shall not be considered in determining if the employee is an exempt employee described in paragraph (1) or (17) of subsection (a).''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of enactment of this Act and shall apply to any civil action—

(A) that involves an issue with respect to section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)); and

(B) in which a final judgment has not been made prior to such date.

Mr. JEFFORDS. Mr. President, I would like to take this opportunity to once again thank everyone who has worked so hard to bring S. 4, the Family Friendly Workplace Act, to the floor. In particular, I would like to recognize the efforts and hard work of Senator MIKE DEWINE, the chairman of the Subcommittee on Employment and Training, and Senator JOHN ASHCROFT, the author and original sponsor of the bill. I am especially gratified to be working with Senators ASHCROFT and DEWINE on this important bill.

We are here today because we share the belief that S. 4 could make a world of difference in the lives of millions of Americans. During the markup of S. 4, a number of issues were brought to the committee's attention by my esteemed colleagues in the minority. At that

time, Senator DEWINE and I committed to look into several of the issues that were raised and to resolve them to the extent practicable. In the days following the markup, I have worked closely with Senator DEWINE and other Members to address these issues. I am extremely pleased with the results of this process. I believe that the changes proposed in the committee amendment will result in an even stronger piece of legislation. The Senator from Ohio will discuss the changes that have been made in the committee substitute to S. 4, the Family Friendly Workplace Act.

After spending a great deal of time working with the language of this bill and the committee amendment, I am more convinced than ever that S. 4 will assist American workers to balance work and family, and I urge all of my colleagues to join me in supporting the Family Friendly Workplace Act.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, we are on this legislation again today. I have a great appreciation for the leadership in attempting to try to juggle a variety of very important pieces of legislation. We have had the emergency appropriations which I think all of us would agree is the first order of business that we want to get passed. As to this legislation, we have been on again, off again. We are glad to debate these issues, but I understand some of the frustration of some of our colleagues during the course of this debate where the bill is on for an hour or two, and they try to begin to follow it, and then it is off again and we are uncertain when it will be be brought up again. That is something we have to deal with, but we will do the best that we can in attempting to deal with the on again, off again nature of this debate and respond to the questions which have been raised over this.

As we continue this debate, I want again to outline for the Members, who it is who supports this legislation because there have been a variety of different observations about the degree of support, who is supporting it, and who is opposing it. Those of us who have concerns about this legislation have enormous empathy and sympathy for families. That has been the focus over time of our Labor and Human Resources Committee, as well as others here. It is not just Members on this side of the aisle. It is many of our colleagues on the other side of the aisle who have made the cause of working families their cause.

But nonetheless, as we deal with this issue, it is important to know who is supporting it and who is against. I want to say again at the outset that we believe working families have been hard pressed over the last 25 years since about 1972 when their incomes effectively became stagnant. In the last 5 to 7 years we have seen that families are working longer and harder to make ends meet and are very hard pressed to rise every morning and deal with their family's issues as well. And so at the outset this legislation has some appeal, and if it was exactly as has been described it might have some merit. But the concern that many of us have is that it really gives the whip hand, so to speak, to the employers and it does appear to many of us that this is really a subterfuge to permit employers to avoid paying overtime.

We even had testimony from witnesses who were supporting the legislation who told the Labor and Human Resources Committee that that was the principal reason why they were supporting it. The National Federation of Independent Businesses told the Committee, ''Small businesses can't afford to pay their employees overtime. This is something they can offer in exchange that gives them a benefit.''

So we ought to understand right at the outset why many of those who do support comptime, also support the inclusion of Senator MURRAY's amendment. That amendment would have given absolute discretion to employees to take up to 24 hours a year to be able to attend a parents' meeting at school to consider the child's educational progress, or other such educational activities. Such an amendment was offered in the committee, but it was defeated along party lines.

That amendment was offered. It was supported by the President, and supported overwhelmingly by the majority of the American people. Under the amendment, the decision was the employee's. But the committee rejected that amendment along straight party lines. It was rejected. It was rejected. It was rejected.

We have also heard a great deal about the needs that families have to get some time off when they have a sick child. No employees in this country ought to have to make the choice between the job that they need and the child that they love. We passed the Family and Medical Leave Act to address those needs. That effort was achieved in a bipartisan way. But it was limited to those employers that had more than 50 employees. It has worked and worked well. And, under the Family and Medical Leave Act, if there is a medical emergency, if the need for treatment is not foreseeable, the employee has an absolute right to take time off. The employee has that right. If the medical condition is forseeable, then the employee has to make a reasonable effort to schedule the treatment at a time that does not unduly disrupt the operations of the employer. We offered an amendment in the committee to allow employees to use compensatory time under this same standard. That is, an employee has the right to use comptime at any time for reasons that would qualify under the Family and Medical Leave Act. But that amendment, too, was rejected along strict party lines.

The Family and Medical Leave Act applies to firms with 50 and more. Senator DODD offered an amendment in the committee to lower that threshold to 25 employees. That amendment, too, was rejected on party lines.

That is why the real issue regarding comptime is who is going to make the decision. If it is going to be the employee, put my name on it. Put my name on it. And I bet you would get the overwhelming majority of the Members on this side. If the employers are the ones who are going to make the decision—certainly you are not going to have my support, and you are going to be hard pressed to get the support of those who have been championing workers' rights.

That leads me to another point, and that is who are the supporters. Are these concerns just mine, or those of my good friend and colleague, Senator WELLSTONE, or Senator DODD, Senator HARKIN, Senator MOSELEY-BRAUN, and many others? No, that was a conclusion reached by the League of Women Voters, the National Women's Political Caucus, the National Women's Law Center, the Women's Legal Defense Fund.

It is very interesting why these organizations which have been the champion of women's issues and women's rights oppose this bill. It is because many of the people who are going for the overtime are women, single moms. You would think these organizations that have been fighting for women's rights and workers' rights would be out here supporting it, saying why are you battling it? Why are you battling it? These organizations that day in and day have been championing the economic rights of women universally reject the conclusions that have been drawn by some of our friends and colleagues on the other side of the aisle—that the employees are going to make all of these decisions, that it is going to benefit the single moms for employers to make the judgments about when they can be with their children.

That is not my reading of this bill, and many others agree. It is the conclusion of those organizations—not that we have to be on the side always of these organizations; they are not always correct. But it is interesting that every one of the organizations that have been championing women's economic rights and rights for children are all opposed to it. Why?

The Leadership Conference on Civil Rights:

> The legislation could reduce the income of many working families and make it more difficult for them to balance competing work and family responsibilities.

That theme runs all the way through. I will include it in the RECORD, Mr. President. The Leadership Conference on Civil Rights draws the same conclusion that I and many others have drawn, and that is after all is said and done it is the employer that is going to make the judgment about whether employees choose whether to earn comptime and when to use it if they've earned it. So these wonderful speeches

that I read over the course of the weekend in support of comptime, which were well stated and eloquently stated in many instances, beg the fundamental issue: that is, who is going to make the judgment about that sick child, about that sick relative, about the necessity for going to a teachers' conference or to a child's play. That has been the subject of debate here for more than 10 years. When we finally achieved it, in the Family and Medical Leave Act, it is the employee who has the right.

But now we have this different bill. As I mentioned, those who are opposing it not only include those women's organizations but also the Council on Senior Citizens, the NAACP, disability rights organizations, the National Council of Churches, a whole host—I will have the list of those included in the RECORD—let alone the unions, in spite of the fact that they are outside the coverage of this legislation. Unionized employees are outside. They are not affected by this legislation unless they choose to try to achieve comptime in the collective bargaining process. It is other workers, who are not unionized. But, nonetheless, these organizations understand what is happening out in the plants and factories. They supported the increase in minimum wage, as they support child care, as they supported family and medical leave and plant closing legislation—the whole range of issues that can offer some empowerment to workers dealing with a lot of challenges in the workplace. They have been, obviously, fighting for those rights, and they reached the same conclusion as well.

On the other side, those supporting this bill include the principal organizations that said ''thumbs down on the increase in the minimum wage,'' even though 65 percent of the people who were getting the minimum wage were women, a great percent of them with small children—thumbs down on that; thumbs down on family and medical leave, thumbs down on that. That is the decision that no worker ought to have to make, that decision between the child they love and the child they leave—thumbs down on that. And, as to plant closing legislation, which requires employers to give some notice to workers so they can go out and get other jobs if a business shuts down—thumbs down on that.

But these organizations that fought all of these worker protections just cannot wait to get this bill passed. They just cannot wait to get this passed. And one, I think, can reasonably assume that they are trying to get this passed for the very reason that was stated by the National Federation of Independent Businesses, because they do not want to pay overtime to workers.

I also want to describe the people who get overtime. Let us take a look at who are going to be the ones affected by this bill. To understand the real world impact of the bill, you have to look at the workers who are currently depending on overtime—that is what we are talking about, on overtime—to make ends meet. Mr. President, 44 percent of those who depend on overtime earn $16,000 a year or less—44 percent. More than 80 percent of them have annual earnings of less than $28,000 a year. These are hard-working Americans who are on the bottom steps of the economic ladder. They are the hard-working Americans who have a sense of pride, a sense of dignity—in so many instances they are the ones who clean these buildings at night, separated from their families. They are the teachers' aides, they are the health aides who work in nursing homes. They are men and women facing tough life decisions in tough economic times. Mr. President, 80 percent of them earn less than $28,000 a year. These are people who need every dollar they can earn just to make ends meet. They are men and women who are supporting families.

If this bill passes many of them will lose the overtime dollars they need so badly. Employers will give all the work to employees who agree to take the comptime. There will not be any overtime work for those who insist on being paid. Under the Ashcroft bill, discrimination in awarding overtime will be perfectly legal. Do we understand that? Discrimination against workers who refuse to sign on for the comptime provisions, the flexible credit hours or the so-called 80-hour biweekly schedule—discrimination against such workers will be perfectly legal. For example, let's take a worker in a plant who says, I am not going to go for that program. I want to play by the rules just as we have them now, a 40-hour week. I want to work overtime and get my time and a half. This bill gives the employer new powers—new powers. Time-and-a-half pay for overtime was the rule for all the workers in that place. Now, under this bill, it is different. Now the employer can go up and say, OK, so that is your position. The employer can then go to the next worker and say, What about you? Do you want to sign on for the flexible credit program that means you work overtime this week and get paid straight time without time and a half? Would you like to do that? Do you want that instead of time and a half?

Let's assume that this worker says, OK, I'll take that. I ought to be getting time and a half, which I would under the present law, but we have a new law. We have a new law called the comptime law, and it's supposedly family friendly. So if that is what I have to do, OK, I'll do it. I will work the extra time and just get paid straight time.

Now, what happens next? You come now to the third worker who says, All right, I will take the abolition of the 40-hour week. I'll work 60 or 70 hours one week and 10 in the next. So this worker is signed up.

Then, assume that the business gets a little overtime work. Do you think they are going to go back to the person who wants to get paid time and a half? Or do you think they will go to the person who takes the straight time, requiring no extra pay? Of course, the business will go to that person. That is what this bill is all about.

When we said in the Labor Committee, all right, if you are going to go this route, don't discriminate against those who participate, who want the existing law now—that amendment was rejected. Turned down, by a party line vote.

I wonder if, in the back of the minds of those who are the principal supporters, they know exactly what they are going to do. If they have this bill passed, they are not going to give any of the overtime to those people who insist on getting time and a half pay for overtime work. Instead, they'll assign the overtime work to workers who will accept flexible credit hours. Flexible credits are nothing more than saying I will do overtime but I will get paid straight time.

We must remember, again, who we are talking about. We are talking about the people who will get hurt the most. Mr. President, 56 percent of employees earning overtime have only a high school diploma or less. Do you know how hard it is to get ahead today, no matter how hard you work, without more education? We don't seem to dwell on that here on the floor of the Senate of the United States. The more you learn the more you earn. It is not always true, but it is by and large true. Yet these are the hard-working people who need the overtime pay to continue their education.

Millions of those affected by this bill rely on the overtime to make ends meet because they only earn the minimum wage. They are minimum wage earners—60 percent of them are women, a third of them are the sole breadwinner in their families. Mr. President, 2.3 million children rely on parents who earn the minimum wage, parents who hope their children do not get sick because they cannot afford a doctor. They are out there working, but they cannot afford a doctor for their children. If they make a little more money, it makes them ineligible for Medicaid, but they cannot afford the premiums for private health insurance. Children make up another group we are trying to provide some relief for, under the leadership of Senator HATCH, to try to make sure at least they are going to get some health care. I hope those on the other side of the aisle who are speaking so eloquently about the needs of these working families are going to be out there giving us a hand in trying to do something about their health care costs.

Interviews conducted by the Women's Legal Defense Fund demonstrate the sacrifice American women are making in support of corporate flexibility, such as a waitress who was involuntarily changed to a night shift despite the fact she had no child care for evening

hours. One working mother expressed the bitter frustration of many when she said, ''My life feels like I am wearing shoes that are two sizes too small.'' Millions of these low-wage workers are already working two jobs to make ends meets. They need to work every hour they can and be paid for it. Over 400,000 employees, well over half of them women, are working two jobs. They need the resources so badly they are working two jobs. But this bill is going to open up the opportunity for their exploitation.

I want to comment on what is, I believe, the fundamental issue. We now know who is really for this bill. We know that amendments to try to strengthen the bill against the possibility of exploitation were defeated in committee. I also mentioned others we offered to try to deal with other very important features of the bill.

But I also want to offer a general response to some of the points that were brought up by my friend and colleague from Missouri last Friday. After I discussed the Family and Medical Leave Act he said: I would like to ask the Senator from Massachusetts whether he believes that this abolishes the Family and Medical Leave Act.

Let me tell my colleague why I raised the Family and Medical Leave Act. I raised it on the floor because the Republicans rejected the two amendments to expand the Family and Medical Leave Act in committee. The Senator from Missouri said Friday that the Family and Medical Leave Act and S. 4 are compatible. Obviously, his Republican colleagues in the committee did not think so. On a straight party line vote, as I mentioned earlier, Senator DODD's amendment to extend the availability of family and medical leave to workers in businesses with between 25 and 50 employees was rejected. On a similar vote they rejected Senator MURRAY's amendment to allow 24 hours of leave a year to attend parent-teacher meetings.

This debate is not about the changing demographics of the work force. We are all aware that in more than 60 percent of two-parent families with young children, both parents are now working outside the home. Working parents need more opportunity to take time off from their work to be with their children. The debate is over how best to provide that time.

Those of us who oppose S. 4 believe that it does a very poor job of providing employees with time off at those times when they need it most. S. 4 is designed to meet employer needs, not employee needs. The legislation purports to let employees make the choice between overtime pay and comptime, but it does not contain the protections necessary to ensure that employees are free to choose without fear of reprisal. It is the employer, not the employee, who decides what forms of comptime and flextime will be available at the workplace. There is no freedom of choice for workers.

This is really a Hobson's choice. It says: We are going to change today's existing protections for what is really a pig in a poke. So if the employee signs on, he or she is going to have a series of choices. But they are all going to be bad choices. They are all going to be bad choices, that are not in the employee's interest. Under this bill, employees will indeed have some choices, but they are all going to be the bad choices. Let me explain.

The worker goes to work in the plant. The employer comes up and says, This is a voluntary program. You can either play by the rules as we do at the present time or, as I mentioned, you can sign on for the comptime provisions. Or you can do the flexible credit hours, and we can abolish the 40-hour week. Which one of these, or all of them, do you want? You would like all of them? If the employee agrees, that agreement does not even have to be a written statement. It can be an oral statement. It has to be written if employees are trying to get out of one of these programs, but it can be oral for employees to get in. Very interesting; I wonder why. Why do they not treat the employer and employee the same way? If employees believe somehow they are in the program, they have to write a written statement to get out. But an oral statement is enough to get you in.

Again, that doesn't apply to the Federal employees, which we hear so much about; again, that is a decision made purely by the employee.

Imagine a situation where employees say, Look, I really need that money. I like time and a half. That's what I get now. But I need this money so badly in order to provide for my kids, getting their teeth fixed, I will work the extra hours just for straight time.

The employer will respond, Fine. You are on. You are on. Look, it's voluntary. You are on. You wanted to do that, you are stating that, OK, you are on.

Now imagine that the employer needs a little overtime work. Do you think he is going back to the person who wants time and a half? Of course not. Of course not. Of course not.

They are going to go to this part that says, Look, you can work me 60 hours a week. So that employer is going to say, I'm going to take those that go for the flex credit and those that will go for the 60- or 70-hour week, then I don't have to pay the overtime.

Mr. President, that is what this bill provides. We can hear this is voluntary. Sure, it is voluntary for this person to get in or out. It is voluntary for that person that effectively is going to have to need those resources so much that they will sign on for a lesser compensation, but it is not voluntary for the employer. He or she can make that judgment as to which one of those they will use and do it in a way which effectively undermines these provisions.

I want to just mention what the current situation is, and then I will come back to the analysis.

Currently, if employers generally want to provide family friendly arrangements, they can do so under the current law. The key is the 40-hour week. Normally, employees work five 8-hour days a week, but more flexible arrangements are possible. Employers can schedule workers for four 10-hour days a week, with the fifth day off, paid at the regular rate for each hour. No overtime is required. They have that flexibility today.

We hear, What if you want Friday off? Well, you can have Friday off on this if the employers want to do that to benefit their employees. We heard so much the last time that employers care so much about the employees that they are really going to take care of them. They can do that today under the existing law. They can give them a half day off on Fridays. A number of companies do that, but they do not have it mandated. And no overtime is required. Or they can arrange a work schedule for four 9-hour days plus a 4-hour day on the fifth day, again without paying a dime of overtime.

Under current law, employers can also arrange a work schedule for four 9-hour days plus 4 hours on the fifth day without paying the overtime.

Under the current law, some employees can even vary their hours enough to have a 3-day weekend every other week. They can offer genuine flextime. This allows employers to schedule an 8-hour day around core hours of 10 to 3 and let employees decide whether they want to work 7 a.m. to 3 p.m. or 10 a.m. to 6 p.m. This, too, costs employers not a penny more.

But only a tiny fraction of the employers use these or the many other flexible arrangements available under current law. The Bureau of Labor Statistics found in 1991, only 10 percent of hourly employees use the flexible schedules. The current law offers a host of family friendly flexible schedules today, yet virtually few employers provide them.

This bill, Mr. President, has to lead us to a different conclusion. If they have the flexibility, they can do it, and they are not doing it, I think it is fair to reach a different conclusion, which is cut workers wages, and employer groups unanimously support it. That is the record. All the employer groups unanimously support it. Obviously, it is not just small businesses which wish to cut the pay and substitute some less expensive benefit instead.

As I was just mentioning about the comments that were made last week, we have the situation where the employer has those choices over those employees. Those of us who oppose S. 4 believe it does a very poor job of providing employees the time off at the times they need it.

S. 4 is designed to meet the employer needs, not the employee needs. I mentioned last week about the change in the decisionmaking from the employee to the employer that is made with Federal workers. We heard so much about

the Federal employees: We are just doing here for the private sector what the Government has already done for Government employees. We heard that for a long time, until someone picked up the book and said, ''In the Federal Government, the employees make the decision.'' But not here, Mr. President.

The way this is designed, which I went into in some detail last Friday, demonstrates that the employer will make the ultimate decision about whether he or she has been given reasonable time and whether it will unduly disrupt. Even if the employer is arbitrary in basically denying this kind of reasonable request, do you think that there is any enforcement mechanism there? Do you think there are any penalties in this area there? Absolutely none. What do you think that says to the employers? That gives them the whole enchilada. They make the decision on whether the request is reasonable, they make the decision whether it will unduly disrupt, and if they make it wrong, there is nothing that will happen to them. Come on, Mr. President, that gives the authority and the power to those employers.

An employer can lawfully deny all overtime work to those employees who want to be paid and give overtime exclusively to workers who will accept the comptime in lieu of pay. There is no freedom of choice for workers.

A working mother may want a particular day off so that she can accompany her child to a school event or a doctor's appointment. Nothing in this legislation requires the employer to give her the day off she requests. The employer decides when it is convenient for her to use her accrued comptime. There is no freedom of choice for workers.

The employee witnesses cited in the Republican majority report, Christine Korzendorfer and Sandie Moneypenny, emphasized the importance of employee choice in their testimony. Ms. Korzendorfer, who the Senator from Missouri focused on in his remarks, told the Employment and Training Subcommittee: ''What makes this idea appealing is that I would be able to choose which option best suits my situation.'' But those who brought Ms. Korzendorfer to testify did not tell her who controlled that decision. Under S. 4, it is the employer alone who determines what flexibility is available in her schedule.

Ms. Moneypenny testified, ''If I could bank my overtime, I wouldn't have to worry about missing work if my child gets sick on a Monday or Tuesday.'' The problem is that the Republican bill doesn't give her that opportunity. Her employer has no obligation to let her use the accrued comptime on the days her child needs to see a doctor. There is no provision, there is no guarantee in here, absolutely none.

The Senator from Missouri went to great lengths to rebut my contention that on crucial issues, S. 4 gives the choice to the employer, not the employee. His defense of the legislation is that the employee can choose not to participate in the first place and can choose to withdraw from the program later. He refers to this as ''the choice to change his or her mind'' if the program is not working fairly. Contrary to the Senator from Missouri, I do not consider that to be much of a choice at all.

If they are out, if they say, ''I am not for this, I have worked these flex credit hours until I am blue in the face and I'm not getting the overtime, I want out of it,'' does anybody think that that individual is ever, ever going to be able to get overtime as one who is not participating in this?

This is so far beyond the possible understanding about what is happening in the work force, where last year, 170,000 cases came before the NLRB and over $100 million was returned to workers because of the failure to pay overtime. That is what is happening.

And where is it happening? Among these various workers. That is today. That is happening just as we are here. The idea that this is all being done in this wonderful atmosphere of consideration of the bill defies what is happening in the work force of America among this economic group: over 80 percent, $28,000. We know where they are working. We know about the failure to give them overtime. We know what those working conditions are. How many studies, how many reviews, how many inspections have to be done? We know what will happen to that employee when that employee says, ''Well, I'm out of it now, I want to get out of it.''

If we are truly concerned about the employee's need for families, we should design a program that really works. I do not consider it to be an appropriate response to say, in essence, if the employees don't like what we give them, they can reject it and get no time off at all. I think we have a greater obligation to draft legislation which genuinely addresses the real needs of workers.

The Senator from Missouri denied this bill will result in a pay cut. As presented, S. 4 would allow an employer to deny overtime work from employees who insisted on receiving overtime pay. All the overtime work could go to the employees who agreed to take comptime. Those who wanted overtime pay would no longer receive any of the extra work. Their paychecks would be reduced, and, in plain English, that is a cut in pay.

Furthermore, under the biweekly work schedule and the flexible credit hour provisions, employees who work more than 40 hours a week will no longer receive time and a half in their wages or time off. That is, Mr. President, if the person said, ''Look, I really need to get that time for my child on Monday, give me the time off my comptime,'' they say, ''OK, you get it,'' but the interesting thing is, the words that are left out are when they come back to work, they can be forced to work on Friday because it does not use the words ''hours paid,'' to equivalency in hours paid which gives the protection.

So mom or dad gets the child on Monday but loses them on Saturday. These are the kinds of things in this bill. Do you think we got support? We tried to make those adjustments in the legislation. No, no.

As the Senator from Missouri directly noted, that loss of pay creates undue stress. We should not permit it to happen, but it will happen if S. 4 is enacted.

All of the problems with S. 4 I have described this morning —the failure to ensure employees the right to use comptime when they choose; the failure to prevent employers from discriminating in allocating overtime work; the failure to preserve the principle of the 40-hour workweek; and the failure to treat comptime hours used as hours worked could easily be corrected. In the Labor Committee, the Democratic members offered amendments to correct these flaws. Each was rejected. Each was rejected. Each one of those would have given greater power to the employees. All of them were turned down.

The refusal of the Republican majority to make these changes —to present legislation that would truly empower workers to make real choices—speaks for itself. The real intent of S. 4 is to create choices for employers, not employees. We can do better. Let's enact a bill that gives those choices to working men and women so they are free to do what is best for their families.

Mr. President, I yield the floor.

Mr. ASHCROFT addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. ASHCROFT. Mr. President, last Friday, we had the privilege of beginning our discussion of the Family Friendly Workplace Act. During that debate, the Senator from Massachusetts asked an important question of the sponsors of S. 4. He put the question this way: Who's side are you on?

I want to answer that question very clearly: We are on the side of the workers of this great nation. We are on the side of giving American workers the capacity to be better fathers and mothers, sons and daughters. We are on the side of providing a framework so workers can adequately balance the competing demands of work and family. We are on the side of giving the 59.2 million private sector hourly workers the ability to work flexible work schedules that already are enjoyed by the 66 million American workers who enjoy flexible working arrangements.

Who's for flextime? I think it is an important question that has been asked. A Penn and Schoen survey reports that 75 percent of the public supports the choice of comptime; 64 percent of the public prefers time off to more pay, given the choice. They want to have the choice to take time off instead of receiving more pay.

Federal workers now have the same flextime arrangements that are offered in this legislation; 74 percent say that it boosts their morale; 72 percent have more time with their families.

It is time to provide this same benefit we provide in Government to people in the private sector. Working Woman and Working Mother magazines both endorse this particular proposal of flextime, because they believe that it is essential that we have more capacity to accommodate the competing demands of flexible working arrangements and our families. We are on the side of working women who have said that flexibility is what they need to meet the competing demands of work and family. We are for women who, in the Department of Labor's working women count report to the President stated that, ''The No. 1 issue women want to bring to the attention of the President is the difficulty of balancing work and family obligations.''

As I mentioned, Working Mother magazine says it supports this legislation. Working Woman magazine also supports this legislation—in its approval of this bill—the editors said that we should give women what they want and not what Congress thinks they need.

Why should we want to give flexible work arrangements to these workers? What does it mean for their families? What does it mean for their lives? The workers enjoying the benefits can tell you. The executives in the boardroom can tell you how important it is to be able to accommodate their family needs through flexible scheduling. The salaried workers of America—supervisors, managers, stockbrokers, bankers, and lawyers can tell you how flexible working arrangements give them opportunities to leave work early when needed to watch their child play in a ball game or go talk to a parent-teacher conference, or take care of personal business that cannot be done on the weekend.

Of course, Federal workers, and many State and local government workers, who have comptime can tell you what the benefit of being able to go home to be with their sick child instead of worrying about that child. Congress recognized the benefit of flexible work arrangements and passed the Federal Employees Flexible and Compressed Work Schedules Act almost 20 years ago. This act allowed Federal Government employees to enjoy flexible work schedules, which still are illegal for the rest of America's private sector hourly workers. That disparity between what we have provided as an opportunity for Federal workers and which we make illegal for people in the private sector is a disparity which the people of America are uncomfortable with, and they expect us to change.

The Federal Employees Flexible and Compressed Work Schedules Act allows hourly workers to work an extra hour one week in order to work 1 hour less the following week, something that is illegal now. It allows Federal Government employees paid by the hour to work on biweekly schedules, at their option. This allows a worker to work 5 days one week, 4 days the next, and have every other Friday off.

When surveyed about the program among the workers who have it in the Federal Government, it is interesting that Federal workers, on a 10-to-1 basis—actually, better than 10-to-1 basis—stated they like the program and they wanted it to continue. No wonder. Today, almost 20 years after giving this benefit to workers in the Federal Government, it is still illegal for private sector employers to cooperate with their employees in the same respect.

As far back as 1945, the Congress of the United States recognized that some times, when employees work overtime, they would rather have some extra time off rather than the money. Congress recognized that no matter how much money you get for overtime, you cannot replace the time you need with your family, so they amended the Federal Employees Pay Act to allow Federal Government employees the choice between being compensated for overtime work and being able to take time off with pay. In 1985, Congress gave the same choice to State and local government employees, in terms of comptime opportunities. These workers can take time off with pay at a later date, instead of being paid cash for time-and-a-half overtime.

Congress acknowledged that sometimes time is more valuable than money and that Congress is not in a place to make that decision for every worker. However, right now Congress is making that decision for private sector hourly workers. Congress is making that decision because there is no option, under the law, for employees to choose to take time off later over monetary compensation.

Now, the squeeze on people for time has never been more dramatic than it is at this time. Yet some Members of Congress continue to fight giving the same option of flexible scheduling to private sector employees that we have given to Federal government employees. They fight giving compensatory time off options to private sector workers even though they supported such measures for State and local government employees just 12 short years ago.

The Family Friendly Workplace Act would give all hourly workers this same opportunity to make such choices.

Now, President Clinton recognized the benefits of flexible work schedules himself when he directed the use of flexible work arrangements for executive branch employees. On July 11, 1994, he said:

> Broad use of flexible working arrangements to enable Federal employees to better balance their work and family responsibilities can increase employee effectiveness and job satisfaction while decreasing turnover rates and absenteeism.

It sounds like the President was endorsing the concept. I agree with his statement. I urge him to be on the side of the rest of the workers, not just the Government workers of America. I urge him to join us in saying that all hourly paid workers in America should have this opportunity to cooperate with their employers to work for comptime off instead of paid overtime when they prefer comptime off.

It is important to note that this legislation would impose taking time off on no one, and anyone, even if they made a choice to take time off, could later convert that to paid time merely by saying so. The bill provides that second choice.

I think it is important for us to say whose side are we on. I think we are on the side of the private sector, hourly workers in this country. Everyone agrees that flexible work arrangements have been good for Federal employees, for salaried workers, for State and local workers in terms of comptime provisions. Every study that has ever been done on the subject concludes that these arrangements are beneficial to workers.

So why is that group of hard-working Americans, the laborers of this Nation who work on an hourly basis—the store clerks, the mechanics, the factory workers, the clerical workers, baggage handlers, gas station attendants—why are they denied the opportunities for this benefit? Could it be that the Congress has the arrogance to decide that no worker could make such a choice for himself, that these workers are incapable?

I believe that is outrageous. We should no longer say, ''You cannot make this decision, we must make it for you.'' We should say to these workers, you have the same capacity and right to cooperate with your employer to make decisions about time off and about flexible working arrangements and about scheduling as do the Federal workers and workers at State and local governmental entities.

That is whose side we are on. Everyone in the culture, other than hourly workers, now has a real shot at flexible working arrangements and compensatory time. The boardroom has it. When the boss goes to play golf on Friday afternoons, he knows of the value of flextime. It is high time, if the boss is capable of doing that, he should at least be able to cooperate with employees who need to spend time with their family to provide such opportunities for hourly workers, as well.

So I ask the opponents of this legislation, whose side are you on? Are you on the side of working women who sit at their desk worrying about a sick child because they cannot afford to take time off from work without pay, while their salaried coworkers leave for their sons' soccer games? Are you on the side of working men who pack their lunch every day and go to work only to go

home to look at pictures of their child's award assembly, pictures which show that the business executives were proudly at the side of their children while his child accepts the award?

Are you on the side of Christine Kordendorfer who wanted the option of occasionally taking her overtime compensation in the form of time off rather than pay to care for her growing family and take care of her health in the last stages of her pregnancy? Are you on the side of Arlyce Robinson who came in to testify that she wants to take some time off as a result of flextime, so she can participate in her four grandchildren's extracurricular activities? Or are you on the side of the special interests? Are you on the side of the organizations designed to represent the interests of America's workers, who just this Sunday began running ads opposed to this legislation?

Let me just say I was stunned when those organizations, which purport to be helping American workers, began running television ads against this legislation. The television ads were replete with misrepresentation. Here is the text of the ad: ''Big business is moving to gut a law protecting our right to overtime pay. If they win, employers could pay workers with time off instead of money.'' That is simply false, that the employer would have a unilateral right. As a matter of fact, it takes a request by the employee in order for that to happen. They say that the choice will be up to employers. They say that there are no real safeguards to keep employers from pressuring workers to accept time off or to telling them when to take the time off.

The fact of the matter is the bill itself contains safeguards that are substantial. The bill provides that there can be no coercion, either direct coercion or indirect coercion. I will read from the bill, line 14 on page 15: ''An employer that provides compensatory time off under paragraph 2 to an employee shall not directly or indirectly intimidate, threaten, coerce or attempt to intimidate, threaten or coerce any employee for the purpose of,'' and then it goes on, ''including interfering with the rights of the employee to use accrued compensatory time off in accordance with this law, or requiring, threatening or coercing them in terms of requiring the employee to use compensatory time off.'' When you go to the definition provided in the law about intimidation and coercion, either direct or indirect, you find out that relates to conferring a benefit or denying a benefit.

Now the Senator from Massachusetts has repeatedly said employers would be free to offer benefits like overtime work and extra pay, which he categorizes as a benefit to those who would choose one form or another of compensation. The bill itself unmistakably challenges the charges levied in the AFL–CIO spots against this matter.

This ad says, ''You could work up to 40 additional hours in a week before qualifying for overtime.'' Up to 40 additional hours in a week before qualifying for overtime, suggesting that an employer could make an employee work an 80-hour week. That is a total falsehood. To do that, to say that, knowing this bill does not provide that, is to lie.

It is important for us to know that the real provisions of this bill outlaw specifically direct and indirect coercion. They outlaw intimidation. They outlaw the promise of a benefit, or the conference of a benefit to an individual to shape or to otherwise distort the decisionmaking that is voluntary, and it is supposed to be voluntary and guaranteed to be voluntary under this bill.

I think it is shameful that the AFL–CIO would seek to impair the ability of hourly workers in this country to have the benefit. It is the same kind of flexibility that workers at the salaried level, at the boardroom, at the management level, at the supervisory level, have long had. It is sad—twisted, that these ads began running on Mother's Day. Frankly, the best Mother's Day present we could have given to the United States of America would have been flexible working arrangements that would have made possible mothers spending more time with their families, fathers spending more time with their families, fathers and mothers spending more time with each other and their children. On the day set aside to recognize the valuable contributions that mothers make in our society, the labor lobby was beginning a campaign opposing this bill rather than embracing a change that would enhance the lives of mothers across this great land.

Rather than supporting public policy to make workers' lives easier, the labor lobby found out that the Members on the other side of the aisle recognize how important it is to give American workers these options. The labor lobby realized that Congress is going to work together to ensure America's families a brighter future, so the labor lobby interests in Washington took money, paid out of the pockets of hard-working Americans—it is from the very workers who would benefit from these scheduling options—yet they are spending the worker's money on ads opposing this legislation. These ads are a lie. These ads were strategically targeted to those Members on the other side of the aisle who have expressed an interest in working with us on this issue.

When I first introduced this legislation back in 1995, the labor lobby ran similar ads in my State. However, the ads backfired as their lies were exposed. As concerned constituents called my office, they found out the truth about the legislation. Many of them told me not to listen to the voice of the opposition coming from the labor lobby. They told me that, as workers, they were interested in this kind of flexibility. They told me that these scheduling options would enhance their lives. They recognized the fact that the labor lobby should be leading this fight, leading the charge to help get workers more scheduling options. In fact, these constituents resented the fact that the labor lobby in Washington had abandoned their traditional promoting of workers' interests.

Knowing that some of this body's strongest opponents of this bill supported these flexible scheduling options for Federal Government workers makes me wonder whose side they are on. Knowing that just 12 years ago these same opponents not only supported comptime options for State and local government employees, but cosponsored the legislation, I wonder whose drum they are marching to now. Is it the drumbeat of the American worker who needs to have the opportunity for flexible scheduling? Or is it the cadence that is being called by the labor union leaders in Washington? I wonder whose side they are on when there are much greater protections in this bill than the bills they have supported in the past.

This bill is replete with protections for workers that are not included in the bill that is providing the same framework of options for Federal employees. Under the legislation giving State and local government workers comptime options, cosponsored by the opponents, comptime can be made a condition of employment. It can't be a condition of employment here. There is no protection of a worker against coercion. Under this legislation coercion or even attempted coercion would be a violation of the law. We have rules against coercion and intimidation. State and local government agencies can force the employee to use their comptime when it is convenient for the agency, even though that practice has been successfully challenged in some courts. That is the provision they allowed in the bill they passed for State and local governments. We have protections against that happening in this bill.

Last but not least, in the bill that they sponsored and passed for State and local government authorities, there were absolutely no cash-out provisions for the workers. The bill that is before us allows a worker who has said, ''I will take my time in comptime,'' any time prior to taking the time off with pay, later on, can say, ''No, I would like the money, the time and a half overtime. I will be working to gain additional hours later.'' So the worker has a choice in the first instance to say, yes, I would like to have some comptime or not and work time and a half—that is the worker's choice. It can't be imposed on him, by the terms of the legislation, with a stiff penalty.

A second choice is an option of the worker. At any time prior to taking the time off, the worker can say, ''I changed my mind. I would like to have the money.'' That is not an option under legislation cosponsored by opponents of this bill. That is not a protection that was included by those who sponsored the measure for State and

local governments. They didn't have that protection there. We have it here. Further, there is another protection. At the end of every year, these hours have to be cashed out if they are not taken in this bill. Were those protections in the items sponsored by those who oppose this bill for State and local workers? Not on your life. They are demanding a much higher standard here because they are marching to the beat of a different drum.

I submit to you that it is important to know whose side we are on in this legislation. I say it is time that we be on the side of American workers and their families. For a long enough time we have been on the side of those individuals whose effort is made in Government. For the last 20 years, we have had these kinds of flexible arrangements. Federal Government workers enjoy using them at a 10-to-1 rate. They say these schedules improve their morale and give workers more time to spend with their families. Last week, they interviewed working mothers in the United States of America, and 81 percent of them said flexible working arrangements would be very important. Yes, that is whose side are we on?

Now, those who oppose this call this a ''paycheck reduction act.'' I don't know how they can call this the paycheck reduction act with a straight face, because there answer it to create more unpaid leave. They say we should not do this, we should expand family and medical leave. Family and medical leave is nothing more than the right to take time off without pay. Here we have a flexible working arrangement proposal which would give people the right to take time off with pay. I think the American people want to have time off with pay. So who's side are we on?

Let's go to the statistics from the Family and Medical Leave Commission report. The Family and Medical Leave Commission report says what happens when people take time off without pay—which is really the way you reduce your paycheck, by taking time off without pay. Here is what happens: Twenty-eight percent of all the people who took time off had to make ends meet by borrowing money. This is from the report of the Commission on Family and Medical Leave. Senator DODD chaired this Commission. The Commission reported that 28.1 percent had to borrow money; 10.4 percent of the people who took time off under family and medical leave went on welfare in order to accommodate the reduction in pay; 41.9 percent said they had to put off paying bills. The opponents of this legislation are just offering more additional leave without pay, so that another 40, 41, or 42 percent of the people have to go without paying their bills, or another 10.5 percent will have to go on welfare, or close to 30 percent will have to go out and borrow money.

Whose side are we on? How can you call this the paycheck reduction act, which would provide individuals the opportunity to take time off without taking the pay cut? They could use comptime or take time off by using flextime. It just is beyond me to think that we would reject this opportunity for Americans to spend time with their families. It is beyond me that we would reject this opportunity to give Americans time to accommodate their needs outside the workplace by taking comptime off or using flextime and still get paid for it only to have the other side allege that this is a paycheck reduction act. I cannot believe that after calling this bill the paycheck reduction act, that they can claim the real solution to this problem is to put more people in the position where, according to the Family and Medical Leave Commission, 28.1 percent of them had to borrow money, 10.4 percent had to go on welfare, and 41.9 percent had to say to creditors, ''I am not going to be able to pay you.'' This isn't what Americans want. No wonder 75 out of 100 people in this culture say we really want more flexible working arrangements.

Now, I just add that nothing in this measure impairs the ability of anyone to take time off under family and medical leave. That time is still available. This doesn't abolish family and medical leave. Every single hour of family and medical leave that exists—if a person prefers to take time off with a pay cut, they will be able to use that and there will be times when they may have to. This is a different set of options.

This bill doesn't say we will no longer have family and medical leave. It is not incompatible with it. It doesn't outlaw it. People will be able to, if they need or want to, say, ''Because I meet the conditions of the Family and Medical Leave Act, I am going to take time off.'' That is appropriate. We want workers to have that choice and to add to workers another range of choices. It doesn't in any way impair their ability to choose time off under family and medical leave. That is still there. This is merely a way to say to them, if you don't find that comfortable, if you are tired of having to go on welfare and put off bills or borrow money in order to take time off under family and medical leave—you might want to try another way of doing it. Instead of being paid time and a half sometime when you have overtime to work, you would put it in a comp time bank, so later on, when you needed time off to be with a sick child or to go get your car license renewed and stand in that silly line at the department of motor vehicles during working hours when you normally can't do that, you could do it and you don't have to take a pay cut.

The truth of the matter is, this is not the paycheck reduction act at all. This is the way to take time off with pay. The American people believe, I think, a lot of things and, given the amount of misinformation, I guess that is expected. But they will not believe that compensatory time off is taking a pay cut. If you earn time and a half as a result of working some overtime and you are going to take time off the next week and still get paid for it, that means you get time off without a pay cut, not that you get time off with a pay cut. So I think it is important for us to understand that.

The Senator from Massachusetts thinks that there are tremendous opportunities for abuse, in the event we would average the work week over 80 hours instead of 40 hours and only at the option of the worker—only with the approval of the worker. He talks about the potential abuse of an employer choosing one person as opposed to another person for overtime. Yet, he lauds the current system. I guess his point is that if they want somebody to work overtime on Monday, they can say, ''Who will work it tonight and take a couple hours off on Friday afternoon?'' He thinks that is OK as long as it is done within 1 week. But over a 2-week period it is somehow a great threat. Employers would be abusive in a 2-week stretch, but not in a 40-hour stretch.

Get serious. The truth of the matter is that we ought to understand that, where there are abuses, we ought to have strict, tough enforcement, and I think we can agree on that. We have doubled the penalty for abuses under this law. But to make it illegal for an individual to take an hour off on Friday and make it up the next Monday is inappropriate and should be changed. For the life of me, I can't believe that we should persist in that respect. We have seen how this works. We have watched it work in State and local government and in the Federal Government. We haven't been overrun by a series of complaints. We certainly haven't been inundated by a demand to change the bill. It has been in place for 19 years now and is working very well. You would think if this is the kind of thing that was abusive, we would at least have some people talking about it.

I should emphasize, and I want to make very clear to those who would be watching, that nothing in this law mandates any worker to take time off instead of being paid time and a half for overtime. Everything in this law provides penalties for an employer who would coerce a worker into doing so. Nothing in this law provides any mandate that a worker would have to build up a bank of flextime hours. A lot of workers might like to do that. In the event they needed time off, they would not have to take a pay cut in order to get it.

Flexible working arrangements are enjoyed by the managers, by those in the boardroom, by supervisors, Presidents, CEO's, and corporate treasurers. As a matter of fact, 66 million workers have flexible working arrangements. Only 59 million hourly paid individuals don't. It is time for us to accord to these individuals the same option of working together with their employers

so they can accommodate the needs of their families and work at their jobs. It should be unnecessary to take a pay cut to be a good mom or dad in America. Flexible working arrangements would make it possible for people to meet the needs of their families without taking a pay cut.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER (Mr. BURNS). The Senator from Minnesota.

Mr. HARKIN addressed the Chair.

Mr. WELLSTONE. Mr. President, I yield 10 minutes to the Senator from Iowa.

The PRESIDING OFFICER. The Chair advises the Senator from Minnesota that there is no time control.

The Senator from Iowa is recognized.

Mr. HARKIN. I thank the Senator. I should not take more than 15 minutes. Mr. President, listening to my friend from Missouri expound on the wonders and benefits of this bill, once again, reminds me of what I have often said about the U.S. Senate and the 100 Members that comprise this body. There are no bad people in the U.S. Senate. I can honestly say that I like each and every individual here in the Senate. There are no bad people here.

There are just a lot of bad ideas. Listening to this explanation of this bill reminds me once again of that truth. The Senator from Missouri is a friend, and he is a good guy, but this happens to be a very bad idea. I think it is terribly mistaken—what this bill would do in the force and effect of this bill. I am going to get into some of those in my remarks, especially on whether or not this really is a paycheck reduction act, because it really is. Of the three options that people have, it actually would reduce their paychecks.

Mr. President, as our workplace has changed the number of two-parent families has increased. Workers deserve relief to meet the demands of everyday life. That is why, for example, I support, like a number of people here, the Family and Medical Leave Act to allow workers to take time off to care for newborn children, or ailing relatives, without fear of losing their jobs.

Mr. President, millions of Americans have been helped by this landmark law. Now I believe it is time that we expand this profamily protection to provide parents with a little time off from work to attend a parent-teacher conference, or a doctor's appointment for their child.

I have worked my entire career in the House and the Senate to try to improve the lives of working families, and that includes comptime. I support giving families more flexibility to balance their work and family lives, and I am hopeful that we can pass such a bill. However, this bill before us, designated S. 4, is truly a wolf in sheep's clothing. It is a sham. This bill offers the appearance of employee choice but it is not the reality. The appearance but not the reality. In the Labor Committee markup of this bill several amendments were offered to improve this bill to provide real choice and protection for workers. All were rejected on party-line votes. I am going to go through some of them.

I am deeply concerned that this legislation will actually take families in the wrong direction. It gives the employers more flexibility to get out of their overtime obligations rather than giving employees more flexibility to spend time with their families. It will leave workers with less money, not more flexibility, and should be really titled ''Paycheck Reduction Act.'' A genuine comptime bill must provide employees with choice, protection, and flexibility. It has to be commonsense and profamily, and S. 4 falls short on all of those counts.

Supporters claim that S. 4 allows employees to make the choice between overtime pay and comptime, but it doesn't contain the protections that are necessary to ensure that employees have free choice and are free from reprisal. Under this legislation, the employer holds all the cards. The employer chooses what options to provide the flexible work options to, and when the employees can exercise the options. It is also seriously lacking in other important employee protection measures which would ensure flexibility and not a reduction in benefits.

S. 4 outlines three flexible work options, the employer—not the employee—gets to pick what flexible options to provide. An employer could either offer comptime in lieu of overtime pay; second, a biweekly work schedule; third, flexible credit hours. Two of these three options would effectively relieve an employer of their overtime obligations, and result in an actual paycheck reduction for the employee. In effect, S. 4 would eliminate the guarantee of pay for overtime work for over 64 million workers.

Again, when I think about it, what rational employer would not want to maximize profits and savings with their company? The employer has to answer to the shareholders, to the stockholders. They want to maximize that. I understand that dynamic. But on the other side of that equation there must be provisions to protect the employee so that you can have a balance in those scales. This bill does not provide that kind of balance. All of the help goes to the employer and not to the employee.

Again, I understand that employers want to maximize profits. That is their business. They want to ensure that their shareholders get the best return. That is their business. Our business ought to be to ensure that the workers have their rights protected to even out that balance to provide the kind of support for the workers so that this time and their work and their schedules are not totally determined by the employer. That is what this bill does. This bill gives it all to the employer. For example, under the biweekly work schedule, the employer could choose to abandon the 40-hour work week altogether. An employer would not be obligated to pay overtime until an employee works over 80 hours during a 2-week period. So in effect an employee could work 60 hours one week, 20 hours the next week, and receive no overtime pay, or even comptime. Under this scheme an employer could rig it so that overtime hours are never approved and, therefore, the employer has no overtime obligations. That is factual. I challenge anyone to dispute what I just said right there. It is not in the bill. That is what an employer could do. So not only would this result in less income than the employee would receive under current law for working those same hours and no comptime for those who want that time instead of pay but, I submit to you, Mr. President and others, that a 60-hour workweek isn't very family friendly. Under the biweekly schedule it would be extremely difficult for those workers to arrange for child care, or to plan time with their families if their employer could constantly change their work schedule. That is exactly what could happen: 60 hours one week, 20 the next, 50 the next, 30 the next, 60 one week and 20 the next. How could any employee and their family arrange for child care, or to reasonably plan their schedule? That is one of the options under this bill. So we can see that it really is not very family friendly, and it would take away overtime pay and even comptime.

Under the flexible credit hours provision, an employer could offer the employee an option to work the extra hours but receive only 1 hour of overtime for each extra hour worked. Under existing law an employee would be paid time and a half for extra hours worked. Even with comptime, the employee would at least receive 1½ hours of overtime for every extra hour worked. It is hard to believe that any employee would choose this, unless he or she wasn't given any other choice.

In addition, under S. 4, the flexible work hour arrangements would not have to be made available to all employees. The employer picks who gets to participate. The employer could legally discriminate against workers who need and who want overtime pay instead of comptime, and there are no remedies available to the employee to protect it. Again, let me repeat that. The employer could legally discriminate against workers who need and want overtime pay instead of comptime, and there are no remedies available to the employee which might prevent this.

Instead of having a choice, workers may have it chosen for them, or suffer the consequences. For example, the Senator from Missouri cited parts of the bill which say that the employer could not directly or indirectly intimidate, threaten, coerce, et cetera, or anything like that. OK. But what if the employer did this? He could lawfully stop offering overtime to employees who do not participate in flexible options, or they could give promotions

and raises only to those employees who participate. There is nothing in the bill that prohibits that. That sends a strong signal to the employees that they had better participate in what the employer has decided, or they will not get offered overtime, or they don't get the right to promotion, or they don't get the right to raises. There is nothing in this bill that prevents that. So it may be a good deal for the employer but it is a raw deal for the worker who usually receives overtime pay.

This fundamental flaw was outlined clearly during the Labor Committee markup. Senator KENNEDY offered an amendment that would have expressly made it unlawful for an employer to discriminate in awarding overtime, or in awarding overtime based on an employee's willingness to accept comptime instead of overtime pay. It was defeated on a straight party-line vote. Supporters of S. 4 say it prohibits coercion. The bill does not account for the mild but effective pressure employees feel to accommodate their employer. Hourly workers have little leverage in the workplace and are least likely to challenge the employer when it could mean their job, or loss of a promotion, or raise. The workers who rely most heavily on overtime pay are the most vulnerable employees. Consider the following Department of Labor statistics: One-fourth of workers who depend on overtime earn under $12,000 per year. Sixty-one percent earn $20,000, or less. More than 80 percent of overtime recipients earn less than $28,000 a year. When you are making that kind of money, you can't afford to offend your employer.

Supporters of S. 4 often point out that there are remedies when an employer coerces an employee to participate, again a very hollow right. Without more resources for Department of Labor enforcement this is a sham, hollow promise. Employers violate current overtime provisions at an alarming rate. One-third, or 13,687, of the investigations by the Department of Labor in 1996 disclosed overtime violations. The Department ordered over $100 million in back pay for 170,000 workers who were victims of those overtime violations. In addition, there was a backlog of 16,000 unexamined complaints pending at the Department of Labor at the end of 1996. That backlog accounts for about 40 percent of the annual number of complaints. In committee markup, Senator WELLSTONE offered an amendment that would delay the implementation of this bill until the backlog could be reduced to 10 percent. Again, it was defeated on a party-line vote.

You say the employee has a right. They can go to the Department of Labor. They can file a complaint. But look at the odds against you. Look at the odds that you will ever be seen, at the odds that you will ever be compensated if 40 percent of them are still backlogged cases. Plus the fact many of these are low-income workers. They do not know about filing complaints. They don't have an attorney. They are mainly scraping by week to week to take care of their families. If they get in trouble on something like this, they talk about filing a complaint and the employer says, ''You know something. I don't like the way you are performing your job.'' Out the door, fired. They are going to say, ''Boy, I am going to take my time and I am going to file this complaint with the Department of Labor, and I am going to hire me an attorney, and I am going to get what is due me''? No. You know what they are going to do? They are out the door looking for a job. They don't have the time and wherewithal to do that. They are out on the streets. They have some kids to feed, and the rent to pay. So when you say that there are remedies, believe me those are very hollow remedies when you look at these statistics.

Again, despite the statistics that demonstrate overtime violations are just the cost of doing business for some industries, S. 4 doesn't make any attempt to exempt such industries from coverage under this bill. For example, even though the Department of Labor has found that half the garment shops in the United States unlawfully pay less than the minimum wage, fail to pay overtime, or use child labor, S. 4 provides this industry a lawful way to get out of their overtime obligations. Think about that. The Department of Labor found that half of the garment shops pay less than the minimum wage, fail to pay overtime, or use child labor. S. 4 would effectively say to this industry you are exempt. This is the way to get out from underneath that. Again, workers in these industries are the most vulnerable to employee coercion, and the least likely to file any complaints.

During the committee markup, Senator WELLSTONE offered an amendment to exclude from coverage workers who would be particularly vulnerable to exploitation should comptime be offered at their worksites. The Wellstone amendment would have excluded employees in the garment industry as well as part-time seasonal and temporary employees, the most vulnerable in our society. Again, the amendment was defeated on a party-line vote.

Under this bill the employer has the last word when an employee can use their comptime. The employer could lawfully deny comptime for any reason and the employee has no recourse. Let me repeat that. The employee has no recourse if the employer denies comptime for any reason. This bill, S. 4, provides that an employee who requests the use of comptime off shall be permitted to use the comptime ''within a reasonable period,'' if it ''does not unduly disrupt the operations of the employer.'' But nowhere in the bill are the terms ''reasonable period'' and ''unduly disrupt'' defined. They are not defined. So an employee might give an employer 2 weeks' notice of his or her intent to use comptime to take a child to the doctor and have that request denied on the grounds of insufficient notice or the employer could claim that the time off might unduly disrupt business.

There is no definition in the bill of these terms. Employees work hard to earn their comptime. They should be able to use it within a reasonable time unless it substantially interferes with the employer's operations. No one would want to change that.

Now, again, Senator WELLSTONE offered an amendment to ensure that an employee could actually use the earned comptime when he or she needed to, but, again, the amendment was rejected on a straight party-line vote. Supporters claim they want to offer employees more flexibility, but if the employee has little control over when they can use comptime, where, I ask you, is the flexibility? There is none.

And as if giving the employer all the flexibility was not enough, S. 4 does not even provide for the protection of an employee's comptime. Accumulated comptime is an earned benefit that is accepted instead of overtime pay. S. 4 does not contain sufficient protection to ensure that workers whose employers go bankrupt will have some claim on their unpaid comptime. Let us be straight about this. Comptime is what an employee chooses in lieu of overtime pay. I think that is pretty well accepted by everyone on both sides of the aisle. But what happens when an employer goes bankrupt? Do you have a claim on that? No. In 1994, 845,300 businesses filed for bankruptcy. The rate of failure in the garment industry was 146 per 10,000 firms, twice the national average. In construction the rate of business failure was 91 per 10,000 firms. So comptime should be treated as unpaid wages during a bankruptcy.

In addition, comptime should be calculated as hours worked for the purpose of calculating an employee's entitlement to overtime and certain benefits tied to the number of hours worked. No such protection is found in this bill. No such protection. For example, a worker decides to use 8 hours of banked comptime in order to take a 3-day weekend by taking a Monday off. There is no provision in this bill that would prevent an employer from requiring that employee to work 10 hours Tuesday through Friday without paying overtime because only 40 hours would have been counted as worked.

So you bank the comptime. You take a Monday off for a 3-day weekend. Your kid has a day off from school. There is a teacher conference or something like that. Your kid gets a day off from school on Monday. You say we are going to spend some family time this weekend. So I have got my banked comptime. I want to take Monday off. I come back to work on Tuesday and the employer says, OK, you are working 10 hours every day this week and no overtime. No overtime. Why? Because there would only be 40 hours a week. Talk about a disincentive to take comptime.

So, again, businesses go bankrupt. You have overtime pay that is due you. You have a claim in that bankruptcy court. But if you have banked comptime, you are out of luck. Well, it ought to provide that if you have banked comptime and it goes bankrupt, you ought to have a claim, just as if you had banked overtime pay due you.

Also, there is another interesting little feature about this bill I do not think has been pointed out adequately enough. In many industries, contributions to pensions are made for each hour that the employee works. Overtime hours are considered hours worked for purposes of making contributions to these plans. But under this proposal, workers taking comptime not only will lose overtime pay, but they will suffer a reduction in pension benefits as well.

Imagine that. Imagine that. Now we have said, OK, guess what, employee. We are going to make this flexible, as they say in this bill. As I just pointed out, there isn't really much flexibility for the employee. You can now take comptime in lieu of overtime. But what happens if you have a defined benefit plan, a pension benefit plan. Hours worked including overtime hours would mean that you could also make contributions to that benefit plan. Well, if you take comptime, first of all, you lose the overtime pay. You say, OK, that's fine. I am willing to lose the overtime pay for my comptime. OK, fine, but then you suffer a reduction in your pension benefits as well. Another little twist in this bill that makes it harder for employees to take comptime in lieu of overtime pay.

Now, again, in markup, Senator WELLSTONE offered an amendment to count comptime as hours worked for this very purpose of making contributions to their pension programs. Again, it was defeated on a party line vote.

Now, my friend from Missouri talked a lot about he just wants for people in the private sector to have what Federal employees have because Federal employees have this comptime, so he wants private sector people to have the same thing. Well, all right, first of all, I do not believe that Federal employees should enjoy more rights than private sector employees. I supported the Congressional Accountability Act when we passed it in the last Congress. However, the public and private sector operate under very different circumstances. For one, Government agencies do not go in and out of business like thinly capitalized enterprises in the private sector often do. So when a public sector employee accrues comptime, they can count on eventually receiving the benefits.

But as I just pointed out, in the garment industry or construction, where they have high rates of bankruptcies and failures, you may bank the comptime. They go out of business. You are out of luck. Not so if you work for the Government. You are going to get it.

Also, private sector employers are driven by the profit motive. That is as it should be. And as such they are more likely to press their employees to take comptime rather than to pay overtime. Obviously, as I said, what manager does not want, what employer does not want to maximize their profits to make a higher rate of return for their shareholders? That is their business. So, driven by the profit motive, they would want an employee to take comptime rather than overtime pay.

In addition, aside from having a higher rate of unionized workplaces compared to the private sector, most public workplace employees are under the protection of civil service laws. That means if they are, in fact, singled out because of the choices they have made on the job, there is a set body of law that provides for both substantive remedies and a meaningful procedure in order to enforce their rights. Civil service laws.

For example, in the private sector, an employee can be fired for any reason at the will of the employer. In the public sector, employees can only be fired for good cause. They are entitled to a hearing to determine this. So in the private sector, an employee could be fired for not taking comptime, but not in the public sector—a big difference.

Also, Federal employees are entitled by law to paid sick leave, paid vacation, health and retirement benefits. If we could amend this bill to provide private sector employees with all of that, maybe I could support this bill. So I would challenge those on the other side, especially my friend from Missouri, amend the bill, provide the same kind of legal protections to employees in the private sector as employees have in the public sector working for the Federal Government. Maybe you could make a case for this bill. But I daresay they are not going to want to do that.

Lastly, I would like to point out that much of the flexibility the supporters of this legislation claim to want to offer is available right now. It is available now under existing law. So one has to wonder that if employers can do these things now but they are not, what is the real motivation, what is really behind their desire to get rid of the 40-hour workweek? Is it really to provide the comptime on the employer's side, or is it a way of saying, hey, this is a way I can improve my bottom line, increase my profit margin, pay a little bit more to the shareholders.

We got a real hint of this, Mr. President, at the Employment and Training Subcommittee hearing on February 13 of this year. A representative of the National Federation of Independent Businesses said:

> Real small businesses. . . our members cannot afford to pay their employees overtime. This (comptime) bill is something they can offer in exchange that gives them a benefit.

Gives the employer some benefit.

Well, if S. 4 is supposed to be family friendly, employee driven, giving flexibility to the employee as the supporters suggest, why are we looking for ways to give the employer more benefits? But that is what the NFIB representative said, I think in a moment of unguarded candor, if I might so state.

So the bottom line is this. When considering altering overtime protections in current law, the rights of employees must be of paramount importance to any proposal affecting their time and compensation. This proposal before us appears to be neither worker friendly nor family friendly, and the result of its enactment would require employees to work longer hours for less pay.

Lastly, the Senator from Missouri went on at great lengths to say that the special interests are ganging up to defeat this. Special interests? Let me just read a few of the groups opposed to this bill: the League of Women Voters, American Association of University Women, National Council of Senior Citizens, the NAACP, the National Council of La Raza, the Disability Rights Education and Defense Fund, the Union of American Hebrew Congregations, the Southern Christian Leadership Conference, the National Council of Churches, on and on and on. Special interests?

The fact remains, Mr. President, that every group that represents low-income workers is opposed to this bill. Every group that represents low-income workers is opposed to this bill. That is a fact. Special interests? Not at all. Special interests, not opposed to this bill. But those who understand what real life is about and who understand what these low-income workers have to go through, they are opposed to this bill.

Mr. KENNEDY. Will the Senator yield just for a brief question?

Mr. HARKIN. I will yield to the Senator.

Mr. KENNEDY. I know there are others who want to speak. I see my friend, Senator WELLSTONE, in the Chamber. I commend Senator HARKIN for making an excellent presentation. I hope the Senator will perhaps mention the coalition Members that are in support of this bill. The National Association of Manufacturers, the National Federation of Independent Businesses, the National Restaurant Association—they are not shrinking violets in terms of special interest groups. But the bottom line is, as I understand the Senator from Iowa and the Senator from Minnesota, we oppose comptime where employees cannot make the decisions, as they can under the Family and Medical Leave Act and as Federal employees can. The situation might be different if the employee could genuinely make the choice, but, under this bill, there is no choice for the employee. Therefore, we oppose the bill. We draw the line where we say this is basically stacked against the employees. I tried to spell that out earlier. But I just welcome getting the Senator's reaction on that issue.

We are for trying to get those kinds of protections. We were for it in the committee, as the Senator knows, when we tried to get the Murray amendment to give the 24 hours with the decision to be made by the employees. It was voted down by the Republicans unanimously. In terms of the Dodd amendment, it was voted down by them again—where the employee has it. When we get to the bottom line, is that not really the basic issue which is at stake?

Mr. HARKIN. I think the Senator is correct. That is the bottom line at stake. Are we really going to give the employee—are we going to empower the employee to make those decisions? This bill does not do that. This bill actually just gives more power to the employer. It gives more power to the employer to take away from the employee the benefits they have right now for overtime pay and the benefits they would have from, really, accruing comptime.

As I said earlier, again, this is another one of the very bad ideas that periodically come up through the Senate. It sounds good. What's it called? The Family Friendly Workplace Act? Ridiculous. I don't know who thinks up all these titles and these names. Nothing could be farther from the truth.

This is a bill—the intent may be good. I do not question the intent or motivation of my friend from Missouri at all. I just think it is going in the wrong direction. There are ways we can improve this bill. We offered these amendments to the committee. Senator WELLSTONE, Senator KENNEDY, and Senator MURRAY offered amendments to really make this more like what Federal employees have now. The Senator from Missouri is right. Federal employees do have this—with good protection, good comptime. As I point out in my statement, there is a lot of difference between the private sector employer and the public sector. If the Senator from Missouri wants to amend this bill to give private sector employees the same protections as civil service laws give Federal employees, maybe he can make a case for this bill. But that is not the case right now. So you cannot compare Federal employees with employees in the private sector.

This is just an example of good intentions gone awry. Good intentions, I think, messed up by other special interest groups that have come in, as Senator KENNEDY pointed out. Who is for the bill? As I pointed out, every group representing low-income workers is opposed to this bill. If this was such a good bill, they would be for it. I think that is the proof of what this bill is all about. It is a bad bill. It ought to be defeated. I am sure we will have some amendments, and I am sure the Senate in its wisdom will defeat this bill and put it back in the files where it belongs. I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, Federal employees have enjoyed flexible work schedules since 1978. It is time to give private sector employees the same options. Today's work rules are too inflexible, and this legislation changes that to meet the needs of today's working families.

The bill provides employees with several options in determining their work schedules.

First, workers would have the option of paid flexible leave. An employee might choose to work 35 hours one week and 45 hours the next, and still receive a full paycheck.

Second, an employee could set 2-week schedules totaling 80 hours in any combination. This would not change the 40-hour work week, as some have said. The Family Friendly Workplace Act simply adds a section to the Fair Labor Standards Act to create options for employees who want flexible work schedules. In addition, this cannot be forced upon an employee. It must be agreed to by the employee and the employer.

Third, employees could choose to take time and a half off instead of overtime. Up to 240 hours of comptime could be banked. Employees would also have the option of cashing out accrued hours for overtime pay at a later date.

No employee would be required to participate in any of these programs, and coercion or intimidation by the employer with respect to participation is prohibited. Strict penalties in this bill ensure that these arrangements will be voluntary. Let me reiterate that all of these options are 100 percent voluntary for workers. Nothing would change for employees who want to work a standard schedule. Employers would still have to pay time and a half for any overtime hours put in by an employee in any week, if that is what the employee wants.

According to the Bureau of Labor Statistics, in 1960 just 39 percent of women who had children between the ages of 6 and 17 were in the work force. Today, 76 percent of mothers with school-age children are working. This increase of working families is not compatible with the one-size-fits-all workplace laws enacted in the 1930's.

I urge my colleagues to support giving working families the opportunity to balance their work and family obligations by supporting this legislation.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, there are a number of Senators on the floor. We are undoubtedly going to be back on this bill with plenty of opportunity for amendments and work on it, so I am going to try to be very brief in deference to a number of colleagues. I know my colleague from Texas has to leave very soon, and I see a colleague from Maine here.

My disappointment is that the version of S. 4 that we see right now on the floor is a harsh version. It is not going to pass. It is going to go nowhere.

I would really like to see us do some work together. We had several subcommittee hearings that I thought were productive. I thank my colleague, Senator DEWINE from Ohio, for his leadership. We had a respectful markup. There was discussion in the markup, where amendments were voted down on a straight party vote, in which some of our colleagues appeared interested in modifications and ways of making this a better bill, changes that could bring people together—fixing the bill. That just has not happened. I know there is a managers' amendment. But a lot of concerns that have been raised just have not been spoken to.

The House bill, remember, passed narrowly. That bill was a much more moderate version than this Senate bill. It did not have the 80-hour biweekly work period framework. It did not have the so-called flextime. It was a straight comptime bill. In my view, anything that essentially takes the Fair Labor Standards Act and turns it on its head is not going to go anywhere. That is what the 80-hour framework does. And flextime, which offers little to the employee, does the same thing. I don't believe that anything that is hour for hour as opposed to time and a half is going to go anywhere either.

So I find it surprising and discouraging that we are discussing this particular version of this bill. It is not going to be enacted into law. I really wonder why we are debating it in its present form.

I believe there is some work we can do on the bill. Maybe we can do it through amendments and come out of here with a piece of legislation that we can all get behind. But whatever the bill's press materials promise about it, the fact of the matter is that in its current form the bill turns the clock back half a century. It is simply not going to work. My colleague, for example, came to the floor and was angry about ads that have been run. This is the first time I heard what those ads have to say. But reading from the script of one of the ads, a portion of the voiceover says:

> Big business is moving to gut a law protecting our right to overtime pay. If they win, employers could pay workers with time off instead of money.

That is true. That is absolutely true.

In theory, you could say employees have a right to choose. But the reality of the pattern of power between employees and employers is that quite often employees do not have that power to choose.

Then the ad says:

> They say the choice will be up to us. But there are no real safeguards to keep employers from pressuring workers to accept time off, or telling them when to take it.

That also is true. I pointed out in subcommittee and in committee examples of ways in which overtime law is being violated right now. There is a backlog of complaints at the Department of Labor. Regardless of the theory of the bill, it could very well happen that coercion will take place.

Finally, and I know my colleague from Missouri, whom I enjoy as a

friend, was very worked up about this portion:

You could work up to 40 additional hours a week before qualifying for overtime pay.

That provision is not in the House version of comptime. But in theory, that is true of this Senate version. I don't think it would happen, but the fact of the matter is, when you go from a 40-hour week to an 80-hour biweekly timeframe, that is exactly what could happen. Somebody could work 80 hours one week and not work the next week at all, but for the 80 hours they worked for that first week, there would be no overtime pay for the hours worked over 40 hours. That could happen. That is true. I don't think it would happen. But there is a real danger here, if you don't limit the bill to comptime, of employers being in a situation—and they really do have the power most of the time—where they basically can say to employees: We are interested in the flextime option. We are interested in your working overtime 1 week and taking more time off the next week. But we are not interested in time and a half, premium compensation, which you would earn with comptime.

Employers are in the driver's seat. The real problem is that the bill does not provide the flexibility that it purports to provide. That is a huge problem.

There are two principles, and I am skipping over a lot of what I wanted to say. There are two basic principles at a minimum, I say to my colleague from Missouri, that will be required to make comptime work for employees and give them real flexibility. These should be the basis for the work we do together.

First, it has to be truly voluntary. There has to be some language that puts more teeth into the voluntariness. Frankly, there is not right now.

Second, employees must really get to use their accumulated comptime when they want and need to use it. That was the why of one of the amendments I introduced, which said we have the Family and Medical Leave Act. FMLA makes clear in which cases we let families take some time off, even though millions of people are not covered right now. In any case, this bill would be an opportunity to say to somebody with banked comptime: It's your time. You have earned it. If you have that time and now you need to take time off because you need to go to a PTA meeting or have an illnes in the family, or for that matter you are having problems at home and have been battered, where there are problems of domestic abuse and you need to take time off, you should be able to take that time off. There should not be any question about it. You have earned it as compensation for hours worked. It should not be up to the employer to decide whether you can use it if FMLA reasons exist.

So I just want to make it clear that at the moment I do not see this as a Family Friendly Workplace Act. I do not see it as a Mother's Day present. It is not truly voluntary. We cannot change a piece of legislation that people have given their sweat, blood and tears for, which is what we are talking about when we talk about the Fair Labor Standards Act, unless you keep the integrity of it. We are not doing that here.

So there are some huge problems. The bill is not truly voluntary, No. 1. It moves away from a 40-hour week. It sets up a 2-week, 80-hour framework. That is not in the House bill. I think that has to be out of the bill. It has a flextime option which is just hour for hour. In my view, if we want to get something passed here, we should be making it comptime and we should then say to people, look, we want to give you real choice and the flexibility of using that time when you want and need to use it.

But I say to my colleagues that at this point in time, I don't know what the majority leader's intentions were, but I think it is fine to debate, it is fine to talk. It is not pointless, but this legislation is not going anywhere, not in its present form.

I believe Senator DEWINE is very committed to working out a compromise, and I believe my colleague from Missouri is also committed to a compromise. Maybe the strategy is to stake out an extreme position, with the idea that it helps for negotiating purposes. I don't mean to incur my colleagues' wrath—but I say to them, this is not a Mother's Day present, not in its present form. It is not a Family Friendly Workplace Act, not in its present form. However you package it, and however you try to market it, and however you try to advertise it, the fact of the matter is, you don't have the flexibility for the employee; you take the Fair Labor Standards Act and you turn it on its head. You go to an 80-hour framework and you should not. Then on comptime, you don't really make sure employees truly will have the choice, which is what I thought it was about.

We had some amendments that lost on a straight party-line vote. So let's get rid of the extreme provisions of this legislation, let's talk about the comptime part. Let's talk about how a family, a woman or a man can have this choice between time and a half for overtime pay or time-and-a-half overtime for time needed to be with family. Let's make sure that employees have the flexibility to truly be able to make this choice, that it is not one sided and just for employers. Let's make sure that we really establish a kind of cooperative arrangement. But that is not what this bill does.

I say with some disappointment to a good friend, I oppose it. I think that we will have a strong vote against it. I have to say, it is one of these situations—I promise my colleague from Texas, I will be done in 1 minute now, I know she wants to speak—but really Florence Reese wrote the song, ''Which Side Are You On?'' I heard my colleague from Missouri cite that lyric. I know it by heart because my wife is from Harlan County, KY. It is a great song. It was written during all the coal mining strikes. Of course, you know it's a strong union song.

The fact of the matter is, when I look at the lineup of who is opposed to this bill, and I see all these unions and all these organizations that have fought for civil rights and human rights and for women over the years, I guess I do know who's side I am on. I am on the side of working people.

This piece of legislation could be for working people, but in its present form, it is going nowhere. There are going to be Senators, and I certainly count myself as one of them, who will oppose this with everything we have, and I think we can stop it. I hope we get to the point of having some amendments, figuring out ways we can come together and pass a piece of legislation, but not in this form. I yield the floor.

Mr. WELLSTONE. Mr. President, it is somewhat surprising, and not very encouraging, that we are considering such a harsh version of S. 4 today. The bill before us is essentially the version which was reported out of the Labor Committee on a straight party-line vote. That vote followed rejection by a majority on the committee of a number of amendments which would have improved the bill considerably. All those amendments were defeated on a straight party-line vote.

This version of S. 4 makes almost no changes which directly address the serious and substantive problems in the bill during committee consideration. The managers' amendment has just been made available this morning, so we have not been able to examine it in detail. But it does not appear to be much of an effort to make the bill more acceptable to those who have made a real effort to improve the bill so far.

It is surprising and discouraging that we are considering this particular version of S. 4 for two reasons.

First, many of our colleagues are aware that a comptime bill has passed the House of Representatives. That bill is considerably milder than this bill in its undermining of basic, long-respected labor protections. The House-passed bill does not directly undercut the 40-hour workweek. It does not give employers the option of offering only hour-for-hour compensatory time off in exchange for overtime work—so-called flextime.

Still, the House bill passed narrowly, and it passed under the threat of a likely veto by the President. The President has said he would like to sign a comptime bill. But the Department of Labor has signaled that the President would likely veto a bill like the House bill. In my opinion, a veto of the House-passed bill would clearly be warranted because that bill does not meet the standards of anyone who is serious about trying to help employees cope with the competing demands of work and families.

The House has narrowly passed a bill which likely would, and certainly should, be vetoed. So what is the Senate doing today? Here in the Senate we are considering a bill that is a far blunter and a far more dangerous attack on workers with families, a bill which we all know cannot be enacted in its present form. We know an 80-hour biweekly work period will not become law. Why are we debating it? Do we think the public is fooled by a bill which does away with the 40-hour workweek simply because the measure's proponents say it is voluntary?

It is somewhat absurd. If a Member came and offered a bill doing away with the minimum wage—but on a voluntary basis—we would not take it seriously. If a bill offered employees the voluntary choice of working regularly in conditions which threaten life and limb, we would not take it seriously. A bill doing away with the 40-hour workweek cannot be enacted as drafted, and it should not even be taking our time here today.

The second reason I find it surprising and discouraging that we are discussing this particular version of comptime is that I sat through two hearings on this topic in the Labor Subcommittee on Employment and Training, where I serve as ranking minority member. I heard a great deal of illuminating testimony during the subcommittee hearings. I also engaged, as did others in the Labor Committee, in a respectably rigorous markup of this bill in the full committee.

During these subcommittee and committee meetings we heard a number of expressions of sympathy and concern from Republican colleagues regarding criticisms of S. 4 raised by myself and others. These expressions of concern might have been slightly more persuasive if even one Republican could have found a way to vote for even one Democratic amendment in the committee. Nonetheless, I thought I detected a desire to make this a workable bill. There were suggestions that ways might be found to fix problems in the bill.

Some of us thought that there would be an effort to address the more serious of our concerns between committee and the floor. But the minor changes in the managers' amendment, with one exception do not begin to do that. I will come back to the managers' amendment and our detailed criticisms of this bill's comptime provisions later.

But what we have before us today is hardly an effort at accommodation. The bill in its current form is little more than an affront. Not only have the most offensive provisions for employees—the 80-hour biweekly work period and so-called flextime—not been pulled from the bill. But the comptime provisions which could be the basis of discussion and agreement remain largely unchanged.

Mr. President, many of us on the minority side would like nothing better than to help provide genuine flexibility to working Americans with families. That is what this bill's press materials promise it would do. That is what some of us set out to do 4 years ago when we pushed hard to win eventual passage of the Family Medical Leave Act. Some of today's proponents of S. 4 issued dire warnings back then that the FMLA would harm businesses and the economy. It hasn't. The FMLA has worked well.

That is why our side offered two amendments to S. 4 in committee which would have expanded the FMLA. Millions of workers do not currently enjoy the benefits of the FMLA. Millions who do are able to use it only for medical reasons, not for other times of true family need and importance, such as parent-teacher conferences. This bill purports to provide greater flexibility to employees, so we sought to expand the ability to take unpaid leave in exceptional family circumstances. Unfortunately, both amendments to that effect were defeated.

Many of us on the minority side also would like nothing better than to allow working Americans with families to get more control over their work schedules. What could be more important than to help people juggle work and family by getting more control over their work schedules?

That was the motivation behind an amendment I offered in committee which would have ensured that employees who accumulate comptime as envisioned by this bill would actually get to use it when they want and need to use it. That seemed simple enough.

If the idea of the bill is to help employees get control of their work schedules, if the idea is to be family friendly, then people who accumulate comptime under this bill, which is compensation that has already been earned at some prior date, not vacation or some other benefit conferred by the employer, but previously earned compensation, should be able to use it when they want and need to use it.

My amendment included very reasonable restrictions to avoid harm to employers. It was an honest amendment. It sought to take this bill at its word. At least it sought to take the bill at the word of its own advertising. It sought to provide employees who have families just a little more control over their work schedules by allowing them to choose when it is that they use their earned comptime.

In the case of this bill, however, its advertising and its content are not the same thing at all. Undoubtedly, many workers who may have heard this bill described by it proponents, who may even have heard it described as a Mother's Day gift to working mothers, probably have assumed that if the bill passes and they earn comptime, then they will be able, within reason, to choose when to use that comptime. Sadly, they would be wrong. This bill does not provide for that. My amendment sought to repair this fairly obvious, fairly egregious flaw. But it was defeated.

Many of us on the minority side even find the idea of a truly voluntary choice between cash overtime on one hand, and paid time off at a premium rate on the other—in other words, between cash overtime and comptime—to be an attractive idea on its face. We think comptime might be able to work to the benefit of both employers and employees if it is drafted properly.

Therefore, in the committee we offered a number of additional amendments whose purpose was to take seriously the idea that comptime is indeed meant to deliver on what the title of S. 4 promises. The bill is called the Family Friendly Workplace Act. All those amendments were defeated.

Comptime will not be an easy idea to make work in a way that is truly voluntary. A lot of care must go into drafting such a bill. It is worth remembering that the Fair Labor Standards Act has served both employers and employees well since its initial passage in 1938. We should amend it with care. Nonetheless, the whole law is not sacred. Democrats and working people are not stuck in the past. If we can move forward, and not turn back the clock, it might be possible and desirable to change the Fair Labor Standards Act. But not in the way this bill suggests—not in a way that attempts to turn back the clock when it comes to basic workplace protections.

After the two hearings we held in the Labor Committee's Subcommittee on Employment and Training, I was frankly skeptical about whether comptime could be made truly voluntary and beneficial for employees. It was the testimony of some of the majority witnesses which made me even more skeptical than I was before the hearings. Looking at the version of the bill which has now been brought to the floor, my skepticism appears to have been justified. But still I think comptime could be attractive for many working people if it is drafted properly.

There are two basic principles which at a minimum are required to make comptime attractive for employees: First, it must be truly voluntary; second, employees must really get to use their accumulated comptime when they want and need to use it.

A number of additional protections would be necessary as details to make comptime work. But these two principles are fundamental.

As currently drafted, S. 4 fails both tests. It has additional problems, but above all S. 4 as drafted barely even pretends to be about providing flexibility for working people. It is flexibility for employers. It is flexibility for employers, combined with ways to cut pay for employees. It disfigures what could be a decent idea, comptime, and it adds provisions that even leaders in the House of Representatives did not attempt, which would directly cut workers' pay.

Mr. President, we all understand the game of staking out an extreme position in the hope that you can get more

of what you want through creating the illusion of compromise from a drastic proposal. I hope we will not spend our time on that game. But it appears that is the game we are playing with this bill.

Let us just drop the 80-hour biweekly work period from the bill. It is not a real proposal. It is an insult to working people with families. Many workers face enough indignities without Congress adding to them. Let us drop this frontal attack on the principle of the 40-hour work week.

Second, let us drop the flex hours provision from this bill. That is the provision which would ask workers to work overtime with no premium compensation, only hour-for-hour paid time off.

These are provisions which not even the House of Representatives included in their bill. No one can argue with a straight face that these are not pay-cut provisions. Their purpose is to cut pay. The President will not sign a bill with such provisions. The 80-hour and the flextime provisions simply detract and distract from the debate we should have about comptime.

Mr. President, I would like to conclude with some remarks about working families.

S. 4 is called the Family Friendly Workplace Act. I believe the friendliest thing we could probably do for most working people who have families in America would be to increase their pay. We did that for millions of American workers last year. Perhaps the minimum wage bill which was so fiercely resisted by a number of colleagues on the majority side and by a number of groups who are supporting S. 4 should have been called the Family Friendly Workplace Act.

But whether that is true or not, I believe it is safe to say that any objective person who reads this bill, S. 4, carefully, a person with some familiarity with modern workplaces, might wonder whether its title is actually a grim attempt at humor. They might wonder whether the title, ''Family Friendly Workplace Act,'' is really a mean-spirited and sarcastic message to working Americans. That is because no one who reads this bill carefully, in its current form, could reasonably describe it as family friendly.

S. 4 as written is family-unfriendly. It is a thinly disguised effort to reduce pay and to help employers avoid paying overtime. That is not just rhetoric. That is the bill. I wonder how many families will consider this bill to represent a friendly gesture when we strip it of its happy-face packaging and expose it for what it is: an effort to reduce pay and to help employers avoid paying overtime?

Plenty of employers do try to avoid paying overtime already under current law. And far too many succeed, as we will see later during our debate. We don't need to provide encouragement to cut more pay and avoid paying more overtime.

We will continue to debate S. 4. I look forward to a debate over a number of amendments. I hope to offer one or more myself. I hope that debate can focus on how to construct a truly voluntary and beneficial comptime bill.

But a bill which features two pay-cutting options out of a total of three options for employers and employees is not family friendly.

Mr. President, I would also like to add a brief remark concerning the Managers' amendment. I appreciate the Senator from Ohio's description of it. While we are only seeing it now for the first time, I think we can say that it doesn't go very far toward addressing the deep, substantive concerns many of us have raised against S. 4.

We had some discussion during the committee markup. There was some hope that we could actually work together to make this bill acceptable. But this amendment, as I understand it, makes fairly minor changes—with one exception.

My understanding of the managers' amendment is that it changes the bill's definition of who would be considered a covered employee. That is a substantive step. The change takes a step toward addressing a criticism we raised in committee. It ensures that many part-time and temporary workers would not be covered by the bill's provisions. I don't believe the change goes nearly far enough in exempting vulnerable workers. But it is a move in the correct direction.

The additional changes, again, as I understand them, we are just now seeing them, are minor. One change which we discussed, and which I had hoped we would have agreement on, concerned bankruptcy. I was prepared to offer an amendment in committee to ensure that workers with accumulated comptime would be able to collect on that earned compensation in case of employer bankruptcy. The Senator from Ohio [Mr. DEWINE] indicated that he hoped to address the problem. It is my understanding now that the majority does intend to fix that portion of the bill, although the problem is not addressed by the managers' amendment. I hope we can correct that flaw.

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER (Mr. SESSIONS). The Senator from Texas.

Mrs. HUTCHISON. Mr. President, if I were just a person sitting out there watching this debate, I think my first question would be, ''Well, why can't an employee go to his or her employer and say, 'I'd like to take time off at 3 o'clock on Friday, and could I work extra next week?'''' I am sure people are scratching their heads and saying, ''What would prevent them from doing that?''

The law prevents them from doing that if they are hourly employees. The great Big Brother Federal Government says ''No, no, Mrs. Smith, you cannot go to your employer and ask for time off at 3 o'clock to attend John's soccer game on Friday afternoon and suggest making it up next week. You can't do it if you are an hourly employee,'' because the Fair Labor Standards Act, which was passed in 1938 when fewer than 10 percent of families had both spouses in the workplace, prohibits Dorothy Smith from being able to go in and say, ''I'd like to go to John's soccer game on Friday afternoon, and could I work an extra hour on Monday and Tuesday?''

So now Dorothy, who is one of two-thirds of the working women in America who have school-age children, is being subject to a law that was passed in 1938 that does not even relate to the workplace today.

Mr. President, with the Family Friendly Workplace Act we are trying to bring our labor laws into the 21st century to reflect the changing face of working America and to meet the growing demands of work and family. We realize that two-thirds of the working women in this country have school-age children, and that what they need most is a little relief from the stress caused by being both the provider at work and the caretaker at home. When their child comes up to them and says, ''Mommy, can't you come to my tennis game,'' ''Can't you come to my baseball game this afternoon,'' mommy will no longer have to say, ''No, I'm sorry, there is just no way because Federal law won't allow me to do it.

I have to say, Senator ASHCROFT has provided great leadership on this issue, because until he proposed this bill, I was not fully aware of the restrictions the Fair Labor Standards Act was placing on the hourly working men and women of this country. I, like most Americans, thought it common sense that an hourly employee would have the ability to work a few extra hours 1 week in order to take a few hours off in another week. In fact, as the need for this bill demonstrates, the hourly employee in America has fewer hours than virtually every other class of workers. A salaried employee can work out flexible work arrangements with his or her employer. A Federal employee at any level can do this, but not an hourly employee in the private sector.

Mr. President, I don't see the logic. In fact, when the bill was passed in 1978 to allow hourly Federal workers to have this right, this very important flextime/comptime right, Senator KENNEDY, who is now opposing comptime/flextime for private sector workers, cosponsored that very legislation.

I heard the distinguished Senator from Massachusetts say that our legislation could allow coercion of employers into taking or not taking time off in lieu of overtime pay. In fact, the bill that he cosponsored to extend comptime and flextime to Federal workers allows Federal agencies to make acceptance of comptime in lieu of overtime a condition of employment.

Mr. President, I suggest it is the legislation that the Senator from Massachusetts supported, not the present

bill, that allows for coercion. Far from allowing employers to make comptime or flextime a condition of employment, S. 4 gives employees the absolute right to refuse any of these new options, and provides for severe penalties for employers who might pressure employees one way or the other.

In fact, neither the employee or the employer has the ability to dictate whether the other chooses to participate in a comptime or flextime option. Either side can say, ''No thank you.'' If the employer says on Friday, ''I need you to work 2 extra hours today,'' the employee then has the right to say, ''That's fine, and I will take that in overtime pay,'' or ''That's fine, and I would like to bank that at a time-and-a-half rate to take later on as free time.'' Likewise, if an employee goes to the employer and says, ''I would like to work 2 overtime hours this Friday and take those off with pay next Monday,'' the employer has the right to say, ''I'm sorry, but it doesn't work into the schedule this week.''

But Mr. President, let me make one point clear. Once an employee has accrued either comptime or flextime, the employee would have the legal right to take that time, with pay, with reasonable notice to the employer, so long as taking the time does not unduly disrupt the operations of the business. If the standard were otherwise, Mr. President, scant few employers would even want to offer comptime or flextime, for fear that it might shut down their business if too many employees left at some critical time. A florist simply could not afford to lose his or her employees around Valentine's or Mother's Day, for example. For my colleagues on the other side of the aisle to argue that employees should have the absolute, unfettered right to take time off whenever they choose for other than serious health or family needs is disingenuous. They know that doing so is unreasonable and would prevent workers from having any flexibility because most employers would not be able to offer a comptime or flextime program.

In fact, in the bill that was sponsored by Senators KENNEDY, DODD and others that extended comptime and flextime to Federal workers recognized this. The bill they supported also allows Federal workers to take comptime only within a reasonable period after the employee makes the request and only if the use does not unduly disrupt the operations of the Government agency. That is exactly the same standard in our bill today. By the way, Mr. President, it is also the exact same standard that provides for non-emergency leave under the Family and Medical Leave Act, again supported by my many if not most of my colleagues who now oppose this bill.

But Mr. President, I think the essence of this bill is not whether the employer or the employee have the upper hand legally speaking, because this bill puts them on an even playing field. Rather, it is a matter of the employee and the employer coming together. The only reason an employee would want to take comptime or flextime is so that they can restore some measure of control and sanity to their workweek. The only reason an employer would want to offer comptime or flextime is so that his or her employees will be more engaged, fulfilled, and ultimately more productive at their jobs. This bill truly will create millions of win-win arrangements throughout this country, where both employer and employee walk away happy.

The employer might say, ''Gosh, we've got a big order that has to go out on Friday. Could we, instead, have you work overtime Friday rather than Monday,'' assuming that wasn't the time the employee asked for time off, say it was Thursday. So, of course, the employer can say, ''Well, could you do it at this time?'' I think reasonable people will be able to work this out.

I thought it was very interesting that the distinguished Senator from Iowa, Senator HARKIN said, ''Gosh, what if you have biweekly schedules and a person works 60 hours in 1 week and 20 hours the next week? That may make it harder to find child care.'' What if the person is having a hard time finding child care in the Monday and Tuesday of the following week and would like to go to her employer and say, ''I would like to work extra hours this week when I have child care and take off 2 days next week when I don't have child care?''

The point, Mr. President, is that we are trying to give more options to the hourly employee of this country. I ask the labor unions, what are you afraid of? Why wouldn't you want hourly employees to have this right, because, in fact, you know we have protected labor union contracts in this bill. If employees are under a labor union contract, then this law simply does not apply. If the labor union doesn't allow them to, this bill would not extend to them the right to take comptime or flextime. Labor contracts will not in any way be violated. So why is labor so afraid of this bill? Why would they not allow the hourly employees of our country who don't have labor contracts to have the right to have some added flexibility and manageability in their schedules.

Mr. President, I think it is very important for us to put in perspective that we are adding another option for the hourly employees of this country, because we know that what moms need most if they are working is relief from stress. They need the option of time. This doesn't say they have to take comptime instead of overtime; but it gives them the option.

Recent polls show that these are options that working Americans are overwhelmingly demanding. More and more people in the workplace are saying, ''I'd rather have the time. I would rather have the ability to go home and spend more time with my children, without losing any money in my paycheck.''

A recent Money magazine survey found 64 percent of the public and 68 percent of women would choose time off over cash for overtime work. So, why would we not give the option to those working women to get that time—without wrecking their budgets, I might add?

The Family and Medical Leave Act, as some have called for expanding, gives them time off, but it is not paid time off. We are talking about paid time off in this bill, so that working parents do not have to worry about making the mortgage payment or making the car payment if they take that 2 hours off for their child's soccer game. If their budget is a little tight this month because they had an extra visit to the dentist or the car breaks down, then the employee always has the right to take the cash for the hours he or she has banked. But if they have a secure budget and would rather have a little extra paid time to go to the soccer game, to go to the PTA meeting, to go to the baseball game, the Family Friendly Workplace Act gives them that option. It is an added advantage. It takes nothing away. That is what is important for all of us to remember.

When the labor unions say, ''We think this is a bad bill,'' what are they afraid of? The Federal employees who have this right now love it. The polls show they love it. A recent Government Accounting Office survey found that Federal employees are pleased with their comptime and flextime options, 10 to 1. They love being able to work flexible schedules, like the very popular 9-hour days for 8 days, 8 hours the next day, then taking every other Friday off. They love that option to get to go on a camping trip on Friday or participate in a child's school activity. One parent here in the Washington, DC, area even talked about how wonderful it was that she and so many other parents at her child's school who were Federal employees are able to attend plays, football games, and other school activities on Fridays. She talked about the pride she felt at being able to see her son play football at so many Friday games. I think it is high time that every hourly worker in America have that same ability and right.

Mr. President, we will apparently have a long time to talk about this bill because Senator WELLSTONE and others have signaled they may try and filibuster this bill. He is going to try to avoid a vote on the floor of the Senate on whether we are going to give the 60 million hourly working men and women in this country the same opportunity for flexible scheduling that the rest of the country enjoys. They want to avoid a vote to be able to tell that working mother that ''Yes, you can take Friday afternoon off, with pay, in order to see your child in a school play or to take your child to the doctor.

I think for them to filibuster this bill and not give that added right to hourly employees begs—begs—for an explanation.

Mr. President, I see our distinguished majority leader has come to the floor. I am happy to yield the floor and just say, in closing, that we will not give up this bill. If they are going to filibuster it, they will know we are going to fight for the hourly working moms in this country to spend more time with their children and at the same time be able to make the home mortgage payment and the car payment. Thank you, Mr. President, and I again want to thank the distinguished gentleman from Missouri, Senator ASHCROFT, as well as the distinguished committee and subcommittee chairmen, Senator JEFFORDS and Senator DEWINE, for their leadership and hard work on this most important bill.

I yield the floor.

Mr. LOTT. Mr. President, first, I commend the distinguished Senator from Texas for her remarks today and on several occasions with regard to the working mothers of this country and the women who would benefit from this opportunity, as well as her work on the spousal IRA last year. In so many ways she has raised our sensitivity to ways that we can help the working women and the moms of America.

She was on the air this morning shortly after 7 o'clock, speaking up about this important legislation. I hear her often at all hours of the day. She is doing a great job. I commend her for her leadership.

I also want to thank the Senator from Missouri, Senator ASHCROFT, Senator DEWINE from Ohio, Senator JEFFORDS, all of the Members who have worked to bring this legislation to the floor. S. 4 is probably one of the most important things we can do this year to help the workers of America have flexibility with their work schedules, to deal with the comptime issue in a different way that is more beneficial to them. This is very important legislation.

I had hoped we could come together on an agreement on getting it completed and moving it through the Congress and on to the President for his signature. There were indications in the administration that they would like to do it, and from the Democratic leadership. So far, it has not happened. But we feel this is so important we must bring it to a foreseeable conclusion and make sure that the amendments that are offered are relevant.

CLOTURE MOTION

Mr. LOTT. Therefore, Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the committee amendment to calendar No. 32, S. 4, the Family Friendly Workplace Act of 1997.

Trent Lott, John Ashcroft, Susan M. Collins, Kay Bailey Hutchison, Mike DeWine, Judd Gregg, Paul Coverdell, Gordon Smith, John W. Warner, Thad Cochran, Conrad Burns, Fred Thompson, Don Nickles, Wayne Allard, Jeff Sessions, Dirk Kempthorne.

Mr. LOTT. For the information of all Senators, the cloture vote on S. 4 will occur on Thursday, May 15, and I ask unanimous consent the vote time be determined by the majority leader after consultation with the Democratic leader and that the mandatory quorum under rule XXII be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, I rise to speak in opposition to S. 4, the Family Friendly Workplace Act. At a time when we should be debating ways to raise the wages of working Americans to reverse two decades of decline, S. 4 proposes comptime policies which will place additional downward pressure on the standard of living of working Americans. Rather than seeking a bipartisan solution to give great flexibility to workers without jeopardizing their income, S. 4 unnecessarily undermines longstanding wage protections afforded American workers.

The problem is simple: Working families today find both their time and financial resources stretched to the breaking point. The average working family has not seen their income increase over the past 20 years. In almost two-thirds of families, both mom and dad have to work to make ends meet. Financial resources and family time both are at a premium.

Manifestations of the problem are easy to manage, and they occur in various forms every day. We have heard much discussion about the working mom and her problems. The working mom, for example, might get a call from her daughter's school, and the teacher requests a meeting explaining that the child's grades have slipped, and normally the child is a very attentive child, but she has become disruptive. Concerned about her daughter, who is usually a good student, mom seeks to schedule a teacher conference as quickly as possible without diminishing her income. The factory where she works is currently busy, so she approaches the manager and requests to work an hour of overtime this week so she can take an hour and a half to see her daughter's teacher next Thursday.

How would S. 4 address this problem? Unfortunately, the answer is, inadequately, if at all. First, under S. 4, a worker cannot avail herself of the program. Comptime is provided solely at the discretion of the employer. It is a program that only the employer can offer. Second, even if the employee had been offered comptime and, indeed, had already worked an hour of overtime, there is no guarantee that she will receive the time off that she needs. The Republican bill nebulously allows an employee to take time off within a reasonable period after making the request time does not unduly disrupt the employer.

There are no further guidelines. So, if an employer found the timing of the mother's request was not reasonable or if the time would be unduly disruptive, the request could be denied. Considering the fact that the worker has already earned the right to this compensation, her request for a particular time off deserves deference.

Inexplicably, the sponsors of S. 4 rejected an amendment offered in the Labor and Human Resources Committee that would have ensured a worker receive the time requested if the request was made 2 weeks in advance and would not cause the employer substantial injury. This bill offers quite a bit more flexibility to the employer than it does to the employee, and it does not represent another real option for the wage earner, the hourly wage earner in America.

In addition, there are serious concerns regarding how much choice employees actually will have. The bill contains hortatory language dictating that programs be the voluntary choice of the employee and that employers cannot coerce employees into taking time off in lieu of pay. However, S. 4 fails to provide a verifiable system by which employees choose to take comp time. Indeed, the bill fails to stipulate safeguards concerning potential discrimination.

Under the bill, employees will be quickly divided into two groups: those who accept time off as overtime and those who want pay. The bill does not explicitly or effectively prevent an employer from offering overtime only to those who will accept time off. Again, in committee, the sponsors of S. 4 rejected amendments which would have clarified the principle that employees cannot be distinguished based on their willingness to take nonpaid overtime.

Most seriously, the current Family Friendly Workplace Act contains a provision which devastates the family's ability to both schedule time together and make ends meet: the evisceration of the 40-hour workweek. Under this legislation, an employer would be permitted to schedule employees to work 50, 60, 70, even 80 hours a week without providing any overtime pay. Overtime pay would only be required after working 80 hours in a 2-week period. It is difficult to contemplate how an employee scheduled to work 70 or 80 hours a week at the discretion of the employer will be able to better schedule time to attend to the needs of his or her family. Supporters of the bill may argue that the program is voluntary. Yet the bill's sponsors have denied workers the ability to refuse this voluntary program when the employers offer it.

S. 4 proposes to eliminate a very clear standard; namely, that employees who work more than 40 hours in a week are entitled to premium wages for those extra hours. In its place, the so-called Family Friendly Workplace Act

leaves workers with a nebulous framework. Most of S. 4's provisions are aimed at hourly employees who depend upon their overtime pay. Eight million overtime workers will hold down two jobs in an effort to make financial ends meet and are the most likely targets of this legislation. More than 80 percent of these individuals make less than $28,000 a year. For these people, overtime pay can represent as much as 15 percent of their wages. These workers already face precarious financial situations. The reality is that they cannot risk their job by challenging their employer's application of comptime or realistic demanding wages rather than comptime or flextime. Without clear rules, these workers will be left without redress and left extremely vulnerable.

Would most employers implement comptime in an equitable manner? I am sure many would. However, S. 4 gives managers the authority to effectively eliminate all overtime pay, and truth be told, there are significant numbers of employers who already abuse the current system. Indeed, last year, the Department of Labor awarded $100 million in overtime pay which was wrongly denied by employers. Labor examiners report that half the garment industry now fails to pay the minimum wage. This bill would only protect those who currently violate the law. We should simply exempt these troubled industries from comptime legislation. Yet this was another suggestion rejected by the sponsors of S. 4.

Many Democrats, including myself, would be interested in crafting legislation which ensures flexibility while guaranteeing protections to ensure employee choice—true employee choice. Last year, President Clinton suggested legislation addressing many of these goals. My colleagues should make no mistake, there are solutions to the growing time demands on working families such as the extremely successful Family and Medical Leave Act.

The Family and Medical Leave Act guarantees employees the right to take 12 weeks of unpaid leave for certain family emergencies. Since being enacted in 1993, the Family and Medical Leave Act has been embraced by the vast majority of employers and employees who have been governed by its regulations. Employers have found that it has only incrementally increased the benefits, hiring, and administrative costs they face. The law readily defines eligibility and lengths of benefits. The Family and Medical Leave Act administration costs have been low, if nonexistent, and its benefits extraordinary. Comptime, properly structured comptime, legislation protecting the workers, particularly the most vulnerable workers, could provide the same types of benefits.

Now, proponents of this bill claim that this legislation provides flexibility to needy families. We should be clear. The bill will impact the 50 percent of American workers who receive hourly compensation and are thus classified as hourly wage employees. These are our most economically vulnerable citizens.

A recent article in the Wall Street Journal points out that more and more progressive employees are implementing, under current law, flexible workplace schedules for both hourly and salaried employees. Indeed, as the article points out, one such company, Chevron, has implemented a flexibility option which would allow an employee to work four 10-hour days and have the fifth day off to tend the family. Again, these options are provided under current law.

Now, I compliment these progressive companies for their policies. But I also believe that the Wall Street Journal article points out the reality of some of the fears that are being expressed today on the floor. Businesses are appropriately concerned, first and foremost, with their bottom line. As one corporate manager was quoted in the Wall Street Journal article, ''You have to look at [the work-friendly arrangements] as a business strategy, rather than an accommodation'' because the accommodation doesn't get to the bottom line. Employers will move toward plans that make economic sense to them. Yet, S. 4 provides all the wrong incentives. It potentially discriminates against workers who request pay instead of time off, as well as being inflexible in granting workers' requests for time off.

The PRESIDING OFFICER. The hour of 12:30 has arrived.

Mr. DEWINE. Will the Senator yield?

Mr. REED. Yes.

Mr. DEWINE. How much longer would the Senator like to go so that we can get a unanimous-consent for him to finish?

Mr. REED. Approximately 2 minutes.

Mr. DEWINE. Mr. President, I ask unanimous consent that the time be extended for the recess by an additional 20 minutes. That would enable, I think, the Senators who are now on the floor to make their statements. I ask unanimous consent that we extend our time until 12:50.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REED. Mr. President, I would like to take one moment on a point that has been addressed periodically throughout the course of the debate. First is the argument that this legislation simply gives to private sector employees the same benefits enjoyed by public employees. Public employees do have certain flexibilities, but they also have a great deal more protection than typical hourly wage earners. When we tried to provide some of these additional protections to the private sector at the committee level that are enjoyed by public sector workers, they were rejected.

Public employees can only be fired for cause, unlike most private sector employees, who have at-will contracts. Most public sector employees have grievance systems, which assure them that any disagreements with their employer will receive equitable redress. Public employees need not worry about the bankruptcy of their employer. The list goes on. Public employees have the power to ensure that flexibility works for them. If the sponsors of this legislation had been willing to provide any of these types of protections to those impacted by this bill, I think their argument would have some merit. Unfortunately, my colleagues have been unwilling to incorporate any significant worker protections into their bill.

Mr. President, I believe that this bill has been offered in good faith. Many employers would implement this legislation equitably. However, some employers would not. And, sadly, large sectors of employers do not follow even the current rules.

Unfortunately, portions of this legislation have been hijacked by those same interests who opposed an increase in the minimum wage, the implementation of the Family and Medical Leave Act, and who now impose the implementation of employee-oriented flexible work schedules. This well-intentioned idea now contains large loopholes by which some employers could dramatically reduce the pay of employees.

Mr. President, I hope these problems can be addressed so we can provide today's workers stretched thin by demands of work and family, the power with which to make use of flexible work schedules. I hope we can work to amend this so that it would reflect a bill that is balanced between the needs for employees and time with their families and giving them the opportunities to make the choices so that they can effect the policies for their families and improve the quality and climate of the workplace. I hope that we all can work toward that end.

I thank the Chair and yield back my time.

Mr. ENZI addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I rise today not only as a proud original cosponsor of S. 4, the Family Friendly Workplace Act, but also as a parent of three wonderful children. I am a working parent of three wonderful children. Many of my colleagues know from personal experience that being a parent is tough work—even for Senators.

I come to the floor today to speak as an advocate for more family time. My family is my lifeblood. They were by my side long before I became a Senator, and they will be by my side long after I leave this job. If I had to make a choice between politics and parenting, my duties as a father would receive my vote.

Having said that, I think it is important that my colleagues keep in mind that there are millions of working American parents in their States who confront far greater difficulties managing work and families than we do. As a

Senator, I have flexibility to spend time with my family. But what about the millions of working parents that want paid time off with their kids? They can't have it because they remain tethered to a 60-year-old act that prevents them from crossing that bridge to the 21st century.

This is a different world from 60 years ago. In 1938, only 2 out of 12 mothers worked. Now, 9 out of 12 mothers work. We have had so much Government help that two parents in a family have to work. One works to pay the bills; the other one works to pay the taxes. We have to reverse that trend. Until we do, we have to find ways that they can keep the family together and have time to spend with their families.

S. 4 would amend the Fair Labor Standards Act of 1938—not eliminate it from the pages of history, as the opponents of this bill would like us to believe. This vital piece of legislation would provide American working parents with flexible work schedules and increase their choices and options for their time at work and quality time with their families, even if they don't work for the Federal Government. Ensuring that such opportunities are provided for working parents can only serve to strengthen our American families.

I do recognize that there are changes in this Nation's work force that have been made over the past 60 years. There has been this influx of women into our Nation's work force. According to the Bureau of Labor statistics, 63 percent of mother and father households now see both parents working outside the home. Moreover, 76 percent of mothers with school-age children now work.

Americans want flexibility. This month's Money magazine shows that 64 percent of the American public and 68 percent of women would prefer time off to overtime pay—if they had a choice. I predict that these percentages will continue to increase. I urge my colleagues to invest now, while it is still a meager 68 percent. That number will continue to rise and the payoff will be big for our Nation's workers—not just in paid time off from work, but paid time off with family—a true investment in America's future.

Wage payers are not the heartless and cruel reincarnations of Ebenezer Scrooge and Simon Legree, like we keep hearing on the floor here. Having played the wage payer role for more than 26 years, I take great offense when employers are characterized as being the bad guys in this thing. I have been a small businessman, and my wife and I had shoe stores, small shoe stores, family shoe stores. We employed, in each store, three to five people. It gives you a different perspective on the world and on flexibility. Back here, I have been in partisan discussions where we have talked about whether small businesses have 500 employees or 125 employees. I have to tell you, that isn't even close. Small businesses have 1 to 5 employees. These are small businesses where the guy that owns the business sweeps the front walk, cleans the toilet, and waits on customers. That is a focus that we have to get in this United States. We have to think about those small businesses and the flexibility they need, instead of overburdening with continuous regulations and tough forms to fill out for taxes. Eighty percent of the American work force works in those small businesses—90 percent in my State.

Now, they used to have flextime. Why don't they now? They can't afford to litigate. We have become a Nation of victims. If something doesn't go just exactly the way we want it to work, we complain about it, try and figure out how we have been a victim, and we try to figure out how to make somebody pay for it. When it gets into a contentious situation like that, some of the things not provided for in law have to be watched very carefully. That is why there isn't as much flextime now as there used to be. I went to a small business hearing in Casper, and when it was over, the news media said, ''You only had 75 people here at a time. Why were there not more here?'' They are kind of prohibited from coming to daytime hearings, because if they had an extra person to be able to attend the hearing, they would fire them because it would be too much overhead.

That is the kind of perspective we have to look at. Those are the people this seeks to work with. It seeks to give people working in the small businesses some flexibility so they can do the things they need to, without being overburdened by the problems that are provided in the Family and Medical Leave Act. That excludes businesses under 50, and there is a good reason for it. If they have employees with less than 50, they have problems filling out just the paperwork for that bill with 300 pages of regulation. This is a 45-page bill. I can picture small businessmen trying to handle what we may force on them with this many pages of legislation. As for the Ebenezer Scrooges and Simon Legrees, they are probably out there; 2 percent of the businessmen probably fall into that category. We have to quit writing laws to take care of the 2 percent in this country and write laws that take care of the 98 percent, the good employers that want to work together, that want to keep their business going. That is a focus we lost in this discussion.

Part of the reason for this flextime is so that the business can still function. They say, why isn't there a provision in here that absolutely guarantees the employee to take off any time that he wants to? If you only have three people and the other two who don't have an investment in the business insist they are going to leave tomorrow morning, you don't have enough help to take care of the customers. If you do that a few days in a row, you don't have anymore customers. If you don't have the customers, then you don't have a business. I have to tell you, in small business, the employee understands that. He is more sensitive to the business than anybody in the big businesses, and he knows that it is his job that goes. So he is interested in having a flexible work situation that we are trying to provide with this bill and that it does provide with this bill, without putting anybody out of business and taking away all three to five of those jobs.

I have heard some things against the Family Friendly Workplace Act besides the ones mentioned on the floor. Employees have talked to me and say, ''How come there are limits in this bill on how many hours I can collect?'' They would like to work extra so they could have the biggest anniversary party you could ever imagine. They may have a son graduating from college and they want some extended time together, probably their last time together. They may want to build up some hours for that. In this bill, there are limitations on that. So they are going to have to pick one or the other, or maybe neither. I hear the employer saying, well, by golly, this puts us in a bit of a bind, because if there is enough work force around here now, and they have enough flexibility on where they go to work. If my competitor offers this flex, then I am going to have to offer the flex. So it isn't a perfect bill for anybody. But it is a perfect bill for most and it will provide solutions in the work force.

Four years ago, the President signed the Family and Medical Leave Act into law. While well intended, the Federal Government took 13 pages and made it into 300 pages, instead of targeting employees with choices and options, and overburdened everybody with a bunch of paperwork. It is making a difference, but it is unpaid time, without any option in the private sector to change that around so it is paid time.

One of the things that came up in the committee was a request or suggestion that people could take their time, time and a half, take the money, and when they had an emergency or just wanted to see a ball game, they could just pay for it. That isn't how America works. When you get that money, you spend it. Particularly with working mothers, if they get the paycheck, they say this paycheck is now my family's and it has to go for the bills. But they can bank hours; the hours are theirs. The hours are theirs to spend the way they want to. It is a way to bank it. Then if they run into that family emergency where the refrigerator breaks down, they can make that trade and take the money. This bill says you can take the cash if you want to. You can bank the hours, and you can take cash.

It is a much easier situation than trying to meet all of the Federal guidelines on everything else that we have. I have to tell you one of the reasons I am in on this bill. When I was in my campaign, I was in Cheyenne, WY, a

company down there does first-day stamp covers; it's one of the biggest ones in the world. If you want a first-day cover on any stamp, there is a place in Cheyenne—not just for the ones that are going to happen, but for the ones that already happened. It's one of the greatest museums of stamps. When the Federal Government passed this law that said that employees can have flextime and comptime in the Federal Government, the same proposals we are talking about here, some of the people working for that company were married to Federal employees. Now, the ones working for the Federal Government could do that kind of time. The ones working for the private business could not. So they got the employees together and said let's offer this opportunity, and they took it to management and management said, ''why not?'' They offered it to the employees. Then they got in trouble because it is only a Federal law. I ask you, how fair is Government if two people in the same family don't have the same advantages and the one that gets all the advantages is the one working for the Federal Government? Businesses are not Ebenezer Scrooges or Simon Legrees. They are the ones who want it to work for the employees. They have worked on this for 19 years now, and they are overjoyed that we are considering this at this moment. They sent somebody back at their expense to testify on behalf of the employee to get this kind of flex in the schedule.

I ask you, are those people working for Unicover crazy? No, they want flextime in their schedule. Private sector employees know that the Federal employees have this flexibility.

I urge my colleagues to join me in giving the employees the opportunity to balance their work and family obligations. This bill is just common sense. We can put all kinds of smoke screens behind it. We can make it look like it is just for big business.

But, please, on behalf of the small businesses of this country, on behalf of the working people, particularly the working mothers of this country, let's give them some flexibility in their work schedule so that they can have better families. If we have better families, we will have a better America. And the Family Friendly Workplace Act will provide that.

I yield the floor.

Mr. DEWINE addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, I rise to support the Family Friendly Workplace Act once again. Senator JEFFORDS earlier today submitted to the Senate the committee substitute. I would like to take a few moments now to explain the terms of that substitute to the Senate.

I note the time. I, therefore, ask unanimous consent that our time for the recess be extended by an additional 7 minutes.

The PRESIDING OFFICER (Mr. ENZI). Without objection, it is so ordered.

Mr. DEWINE. I thank the Chair.

Mr. President, as has been pointed out by my colleague, Senator WELLSTONE, we had the opportunity to have hearings. We had the opportunity to thoroughly discuss this bill in not only the subcommittee but the committee. We listened to the criticism. We listened to the constructive comments that were made. I believe that the committee substitute that has been brought forward today addresses the legitimate concerns that were, in fact, raised by many of our colleagues on the other side of the aisle. I think this committee substitute is a fine work product. I am pleased to be able to discuss today some of the details.

First, the collective bargaining process.

When we drafted this bill, we wanted to give nonunion employees the ability to select flexible work options through individualized agreements with their employers—and to give union members the ability to select these options collectively. We wanted all unionized employees to use the collective bargaining process to select these options. During the markup, however, it was pointed out by Senator KENNEDY that the bill actually limited the scope of coverage to unions who are recognized representatives of the employees under section 9(a) of the National Labor Relations Act [NLRA]. It's true that a great many unions are recognized under section 9(a)—but that provision does not, in fact, cover all union members.

Under the committee substitute before us today, all employees who are members of unions will obtain their flexible work options through the collective bargaining process. The new language says, and I quote, ''where a valid collective bargaining agreement exists between an employee and a labor organization that has been certified or recognized as the representative of the employees of employer under applicable law,'' end of quote, the employee may obtain flexible work options through collective bargaining.

I would like to point out, Mr. President, that notwithstanding this amendment, it has always been our intention to ensure that employees participate in S. 4's flexible options through agreements with their employer. Under no circumstances can an employer provide flexible options to an employee without either a written agreement from a non-union employee or collective bargaining agreement on behalf of a union employee.

This measure, along with the bill's anti-coercion measures, was intended and designed to protect employees from being forced to participate in any of the options available under S. 4. Today we simply strengthen that policy.

Senator WELLSTONE expressed concerns about the tenuous and short-lived nature of certain types of jobs in certain industries—questioning the ability of some workers to use and benefit from the flexible work options provided by S. 4. To address this concern, Senator WELLSTONE offered an amendment in markup which would have exempted part-time, seasonal, temporary, and garment-industry workers from the comptime provisions of the bill.

Even though we found Senator WELLSTONE's concerns legitimate, the majority of the Committee disagreed with the proposed solution—the exemption of whole industries and classes of workers as well as giving the Secretary of Labor broad authority to determine the eligibility of other industries.

We believe that workers should be protected from potentially abusive situations and that employees and employers that enter into any agreements have a stable relationship. However, we believe that it would be unfair to exempt whole industries and classes of workers—eliminating even the possibility of participating in a flexible work option, even if they have worked with the same employer for many years.

The solution provided by the committee substitute states that before an employee is eligible for a flexible work option, or before an employer can offer a flexible work option, the employee must work for the employer for 12 months and 1,250 hours within 1 year—ensuring that a stable relationship exists between the employer and the employee.

This solution may sound familiar. That's because it's the same basic requirement that exists under the Family and Medical Leave Act.

This requirement effectively creates the exception Senator WELLSTONE suggested. Employees whose duration is too short-lived or tenuous to take advantage of S. 4's options are excluded. However, employees who are not so situated have an opportunity to develop a stable trusting relationship with their employer.

In addition to satisfying Senator WELLSTONE's concerns, this change will allow long-term employees an opportunity to determine whether their employer is the type to respect the parameters of S. 4's flexible options and to determine if they want to participate or not.

The purpose of this provision—as of the bill in its entirety—is to increase the freedom and flexibility of the workers.

Mr. President, let me now turn to a third change we propose in the bill. We propose aligning the potential damages available for violations of S. 4's biweekly and flexible credit hour provisions. Some of our colleagues appear to believe that it's impossible to modify the Fair Labor Standards Act and still provide adequate protection to working men and women.

If my friends believe this, they are wrong. The purpose of our bill is worker protection. There are severe penalties for employers who violate the workers' rights.

S. 4 had strong penalties under the comptime provisions. The committee substitute takes these strong penalties and extends them to violations under the other flexible workplace options.

Mr. President, the committee substitute will also include an addition to the provisions for biweekly work schedules and flextime options. It will require the Department of Labor to revise its Fair Labor Standards Act posting requirements so employees are on notice of their rights and remedies under the biweekly and flextime options as well as the comptime option.

Let me now discuss the salary basis provision. Under the FLSA's salary basis standard, an employee is said to be paid on a salary basis—and thus exempt from the FLSA overtime requirements—if he or she regularly receives a straight salary rather than hourly pay. These individuals are usually professionals or executives. Furthermore, the FLSA regulations state that an exempt employee's salary is not subject to an improper reduction.

For years this subject to language was noncontroversial. Recently, however, some courts have reinterpreted this language to mean that even the possibility of an employee's salary being improperly docked can be enough to destroy the employee's exemption, even if that employee has never personally experienced a deduction. Seizing upon this reinterpretation, large groups of employees, many of whom are highly compensated, have won multimillion-dollar judgments in back overtime pay—even though many of them never actually experienced a pay deduction of any kind. This problem is especially rife in the public sector.

Mr. President, this legislation would not affect the outcome in cases where a salary has in fact been improperly docked. If an employer docks the pay of a salaried employee because the employee is absent for part of a day or a week, the employee could still lose his or her exempt status.

The purpose of S. 4, in this regard, is to make clear that the employee will not lose his or her exempt status just because he or she is subject to—or not actually experiencing—an improper reduction in pay.

Mr. President, we're making progress on this legislation—a bill that would help give American workers the flexibility they need and deserve as they confront the challenges of a dynamic new century.

This bill will strengthen America's families, by allowing millions of hourly workers to balance family and work. Let's move forward in a bipartisan way to get it passed.

Mr. President, I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:59 p.m., recessed until 2:15 p.m.; whereupon, the Senate resembled when called to order by the Presiding Officer [Mr. COATS].

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT AMENDMENTS OF 1997

Mr. JEFFORDS. Mr. President, I call for the regular order with respect to S. 717.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 717) to amend the Individuals With Disabilities Education Act, to reauthorize and make improvements to that act, and for other purposes.

The Senate resumed consideration of the bill.

Mr. JEFFORDS. Mr. President, I make a point of order that a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. THOMAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THOMAS. Mr. President, I would like to take just a couple of minutes to rise in support of the Individuals With Disabilities Education Act. I have a particular interest in this bill in that I have been involved for a very long time with disabilities, chairman of the disabilities council in Wyoming, my wife teaching special kids, and so I wanted to comment very briefly.

I rise in support of the current bill to reauthorize IDEA, the Individuals With Disabilities Education Act. The Federal Government, in my view, should and does play a rather limited role in elementary and secondary education. This is the responsibility generally of communities, those of us who live there. State and local control, I think, is the strength of our educational system, and yet I believe strongly that this is an appropriate Federal responsibility. This is dealing with that kind of a special problem which exists in all places to ensure that every child has the opportunity to be the best that he or she can be.

IDEA helps local schools meet their constitutional responsibilities to educate everyone, and that is what we want to do. Today nearly twice as many students with disabilities drop out of school compared to students without disabilities, and that is what it is about, to have a program that helps keep students in school.

S. 717 does not have as much punch as legislation considered in the last Congress. Some issues about discipline and litigation were impossible to resolve last year, and therefore there was no reauthorization. This bill, as I understand it, represents a consensus. It is a product of negotiation. No party involved, as usual, received all they had hoped for, but nevertheless it is a fair approach. It is a step in the right direction. This bill has had a very long journey. We owe it to our local school districts to pass this reauthorization legislation that has been stymied for several years.

Education is clearly an issue that is on the minds of all of us. It is on the minds of Wyomingites. There is a great deal of uncertainty regarding the future and shape of secondary and elementary schools in Wyoming. State legislators currently are scrambling to provide a solution to a Supreme Court ruling that funding and opportunities must be allocated more uniformly and fairly across districts in Wyoming. I am hopeful that Congress can pass this IDEA legislation and eliminate at least one of the sources of uncertainty for educators and, more particularly, for parents in my State.

Since its original passage in 1975, it has become clear that there are improvements that are necessary to IDEA. Wyoming teachers and administrators have contacted me expressing concern about the endless paper trail. I hear that every night, as a matter of fact, at home; as I mentioned, my wife teaches special kids and spends, unfortunately, as much time in paperwork as she does with kids. That is too bad.

They complain the current law is unclear and places too much emphasis on paperwork and process rather than actually working hands-on with children. The bill we have before us today attempts to reduce paperwork associated with the individualized educational plan. Teachers and administrators also write to me, and I am sure to my fellow Senators, to ask for strengthening of the discipline and school safety provisions of the law. They want power to take steps necessary to assure that schools are safe for all children. S. 717 would give the power to school officials to remove disabled students who bring weapons or drugs to school and keep them out for as long as 45 days pending a final decision. This will give educators a clearer understanding of how they are able to exercise discipline with disabled children, as they should be able to.

IDEA has also proved to be a highly litigated area of law. This bill will require that mediation be made available in all States as an alternative to the more expensive court hearings. Mediation has been shown effective in resolving most of these kinds of disputes. Meeting with the mediator will help

school professionals and parents reach agreements more quickly.

In summary, S. 717 will help cut down on the overregulatory nature of IDEA. It will allow parents and educators to work out differences by using noncontroversial and nonadversarial methods. It will go a long way toward allowing all children to learn free from danger and serious disruption. And, therefore, Mr. President, I urge that this bill be passed, that we make more certain the opportunities for disabled children in schools throughout the country.

I yield the floor.

Mr. JEFFORDS. Mr. President, I make a point of order that a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 242

(Purpose: To make technical amendments)

Mr. JEFFORDS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The Chair will advise the Senator from Vermont there is a pending amendment.

Mr. JEFFORDS. I ask unanimous consent the pending amendment be laid aside.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. JEFFORDS. I offer the amendment.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Vermont [Mr. JEFFORDS] proposes an amendment numbered 242.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 3, strike the item relating to section 641 of the Individuals with Disabilities Education Act and insert the following:

''Sec. 641. State Interagency Coordinating Council.

On page 3, strike the item relating to section 644 of the Individuals with Disabilities Education Act and insert the following:

''Sec. 644. Federal Interagency Coordinating Council.

On page 19, line 19, strike ''Alaskan'' and insert ''Alaska''.

On page 26, line 4, strike ''are'' and insert ''is''.

On page 26, line 12, strike ''are'' and insert ''is''.

On page 26, line 15, strike ''include'' and insert ''includes''.

On page 35, line 5, strike ''identify'' and insert ''the identity of''.

On page 55, line 17, strike ''ages'' and insert ''aged''.

On page 55, line 19, insert ''the'' before ''Bureau''.

On page 94, line 24, strike ''Federal or State Supreme court'' and insert ''Federal court or a State's highest court''.

On page 102, strike line 3 and insert the following:

''(i) Notwithstanding clauses (ii) and

On page 140, line 15, strike ''team'' and insert ''Team''.

On page 140, line 22, strike ''team'' and insert ''Team''.

On page 177, line 8, strike ''661'' and insert ''661,''.

On page 196, line 18, strike ''allocations'' and insert ''allotments''.

On page 201, line 22, insert ''with disabilities'' after ''toddlers''.

On page 203, line 23, insert '', consistent with State law,'' after ''(a)(9)''.

On page 208, line 22, strike ''636(a)(10)'' and insert ''635(a)(10)''.

On page 216, line 6, strike ''the child'' and insert ''the infant or toddler''.

On page 216, line 7, strike ''the child'' and insert ''the infant or toddler''.

On page 221, line 5, strike ''A'' and insert ''At least one''.

On page 221, line 8, strike ''A'' and insert ''At least one''.

On page 226, line 4, strike ''paragraph'' and insert ''subsection''.

On page 226, line 7, strike ''allocated'' and insert ''distributed''.

On page 229, line 20, strike ''allocations'' and insert ''allotments''.

On page 229, lined 24 and 25, strike ''allocations'' and insert ''allotments''.

On page 231, strike line 17, and insert the following:

ferred to as the ''Council'') and the chairperson of

On page 260, line 4, strike ''who'' and insert ''that''.

On page 267, line 15, insert ''paragraph'' before ''(1)''.

On page 326, between lines 11 and 12, insert the following:

''(D) SECTIONS 611 AND 619.—Section 611 and 619, as amended by Title I, shall take effect beginning with funds appropriated for fiscal year 1998.

Mr. JEFFORDS. Mr. President, this amendment is purely to make some technical corrections in some misspelled words and a little bad grammar, which we would hardly like to have on an education bill. This was passed by the House this morning and is made part of the House bill. I know of no problems with it from either side and ask unanimous consent that it be considered as adopted.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The amendment (No. 242) was agreed to.

Mr. JEFFORDS. Mr. President, I now will be going forward with the bill. There will be two amendments to be offered, one by Senator GORTON and the other by Senator SMITH of New Hampshire. They have agreed to a time limitation. I do not know whether it has been shared with the minority or not. Under the agreement, there would be 2 hours equally divided between Senator GORTON and myself, which I will share with Senator HARKIN.

I ask unanimous consent that with respect to the amendment offered by Senator GORTON, there be 2 hours for debate equally divided between Senator GORTON and myself, and I will share with Senator HARKIN.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JEFFORDS. And I add to that unanimous consent that no second-degree amendments shall be considered in order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JEFFORDS. Mr. President, I yield the floor.

AMENDMENT NO. 243

(Purpose: To permit State educational agencies and local educational agencies to establish uniform disciplinary policies)

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I ask unanimous consent that the pending amendment be laid aside and that the clerk report the amendment which I send to the desk.

The PRESIDING OFFICER. Without objection, the amendment will be laid aside. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Mr. GORTON] for himself and Mr. SMITH of New Hampshire, proposes an amendment numbered 243:

On page 169, between lines 11 and 12, insert the following:

''(10) UNIFORM DISCIPLINARY POLICIES.—Notwithstanding any other provision of this Act, each State educational agency or local educational agency may establish and implement uniform policies with respect to discipline and order applicable to all children within its jurisdiction to ensure the safety and appropriate educational atmosphere in its schools.

On page 169, line 12, strike ''(10)'' and insert ''(11)''.

Mr. GORTON. Mr. President, as you know, it is the custom in the Senate to ask unanimous consent that the reading of the amendment be dispensed with. I did not ask for that unanimous consent this afternoon because I wanted to demonstrate that the amendment before us is exactly 7 lines long, to be added to a bill which is 327 pages long—327 pages of detailed requirements imposed on each and every school district in the United States of America from New York City to Los Angeles to one of my own, Harrington, WA, a small school district in a rural farm area.

I will recap only briefly the remarks that I made yesterday relating to this entire bill, and then I will attempt to fit this amendment into some of the objections, perhaps the single most important objection that I have to the bill that is before us.

As was the case yesterday, I must start by saying that we are not operating here today on a clean slate. An Individuals With Disabilities Education Act has been a part of the law of the United States for the last couple of decades. This revises and reauthorizes that proposal. On the narrow question of whether or not this bill is somewhat easier for school districts to administer and grants them somewhat more authority than they have at the present time, the answer can only be in the affirmative. If our only choice was between a continuation of the current

law and the adoption of this bill, I would have to confess that this bill would be superior. Nevertheless, it retains all of the profound policy and balancing of power objections that are applicable to the current law to such extent that the relatively modest improvements in this bill simply do not make it an appropriate law to be passed by the Congress of the United States and imposed on every school authority and on every student and on every teacher of the United States. So it is with deep regret, and in spite of the view that the education of the disabled is an important priority, that some aid and assistance, at least, of the Federal Government to that end is an important priority, that I present this amendment and oppose the bill as a whole.

It seems to me that fundamentally the objections to the bill fall into two quite separate categories. The first and the easiest to understand is that this bill, as is the case with the current IDEA statute, imposes a huge unfunded mandate on all of the school systems of the United States. We are told, I believe by the Congressional Budget Office, that the costs imposed on the school districts of the United States next year, 1998, in that 1 year alone, will be $35 billion. That number is greater than the sum of all of the discretionary appropriations for education from kindergarten through high school passed by this Congress. As against that $35 billion mandate, we will appropriate somewhere between $3 and $4 billion to the States and the school districts when we have finished our work for the year. For the current year, the figure is just over $3 billion. So, perhaps for every $10 of costs and expenses we impose on our school districts, we will reimburse our schools $1.

It is difficult for me to imagine any Member of the U.S. Senate standing up on this floor supporting this bill if that Senator had to persuade the Congress to appropriate $35 billion to enforce it. Given the nature of our budget challenges, given our bipartisan desire for a balanced budget, given the agreement between the President of the United States and the leadership of the Congress on the budget for this year, we would not be able to find that $35 billion without repealing all of the other aid to K–12 education bills and a number of our higher education expenditures as well.

So, what Congress is doing in this bill, just as it has done for the last 20 years, is saying to each school district: We know what is best for you. We are going to tell you what you have to do. But we are not going to pay for it. This is, I am informed, the largest unfunded mandate we impose in the U.S. Congress except for some of our environmental mandates that are spread out over the private sector as well as over the public sector. It is, we are told by the Advisory Council on Intergovernmental Relations, the piece of legislation that creates the fourth greatest amount of litigation of any of the statutes of the United States. Why? Because of its immense complexity.

So, fundamentally, it is wrong that we should be debating a bill like this, or its predecessor, because we are not willing to pay for the consequences of our own actions. We make the rules. We do not pay the bills. That is the first objection to the bill, and I must confess the amendment I have just introduced does nothing about that unfunded mandate whatsoever.

The second objection has to do with the highly valid but nevertheless extremely narrow focus of the bill. The theory of the bill, the philosophy of the bill, is to guarantee a free public education to all disabled students or potential students of a grade-school or high-school age. The focus is narrow because the bill allows school districts, in providing this education, to focus on nothing else. With respect to the bill and its mandates, no other interests are even relevant. The costs of providing the education are not relevant. The individual education plan can be literally unlimited in the cost for an individual student—costs which obviously come out of the same pool of money which educates every other student and thus deprives each and every other student of what that money could furnish. The safety of the schoolroom or the school grounds is not a relevant consideration, with the narrowest of limitations, slightly broadened by this bill over current law. The classroom environment for all of the other students is not relevant in the decisions that are made under this bill.

So, whatever the impact on all of the other students, the school district simply may not consider them. Only the beneficiaries of the bill and their perceived welfare, by their parents or by an administrative officer or by a court, may be considered.

One parent in the State of Washington wrote to me on this subject and made the following statement:

> I recently asked my school district attorney what rights I had as a parent when the education program of my child was interrupted by the behaviorally disabled due to legal decisions. His response was, you have no rights.
>
> ''You have no rights.''

Yesterday, I shared with my colleagues a letter from a parent in California who responded, as I suspect thousands of others have responded, to this frustrating decision by taking her child out of the school system entirely. She was required to find privately financed education for just such a student. In this connection, the fundamental flaw in this law, as in its predecessor, is the double standard it sets both for disciplinary proceedings and for classroom environment. Every school district in the United States retains all of the powers that it had previously to discipline students for what in a different context would be criminal offenses—weapons, drugs, assaults and the like. Every school district retains the authority to act on behalf of the majority of its students with respect to classroom atmosphere and environment so a learning environment conducive to the learning of all can be enforced.

If, however, a student is disabled or contrives to get a finding of disability, all of those rules go out of the window. Discipline is severely limited. The right of ultimate and complete expulsion is wiped out entirely, and an elaborate set of requirements that take up many of the 327 pages of this bill are substituted, including legal proceedings in which attorney's fees can be imposed against the school district but not against a parent, even if the parent loses that litigation. And, inevitably, this double standard communicates itself to the students, to the subjects of our education system.

Again, Mr. President, I would like to share with you a comment from the superintendent of the Edmonds School District in the State of Washington. Edmonds is a relatively prosperous, relatively large Seattle suburban school district. Brian Benzel, its superintendent, writes:

> Our major frustration is that we continue to have high expectations for programs thrust on us by the regulations with very little resources to achieve those expectations.
>
> The result is that good people do not understand why we do some of the things we do because they defy common sense. When we try to explain the regulations and the requirements, we all come away as losers and the public support necessary for the public schools is undermined.
>
> We have had several incidents with guns and dangerous knives. We have a strong policy and clearly set an expectation that possession of these items will result in expulsion. At same time, we often get into time-consuming and expensive due process hearings where our principals are the focus of concern rather than the student's behavior. We all begin to think we're attorneys rather than educators.

Another letter from the superintendent of the Othello School District, a rural school district:

> Already this morning I have received two phone calls from principals asking for advice regarding disciplining disabled students. One student is in possession of a knife for the second time this year, and another middle school student has threatened to kill another student. Each time the principal is faced with one of these situations, s/he should not have to worry about negative consequences for trying to provide a safe environment for all of their staff and students. . . . please don't tie the hands of the administrators that are trying so hard to provide a safe learning environment for all of their students.

This is a field which has made modest progress, but it is very modest. Expulsion, as one of the superintendents spoke about, still is not an alternative. And so, Mr. President, the amendment that I have sent to the desk, and I wish to read it just once again, in its entirety it reads:

> Notwithstanding any other provision of this Act, each State educational agency or local educational agency may establish and implement uniform policies with respect to

discipline and order applicable to all children within its jurisdiction to ensure the safety and appropriate educational atmosphere in its schools.

No more and no less than that. No more and no less than considering maybe perhaps our local school boards, our principals and our teachers know more about running their classrooms and are equally concerned with all of their children as we are, we, in this artificial atmosphere, setting out 327 pages of regulations for the ordering of our public schools. Mr. President, that would be wrong if we paid for it, and, as I said earlier, we are not paying for it. Most States have laws relating to the education of the disabled. Most teachers in school districts would do the best job they possibly could in the absence of regulations, even from the State, and yet we feel in our wisdom we can set up one set of rules applicable to every school district across the country that ignores completely individual situations taking place in individual school rooms, each slightly different than the other, and that we can ignore completely the educational atmosphere in which the vast majority of our students live and work.

Is it any wonder that since the passage of this act, we have a constantly increasing number of students who are denominated disabled, when every incentive to a parent is to get such a designation, when we have a large number of so-called experts who will say that the very fact that a student disrupts the classroom is proof of disability, so that the disruption cannot be effectively sanctioned?

I believe that it is inevitable that even if we pass this slightly improved law, the number, the share of those who are denominated disabled will continue to increase; the percentage, the share of the limited dollars available for education will continue to increase. The amount of litigation and lawyer's fees, coming straight out of the educational budget, will continue to increase. One size does not fit all, and my amendment will not cure all of the shortcomings of this bill. It will leave intact the absolute requirement that a free public education be provided to every individual, disabled or not. That will not be affected. It will not solve the money problem of an unfunded mandate.

It will, however, allow the reimposition of a single standard for discipline, classroom safety and classroom environment to be determined by the school authorities most affected by those standards. It will end the process of student after student leaving the public schools because of the impact of the bills, teachers leaving the profession because of the impact of those bills, and the fact that many of us, I know in my own case, receive more complaints about this aspect of the Federal program for education in the United States than we do on any other single subject.

So, knowing in this case that the odds are stacked against me, I have tried to present this amendment in the simplest possible fashion. You either believe in a single standard of discipline and safety and educational atmosphere or you do not. If you believe in it, if you believe in the essential goodness and expertise of the people who are providing our children with their education, you will vote for the amendment. If you disbelieve in that good faith, if you disbelieve in that expertise, your problems and our problems with our public schools are far greater than those dealt with in this amendment. Free our school boards and our teachers and our administrators to provide the education we demand of them for all of our children. Free them by adopting this amendment.

Mr. JEFFORDS addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I rise in strong opposition to the amendment of the Senator from the State of Washington. I can understand his particular concern, given that the State of Washington at one time had the highest percentage of due process hearings that resulted in court cases of any State in the country. I would note that the State has taken dramatic action in the last couple of years which has greatly reduced the amount of litigation.

But first of all, let me talk about the word ''mandate,'' as it is used not only the Senator from Washington but also by many others. The indication is that IDEA somehow is a Federal mandate.

Back in the early seventies, there were many court cases and some 26 States were told that they must provide an appropriate education for children with disabilities. In order to provide national uniformity, a national consent decree was developed. The decree provided that, if a State provides for a free education, then it must provide it for everyone and, with respect to students with disabilities, it must provide a free and appropriate education. Part of the definition of ''appropriateness'' were the words ''shall contain mainstream provisions,'' or words to that effect.

It is not just an issue of court cases in those States. This is a constitutional matter—a matter of equal protection.

Congress responded by developing a bill that provided uniformity and attempted to provide information, guidelines, and rules for the States as to how to provide an appropriate education consistent with mainstreaming. It is amazing that, since that bill was written in 1975, there have been no amendments to it other than the 1986 amendments which dealt with other matters, such as early intervention as well as attorney's fees. I hope that sets the background with respect to where we are today.

Now let me talk about the cost of this education. Yes, it is costly. It costs right around $35 billion a year, of which the Federal Government provides only a relatively small amount, some 7 percent to 8 percent. The Gregg amendment, which has already been offered, attempts to rectify our failure to provide the 40 percent we promised back in 1975, but that is another issue.

The Republican education bill, S. 1, delineates a path toward living up to our promise to finance 40 percent of the cost of this education. I hope we do carry out that plan. At the same time, I do not believe we should add any amendments on that issue at this time.

What will the Gorton amendment do? If you talk about lawsuits, if you talk about lawyer's fees, it is a bonanza. This proposal may take care of some of the less than fully employed lawyers around the country. We have 16,000 school districts and, under this amendment, we would have 16,000 sets of rules. It will take us a long time to figure out what that means—which ones do you use and where do you go? Senate bill 717 sets specific rules for everybody across the country, so every State has uniformity. Therefore, I think contrary to the desire of the Senator from Washington, his amendment will exacerbate the problem rather than solve it.

Also, I would like to point out, as to the total cost, you have to consider that it is a constitutional mandate, so it is a necessary cost. It is not something which was added in order to try and benefit some people. This is a constitutional mandate. If you measure those costs and you compare them with the savings that have occurred by virtue of providing this education, then you will come up with a totally different picture.

All of us have observed in our States what has happened. Almost all the institutions which used to house children with disabilities, children who were not able to function in our society, have been closed in Vermont. Even those children who have a particularly difficult time, those who are less educable, are in private foster homes. Millions and millions of dollars have been saved in our State by that alone.

Second, there is the issue of the quality of life of individuals who are able to participate in a school system and are able to have functional lives and be employed. There is story after story after story of young people who have come through the system and become an important part of society—employed and paying their own way. To say that the cost is so high, this amendment will do nothing but increase the cost.

As I indicated earlier, I understand the concern of the Senator from Washington. In 1993, the State of Washington had 72 hearings, 26 of which resulted in court cases. The State of California, on the other hand, had 849 hearings requested—only 10 of which resulted in court cases.

The State of Washington recognized that they had to make some changes, and they did. They implemented a process of getting people together to

talk these things over and find a resolution, and the figures have changed abruptly. They now have a lot of mediation proceedings and few, if any, court cases. In 1995 and 1996, there were 137 mediations in the State of Washington, with 6 pending at the end of the year. Just about all of the cases were settled. During that same period, only three hearings were held.

In view of these improvements, I urge the Senator from Washington to withdraw his amendment. I hope we can take a look at what could happen. If this amendment passes, it would destroy a system which has apparently been working very well and would put us in a position where we would be back to court in about every case.

I hope that the Senator will end this instead of creating a problem which would destroy all of the efforts that the State of Washington has made in the last few years to get rid of the problems they had.

Mr. President, I ask unanimous consent that the facts contained in ''Mediation Due Process Procedures in Special Education Analysis of State Policies'' be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FINDINGS: DUE PROCESS HEARINGS

With few exceptions, states were able to provide statistics in response to survey items that asked for numbers of hearings requested, held and appealed for the years 1991, 1992 and 1993. The data is displayed in Table 6. In some states, data concerning appeals of hearing decisions to state or federal court are not provided to the department of education.

STATE DUE PROCESS HEARINGS 1991, 1992, 1993

State	Hearings requested			Hearings held			Appeals to court		
	1991	1992	1993	1991	1992	1993	1991	1992	1993
AL	27	44	53	10	10	19	1	2	2
AK	4	2	0	4	2	0	1	0	(1)
AZ	(1)	(1)	(1)	7	5	7	(1)	1	1
AR	46	15	39	6	2	13	0	1	0
CA	611	772	849	74	72	58	18	15	10
CO	16	27	26	4	3	2	1	0	0
CT	227	195	278	51	56	77	8	5	8
DE	7	10	5	2	4	3	1	0	0
FL	37	43	31	12	12	17	(1)	(1)	(1)
GA	28	48	57	10	9	24	1	0	2
HI	22	23	25	6	7	6	1	1	0
ID	8	2	6	1	1	2	1	0	(1)
IL	466	507	393	130	133	105	(1)	(1)	(1)
IN	82	59	62	32	19	17	0	1	3
IA	32	25	28	6	5	5	0	0	1
KS	(1)	(1)	31	8	4	11	0	0	0
KY	33	34	50	7	8	9	1	1	0
LA	6	7	20	3	3	7	0	0	1
ME	53	35	64	22	10	23	6	1	2
MD	26	40	50	16	19	46	0	7	14
MA	379	343	458	95	111	89	6	3	2
MI	42	34	33	14	14	19	1	3	1
MN	4	19	16	4	0	3	0	0	0
MS	2	4	23	2	4	10	(1)	(1)	(1)
MO	(1)	(1)	(1)	5	5	7	(1)	(1)	(1)
MT	6	4	10	1	2	3	1	2	0
NE	14	9	3	7	3	1	4	1	0
NV	14	31	28	2	6	5	0	0	0
NH	77	80	74	20	16	15	(1)	(1)	(1)
NJ	643	555	740	(1)	(1)	176	(1)	(1)	(1)
NM	2	5	9	0	0	1	0	0	0
NY	465	500	609	465	500	609	(1)	(1)	(1)
NC	14	24	14	2	3	2	0	1	0
ND	2	4	3	0	2	0	1	0	0
OH	47	49	51	12	12	10	4	4	2
OK	99	83	19	33	16	5	(1)	2	1
OR	26	43	56	5	5	7	(1)	(1)	(1)
PA	264	256	213	112	106	78	6	1	2
RI	32	20	25	6	2	4	0	1	3
SC	1	5	3	1	5	3	0	0	0
SD	16	19	6	3	6	1	0	2	0
TN	40	58	56	(1)	19	12	(1)	(1)	(1)
TX	131	134	118	(1)	(1)	(1)	2	3	1
UT	7	8	5	1	1	0	0	1	0
VT	12	25	22	1	9	7	0	2	2
VA	(1)	63	66	(1)	25	39	(1)	(1)	(1)
WA	(1)	(1)	(1)	19	64	72	5	13	26
WV	29	34	28	4	5	8	(1)	(1)	(1)
WI	24	23	25	5	8	9	1	1	0
WY	2	3	1	2	3	1	0	0	0

STATE DUE PROCESS HEARINGS 1991, 1992, 1993—Continued

[1] No data submitted.

Note.—Responses to items 15, 16 and 18 of the Survey on Selected Features of State Due Process Procedures conducted by the National Association of State Directors of Special Education, 1994.

As shown in Table 7, states are evenly split in the design of their systems as one or two tiered. In a two-tiered system, the initial hearing is at a local or county level with appeal or review available at the state (SEA) level. One-tiered states have a single hearing process provided by the state either directly or through a contract arrangement. An appeal to court after exhausting administrative remedies is an available option for all types of hearing systems.

Mr. JEFFORDS. Mr. President, let me discuss the bill and what it does to take care of these situations. Senate bill 717 provides one set of rules with discretion for school districts and protection for children.

The Gorton amendment, if passed, will kill the bipartisan, bicameral consensus that this measure enjoys. We simply cannot destroy all the work that has gone on throughout this country in bringing us the bill we have today—we all remember what happened last year when we thought we had a consensus. Issues similar to those raised by the Senator from Washington came up, and the whole thing fell apart. We cannot let that happen again.

If the Gorton amendment were to pass, school districts would get no relief. All the major educational organizations support S. 717, and they would all oppose this amendment.

Let me lay out a rationale of how we approach the sensitive issue of handling the discipline problems. Educators and parents need, deserve, and—in fact—have asked for the codification of major Federal policy governing how and when a child with a disability may be disciplined by removal from his or her current educational placement.

The bill takes a balanced approach to discipline. It recognizes the need to maintain safe schools and the same need to preserve the civil rights of children with disabilities.

This bill brings together, for the first time, in the statute the rules that apply to children with disabilities who are subject to disciplinary action and clarifies for school personnel, parents, and others how school disciplinary rules and the obligation to provide a free, appropriate education fit together. The bill provides specificity about important issues such as whether educational services can cease for a disabled child—they cannot—how manifestation determinations are made, what happens to a child with disabilities during the parent appeals, and how to treat children not previously identified as disabled.

We have gone through all that and we worked hard all across the country. We have a consensus on this very difficult issue, one that has been the most contentious for several years. We now have an agreement on how to handle it.

When a child with a disability violates school rules or codes of conduct through possession of weapons, drugs, or demonstration of behavior that is substantially likely to result in injury to the child or others in the school, the bill provides clear and simple guidance about educators' areas of discretion, the parents' role, and the procedural protections for the child. The Gorton amendment would say to a town or a school district that they could throw all this out and put its own in.

Dangerous children can be removed from their current educational placement. Specific standards must be met to sustain any removal. If a behavior that is subject to school discipline is not a manifestation of the child's disability, the child may be disciplined the same as children without disabilities. So, that group which has been troublesome certainly is treated just like any other child. If parents disagree with the removal of their child from his or her current educational placement, they can request an expedited due process hearing. If educators believe that the removal of a child from his or her educational placement must be extended, they can ask for an extension in an expedited due process hearing. So there is a process to make sure that no child who is dangerous is forced on the other children in the classroom.

The bill allows school personnel to move a child with disabilities to an interim, alternative educational setting for up to 45 days if that student has brought a weapon to school or a school function or knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or at a school function.

The bill gives school personnel the option of requesting that a hearing officer move a child with a disability to an interim, alternative educational setting for up to 45 days if the child is substantially likely to injure themselves or others in their current placement.

I commend the Senator from Washington. He worked so hard last year to make us aware of the need to change this. We took into consideration his advice and counsel. We came up with a version which everybody in the country has agreed to. Why does he now want to supersede it and say, ''Do away with that, let the communities decide what they want to do themselves''?

Including the regular education teacher in an IEP meeting should help to reassure that children with disabilities get appropriate accommodations and support in regular educational classrooms, decreasing the likelihood for a need for discipline.

Under no circumstances can educational services to a child with a disability cease. If a local educational

agency has a policy which prevents it from continuing services when a child is given a long-term suspension or is expelled, the State must assume the obligation to provide educational services to the child with a disability. The disabled child is protected, also.

The discipline records of the child with the disabilities will be transferred when the child changes schools to the same extent that the records of a non disabled child transfer. That is another thing, which I think was also at the suggestion of the Senator from Washington last year, that you ought to be able to provide that record with the child so the school district that receives a child has warning that there may be problems. Prior discipline records will be provided to officials making decisions about a current violation by a child with a disability.

We have gone out of our way to accommodate the suggestions of the Senator from Washington which he made last year. I think he helped us craft a very excellent bill. Why does he now want to throw it all away and say, ''Yes, notwithstanding that we took care of all these problems, we will let the communities decide how they want to do it''?

This would create chaos, and, therefore, I have to very strongly oppose the amendment of the Senator from Washington.

Mr. President, I yield such time as he may consume to the Senator from Indiana.

The PRESIDING OFFICER (Mr. KEMPTHORNE). The Senator from Indiana is recognized.

Mr. COATS. I do not intend to take a great deal of time. I wanted to comment on this particular legislation.

Mr. President, I, like most Members, if not all Members, have been back at home discussing at official forums, school meetings, and with teachers, educators, parents, and students the impact of the current statute relative to education for children with disabilities.

Clearly, there have been problems. There have been discipline problems, as the Senator from Washington has enunciated. There have been problems of excess regulations and paperwork for teachers. There have been accountability problems for schools. There have been funding problems due to the Federal Government not living up to its promise to fund up to 40 percent of the cost of this particular education.

Now, there have been numerous attempts over the years since this was first introduced—in 1975, I believe—numerous attempts to modify and correct some of these problem areas. Most of those have not succeeded and many of the situations that have been enumerated by the Senator from Washington have continued.

By the same token, there has been nowhere near consensus in this body to revoke that statute. I think there is a solid commitment to provide educational opportunities for students with disabilities. There has been strong support for that. There will continue to be strong support for that.

The question this body has been faced with over the past 3 years is whether or not we could make substantive, important changes addressing many of the problems that arise under the current statute. Our task has been to make effective changes, gain a consensus in support for those changes, and preserve the essence of the statute. These amendments seek to provide all children with disabilities in America with the opportunity for education and do so in a way that provides more accountability, ensures a safe environment for all students, and addresses a number of the other perceived flaws in the current statute.

This has been a 3-year effort. Senator FRIST, from the Labor and Human Resources Committee, undertook the effort as subcommittee chairman last year under the chairmanship of Senator Kassebaum and spent an enormous amount of time and effort trying to pull a consensus together. We were not able to do that by the end of the session.

That effort was restarted in this new Congress under the direction of the majority leader. The majority leader appointed a special task force of Members—a bicameral, bipartisan task force of Members—to see if it was possible to get everybody in one room around one table and address these issues on an issue-by-issue basis and come to some type of an agreement. Now, when you do that, you clearly end up with a piece of legislation that is not perfect from any particular person's point of view. It leaves probably more to be discussed and debated and perhaps corrected in future efforts, but the goal here was to see if we could substantially improve the current legislation.

My colleagues need to understand that the choice here today is not between repealing the statute as it currently exists on the books and going back and writing a new one from scratch. I doubt very much we would be able to successfully do that, or at least come up with something that is in any measure different from the current statute. The choice is: Given the statute on the books; given what we know through experience over 20 years with this particular law and its implications for parents, teachers, students, educators, Members of Congress and appropriators, and others; given the need to put together a consensus that will allow us to substantially improve that current statute; the choice today is, stay with the existing law, with all of the problems that it has, all of the concerns that people have, or move forward on legislation which, while it does not give any one person everything they wanted, moves the mark very substantially toward a better bill.

I think we have done that with S. 717. We have made a better piece of legislation, a better IDEA. It is better for children, better for parents, and it is better for educators.

First, we increase substantially the role that parents play in their children's education. This is a very important principle, to involve the parents more thoroughly, engage them more in the decisions of placement, provide them with information that parents of general education students receive, and give parents access to all their children's records. This provision helps provide accountability, and helps provide a framework for understanding the problems that the teacher might be dealing with in school.

Second, we include children with disabilities in State- or district-wide assessments, and in doing so, we provide systemwide accountability. Schools will now be responsible for what children in special education are learning.

Third, S. 717 moves us toward a much better understanding of the inequity and imbalance that exists in the funding of IDEA whereby the Federal Government has not lived up to its promise to provide 40 percent of the costs of special education. We are actively engaged now in working with the appropriators and others to increase the Federal funding for this act. In fact, the Republican Party, as part of its top priority as defined in our caucus at the beginning of this session, committed to making good on the promise of the Federal Government to pay its full share of IDEA funding, and to no longer leave this obligation and burden on the States and local districts. I am hopeful that the Appropriations Committee can help us this year in making a very substantial step in that direction.

We have taken special care to address the question of the amount of regulations and paperwork that educators have to deal with. This bill provides far more flexibility for teachers and will allow them to spend more time with the children and less time filling out forms.

Finally, we have worked very carefully and very thoroughly to try to craft a discipline provision in this reauthorization bill that addresses many of the concerns raised by the Senator from Washington.

This is a particularly contentious area, and it is important that we understand that the task force looked at this very, very carefully and worked very hard to try to address these concerns.

Now, in regard to specific discipline procedures, we came to the belief that parents needed and, in fact, deserved codification of major Federal policy governing how and when a child with a disability may be disciplined by removal from their current educational placement. Here we have a disagreement with the Senator from Washington. I understand where he is coming from. But to avoid having literally tens, if not hundreds or thousands of different standards, the Federal statute

must include guidelines for a consistent standard that parents and educators can understand, so that everybody knows where we are coming from on this.

The bill takes a balanced approach to discipline procedures. It does not go all the way in the direction that the Senator from Washington would like to go, and it probably goes further than others would like to go. That, again, was part of the consensus that we reached on this legislation. But we do recognize in the discipline section the need to maintain safe schools, and to balance that with the need to retain and preserve the civil rights of children with disabilities. We are dealing with a whole series of court cases. We are dealing with legislation here that has to stand the scrutiny of the courts. So we have to pay attention, obviously, to those cases and try to craft legislation which would give us a constitutionally sound and civil rights compliant discipline procedure.

For the first time, this bill brings together the rules that apply to children with disabilities who are subject to disciplinary action and clarifies for school personnel, parents, and others, how these disciplinary rules work in conjunction with the school's obligation to provide a free, appropriate education. We have to meld these two concepts together to make an effective discipline procedure. The bill provides specificity about important issues, such as whether educational services can cease for disabled children—they cannot. But also how manifestation determinations are made, what happens to a child with a disability during parent appeals, and how to treat children not previously identified as disabled. In each of these categories, we have taken a very substantial step forward, and made very substantial improvement to the current legislation.

When a child with a disability violates school rules or codes of conduct through possession of weapons, drugs, or a demonstration of behavior that is substantially likely to result in injury to the child, or to others in the school, the bill provides clear and simple guidance about educators' areas of discretion, the parent's role, and procedural protections for the child.

Clearly, we must remember that we are dealing here with the potential for litigation, with court cases, with the civil rights of children, the rights of the parents, and the responsibilities that we give to educators. Finding the appropriate balance is not easy. It is very difficult to find that balance that will allow us to meet all these concerns and tests.

Dangerous children can be removed from their current educational placement. I want to stress this. There is a belief here that there is nothing we can do with children whose behavior is disruptive, if they bring violence to the classroom or to themselves, or if they possess weapons or drugs; this is not true. Under this legislation that we are debating and will be voting on, dangerous children can be immediately removed from their current educational placements. Specific standards must be met to sustain their removal.

So you can remove the child, but S. 717 states that you must then apply specific standards in order to sustain that removal. And it is possible to sustain that removal. If a behavior that is subject to school discipline is not a manifestation of the child's disability, the child can be disciplined the same as children without disabilities.

If, however, it is determined that the behavior was a manifestation of their disability, then, obviously, there is a separate standard to follow. If parents disagree with the removal of their child from his or her current educational placement, they can request an expedited due process hearing. These are the parent's rights. If educators believe that the removal of a child from their educational placement must be extended, they can ask for an extension in an expedited due process hearing—once again, the balance of the rights of the parents, the child and the educators.

The bill allows school personnel to remove a child with disabilities to an interim alternative educational setting for up to 45 days if that student has brought a weapon to school or to a school function, or knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function. The bill gives school personnel the option of requesting that a hearing officer move a child with a disability to an interim alternative educational setting for up to 45 days if a child is substantially likely to injure themselves or others in their current placement.

There are some other provisions here, Mr. President, which, in the interest of time and because others want to speak, I won't state. I just say to my colleagues that I very much believe we have made substantial improvements and addressed some of the major concerns in the current statute. I don't discount all the things the Senator from Washington says because many in my State have indicated the same to me. We have tried to address those concerns, balancing the civil rights of those students and what we believe are important educational opportunities for those students, with the rights and the needs of teachers to have an orderly and safe classroom.

We have put all this together in this consensus bill which has been crafted with bipartisan support on a bicameral basis. I think we have a bill—maybe the only bill—that can pass. Failure to pass this reauthorization bill, or alternatively passage of the amendments being offered, would undermine the consensus process and put us back to the status quo. We would be right back to a situation where none of the complaints or concerns arising from the current statute are addressed, and we would probably go an even more considerable amount of time before Congress is able to put together consensus to address these significant concerns.

So I hope we will look past what we believe to be perfect and look instead toward what I think is a good, substantial move forward in terms of this statute. I commend the chairman of the committee for his diligent work in that, and Senator HARKIN for his long time support for this and the many others, including the majority leader, who worked so diligently to achieve this legislation.

I thank the Chair and yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I am sorry to interrupt. I know the Senator from Iowa wishes to speak, as do some Senators on this side. Unfortunately, I am now 1 hour late to a hearing that I am supposed to preside over. So I would like to make just one or two remarks after which I will yield the balance of my time to the control of Senator SMITH and he can proceed as he wishes.

Mr. President, I believe firmly that the case for my amendment has been established by the last two speakers, the Senator from Vermont and the Senator from Indiana. We have heard a wave of arguments about manifestation determinations and individual education plans and the fine distinctions between various forms of violence and disorder. My good friend from Vermont has informed me not only that he knows more about education in the State of Washington than I do, but that he knows more about education in the State of Washington than do the superintendents of my schools in the State of Washington. Mr. President, that is the heart of this debate.

If, in fact, you believe the Senator from Vermont knows more about how education ought to be provided to students in the State of Washington and in your State of Idaho, Mr. President, than do the professionals, the teachers and the administrators and the citizen school board members in your State and mine, then by all means, you should vote against my amendment and you should vote for this bill. If you believe that what uniformity means in education in the United States is that we should have exactly the same rules relating to discipline applicable to every one of the thousands of school districts and millions of students in the United States, then you should vote against my amendment and you should vote for this bill. If, however, you believe that uniformity means something quite different, and that is that the rules should be uniform with respect to every student in a given school rather than a demonstrable double standard, in which the student sitting at this desk is subject to one set of rules and the student at that desk, a totally different set of rules, that that student can do things without significant discipline that this student can't,

then you should vote for my amendment.

Somewhat naively, I had thought that all of us believed that education was so important that the most vital decisions relating to it ought to be made as close to the student and parent as possible. My friend from Indiana spoke of involving the parents more in these decisions. This bill does, but only those parents whose children can be determined to be disabled. What about the parents of the nondisabled students? Well, the quote from the letter to me, I simply need to repeat:

I recently asked my school district attorney what rights I had as a parent when the education program of my child was interrupted by the behavioral disabled due to legal decisions. His response was, ''You have no rights.''

Yes, if uniformity means the same rule for every school district, for every school board member, for every principal across the country, then this bill is going in the right direction and my amendment is going in the wrong direction, except, of course, that we are making the rules but we are not paying the bills.

I heard something about this being a constitutional responsibility. Well, Mr. President, if it were a constitutional responsibility, we would not have to legislate at all. But just recently, under the present law, the U.S. Circuit Court of Appeals in the State of Virginia ruled that the Virginia law that stated that there were certain offenses that were egregious enough to allow for the absolute expulsion of a student applied equally to the disabled and to the nondisabled.

No constitutional right for this egregious behavior was found to limit the discretion of the school authorities of Virginia. This bill reverses that decision. It says, ''Oh, no, Virginia, you have to have a double standard. You can expel the nondisabled. You cannot expel the disabled no matter what the offense.''

That is what this bill says. That is not required by the Constitution of the United States. That is a value judgment made by the sponsors and the writers of this bill.

Mr. President, I said yesterday—and it bears repeating just one more time—I have asked school districts to serve as advisory committees to me in every county of the State of Washington with whom I visit. I try to visit at least once a year, and sometimes more than once. Every one of them has someone who is a teacher or a school board member or a principal. This subject is the one brought up by far the most often by all of the people who actually provide education—the interference in the system. Oh, it is true, as the Senator from Vermont said, there are fewer lawsuits over it now than there were a few years ago. Why? Because the school district can't win the lawsuit. So it now surrenders before the process is so much as started. But the costs of that surrender are paid by every other student in those schools.

So I repeat one last time. Mr. President, if the Senators in this body who have written this bill know more about schools and about education—not just another Senator—than the people who have devoted their lives to public schools and to education, then you should follow their example.

Of course, many of the educational organizations have agreed with this bill. Their alternative was even worse—the present system. I don't blame them. I commend them for doing so. But, Mr. President, that doesn't mean they like it. That doesn't mean they think we know what we are doing. That means they were told that this was the most they could get, and you either go along or get lost. And they have chosen to go along. And they made a wise decision. But we don't have to make that decision. We can decide, if we wish, that these are the decisions that ought to be made by educators—not Senators. And, if you believe that, you vote for the Gorton amendment.

Mr. JEFFORDS. Mr. President, I yield 10 minutes to the distinguished Senator from Iowa, a leader in this area.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President I thank Senator JEFFORDS.

First of all, I thank Senator COATS for his recent statement that he just made on the floor. He hit all the right points. He talked about how long this bill had been in the making and the delicate balance that we reached. I thank Senator COATS for his efforts over a long period of time in this area to reach this very delicate balance.

I also see my colleague, Senator FRIST, on the floor. I want to publicly thank Senator FRIST again for his great leadership in this area.

I was just looking up today, and it was on May 9, 1995, that Senator FRIST held the first hearing on this bill—2 years ago. It has taken us 2 years to get to this point. He has worked day and night on this to try to get it through. Last year we had a lot of problems, and Senator FRIST hung in there every step of the way making sure that we got this bill through. It took 2 years. But we no have a well-balanced bill. I want to publicly thank Senator FRIST for hanging in there and not giving up. I appreciate that very much.

Of course, I thank Senator JEFFORDS, our leader on the committee, again for leading us in this area. Again, Senator JEFFORDS was one of the few around here who was there when Public Law 94–142 was passed. He was a leader at that time 22 years ago. He is still here to lead the charge on this landmark legislation.

I want to talk for a couple of minutes with regard to some of the things that Senator GORTON brought up.

First, Senator GORTON said there are two main objections he had to the bill. The first was that it was an unfunded mandate. This is, of course, not an unfunded mandate at all. No matter how many times someone may say it or how strongly they may say it, this is not an unfunded mandate. The Congressional Budget Office, the American Law Division of the Library of Congress, and the Supreme Court, have all said this does not fall under the unfunded mandate legislation. So it is not an unfunded mandate. It is a civil rights bill, it is a law implementing the equal protection clause of the 14th Amendment to the U.S. Constitution. It is not an unfunded mandate.

In other words, Mr. President, let me put it this way. The State of Idaho does not have to provide a free public education to its kids. If the State of Idaho decided to stop that, they can do it. But as long as the State of Idaho decides that they will provide a free public education to all their kids, then the State of Idaho can then not discriminate against kids because they are black or they are brown or they are female or they are disabled. That free education must be available to all kids. The Supreme Court has decided that.

So it is a constitutional mandate, not an unfunded mandate.

What we have said with IDEA—Public Law 94–142—is, ''Look, we will try to help the States meet that obligation because it will cost some money, and we will help them meet that.'' That is why Senator GREGG moved in this area to get the Federal Government to pick up more of that obligation. We should. But I do not want to go into that anymore. Senator JEFFORDS responded to that.

But this is a civil rights bill.

What Senator GORTON's amendment basically says is, if you just read the first words, ''Notwithstanding any other provision of this act,'' each State educational agency, et cetera, can decide for themselves what they want to do. Notwithstanding anything else, they can do whatever they want to do.

Would Senator GORTON apply that same reasoning to the Civil Rights Act of 1964—notwithstanding any other provision of the law, if a jurisdiction wants to discriminate against African-Americans, they can do so, they can fashion whatever framework they want? Would Senator GORTON apply that to title IX and say, ''Well, with regard to women, each jurisdiction can decide whatever they want and how it applies to women''? We can do that with the civil rights bill? Of course not. Civil rights applies to all in this country.

The second thing he brought up was the cost. He mentioned something about the cost of this in terms of the mandate. There are a lot of ways to look at the cost. But what is the marginal cost of this? We have some figures here. You have to look at the savings. The average per student in America for those in special education the average cost is $6,100.

So it costs about 14 percent more marginally to educate a kid with disabilities than a child without disabilities.

Well, is it worth it? We have to ask: Is it worth it to spend that 14 percent?

Look at it this way. Mr. President, in 1974, before the enactment of this bill, 70,655 children were living in State institutions. By 1994, 20 years later, as a direct result of this bill, that number went to 4,001—less than 6 percent of what it had been 20 years before.

What is the cost? What is the savings? The average State institution cost was $82,256 per person in 1994.

So, if you take the difference of $66,654 for kids that are not institutionalized but are in school learning, that is a savings to the State of $5.46 billion each and every year. That doesn't include the savings later on in welfare costs.

For example, my friend, Danny Piper, who got special education, went to school. We figured up for Danny Piper that the total cost of his special education was $63,000. That is what it cost. Danny Piper today is living on his own in an apartment and takes the bus to work. He is employed. He is a taxpayer. He is not in an institution. But when he was born with Down's syndrome, the doctors told his parents, ''Put him in an institution.'' They refused to do so. Because of IDEA, they got him in school in special education. He did well in high school. Now he is working and making money. The cost to the taxpayers of the State of Iowa to institutionalize Danny Piper would have been $5 million. Do you know what it cost us? $63,000 to get him his education.

So you can look at it from the cost, but you have to look at it from the other side—the savings side, not to mention lifestyles, quality of life, and what it means to the Danny Pipers and others not to be institutionalized.

Lastly, Senator GORTON talks about the double standard. I am sorry. That is just not so. There is no double standard here at all.

I guess what we have to ask is, What do we want at the end of the day? At the end of the day, we want a safe classroom with an environment that is conducive to learning for all students. That is what we are all about. What we want to do is teach children behavior that will lead to that safe, quiet classroom that is conducive to learning. Under IDEA, we want to use discipline as a tool to learn and not just as a punishment and to ensure that each child receives the supportive services necessary to function appropriately in a classroom environment.

For example, we have some examples of kids. Here is one. I have hundreds of these examples. Here is one, Nick Evans in Wisconsin. I have a letter here dated January 24, 1997. He was in school. He was fighting. We are told that they did not know what to do with him. We are told by the school that they felt Nick was emotionally disturbed, mentally retarded, and did not belong in the school. They did not know what to do. But they sought an evaluation at the clinic in La Crosse, WI. They met with the child's specialist. He had a superior IQ of over 130. His behavior problem stemmed from tremendous frustration of an unidentified, profound learning disability. Once that was recognized, once he got the supportive services, his behavior problems literally disappeared overnight. Now he is an A, honor roll, student. The kids want to work with him. When he is doing a class work science project, the classmates choose to work with him. This is a kid who the school said, ''Kick him out. Get rid of him. He is disturbing everybody. He is dangerous.'' But he got the supportive services and the proper kind of discipline—the discipline to teach him how to act within that environment.

I can go through a lot of them. Here is Molly, who was very abusive to others, hitting and pushing them; teachers wanting the child removed. A speech language pathologist was called in. They commenced a program and found out that she had a communications problem. Within 12 weeks her ability to talk to her peers grew. Her behavior problems faded away.

Here is a family of three. The children engaged in fighting, aggressive outbursts, name calling. Frustrated by lack of support by the school system, they moved to a neighboring district where they found the support, and now all three of their kids are honor roll students and doing well.

Let me talk about Mike McTaggart of Sioux City, something closer to my home. I visited the school last year. Mike McTaggart is the principal of West Middle School in Sioux City. Listen to this. There are 650 students in the middle school. Student population is 28 percent minority, 32 percent are children with disabilities, and one out of three have IDP. One year prior to Dr. McTaggart coming there and taking over this school, there were 692 suspensions, and of those suspended, 220 were disabled children. The absenteeism rate was 25 percent, and there were 267 referrals to juvenile authorities in 1 year.

In 1 year. Dr. McTaggart came in, and 1 year later the number of suspensions of nondisabled children went from 692 to 156. The number of suspensions of disabled children went from 220 to zero. Attendance has gone from 72 percent to 98.5 percent. Juvenile court referrals went from 267 to 3.

What happened in that 1 year? We had a principal who came in—who brought a different philosophy, a philosophy of using discipline as a tool to teach rather than to punish, and turned that school around by involving kids and involving their parents. That school is very successful today. But if you had looked at that school before he got there, there was a lot of blame on the kids—blame the kids, blame their parents. They shouldn't be there. They are dangerous. Get them out of there. There were 267 referrals to juvenile authorities—from that to 3 in 1 year—and 220 disabled kids were suspended. It went to zero the next year.

I am just saying that is again bringing in someone who understands a different philosophy, that you use discipline as a method of teaching and enabling—not just as a method of punishment.

Lastly, the Senator from Washington State kept asking the question. He had a letter that he was reading from a parent in Washington who basically said that I asked my attorney—and I am paraphrasing here. But the letter the Senator read into the RECORD was, what rights do I have for my child to be free from all this commotion, and dangerous activity in school. And the attorney said, ''You have no rights.'' Well, first of all, I would suggest that parent get a different attorney because you do have rights.

That parent has the right to demand of that school a safe and conducive learning environment. They have a right to demand that. They ought to demand it. What they don't have the right to do is to demand that a disabled kid gets kicked out of school. They don't have that right.

It would be like this. Let's say, Mr. President, that a caucasian kid came to school and had to sit next to an African-American. They said, ''Well, I don't like that. I don't like this integration.'' I am conjuring up memories of a few years ago. ''Oh, no. Those kids cause all kinds of problems in school. They couldn't be conducive to a learning environment.'' Well, we found out that wasn't so, as long as teachers and principals and parents got together, and in sort of an atmosphere of working together, it was fine; no problems.

Let's say that a child went to school, and all of a sudden sitting next to him was a physically disabled child who made them nervous because they didn't look the same, they didn't act the same, they had a physical disability that, well, maybe they weren't like the rest of the kids. Would a parent who said, hey, wait a minute. My kid has to sit there and it's disturbing; it confuses him; it is not a good, conducive atmosphere for him to learn—would that parent have the right to say, kick that disabled kid out of school? No. But what the parent has the right to do is demand of the school that they provide a safe and conducive learning environment.

That means at least to this Senator that the school has to develop strategies to make the classroom safe and quiet and conducive to learning. If kids are disturbed by someone who is in the classroom, by their appearance or by their actions, that means you develop a strategy to deal with it and bring the parents in and provide for an atmosphere where kids can learn, not just a knee-jerk reaction and say, well, the easiest course of action is to expel them, kick them out, get rid of them, segregate them, exclude them.

We have been down that road before. The whole theory of IDEA, the Individuals With Disabilities Education Act, is to mainstream, is to bring people together, not to segregate people.

So I would say to the person who wrote that letter to Senator GORTON, yes, you have that right; go to that school and demand the safe, conducive learning environment. You have that right. But you do not have the right to demand the kid gets kicked out because he or she is disabled. You do not have that right. So I would suggest that perhaps they ought to get a different attorney. I just wanted to make those comments. I did not have the time before.

There was one other thing. Again, showing how things can happen if people really do want to make it work, will work together, on January 29 of this year Elizabeth Healy, a member of the Pittsburgh School Board, testified before our committee. She said she thought IDEA was a good law; it is working. She said the Pittsburgh School District has adopted a family centered inclusive approach to provide special education. Because of what they did in Pittsburgh, because of this family centered approach, the number of due process hearings has plummeted.

Unlike reports from other urban school districts regarding the due process hearings, last year there was only one due process hearing and one special education mediation in the entire school district in Pittsburgh. I do not know a lot about Pittsburgh, but it is a pretty urban city. One due process hearing, one special education mediation in the entire school district.

I might suggest to the Senator from Washington that he might want to take the principal of this school that he keeps talking about with all these problems and maybe send him to Pittsburgh and have him look at what they did there or send him to Sioux City, IA, and we will have him look at what Principal Mike McTaggart did there. And maybe, and I say this in all candor and seriousness, they could pick up some pointers on how to structure the school environment, how to involve the families, so that they will have the same results as Sioux City or the same results as Pittsburgh.

So I am saying it is not impossible. It is very possible to have a safe and conducive learning environment and to meet at the same time the requirements of the Individuals With Disabilities Education Act. What it really takes is a commitment by the school boards, teachers and principals, parents and the community to work together in an atmosphere of mutual accommodation and understanding and support. If they do that, there won't be that many problems. Oh, you will always have some problems, but, my gosh, Pittsburgh went down to one due process hearing. That is the kind of goals we ought to be looking for.

That is what this bill does. That is what this bill does. I have to tell you, Mr. President, a lot of times my heart goes out to teachers who are in the classroom and they are confronted with situations where they have emotionally disturbed kids, physically disabled kids, mentally disabled kids, and that teacher does not have the proper support and learning and training to know how to deal with it. Teachers need that support. They need that kind of training and that kind of educational support that will help them. That is what we are talking about here. If they do that, IDEA will work, but it will not work if our reaction is, first of all, notwithstanding any other provision of this act, let each school district decide for themselves.

That is what the Gorton amendment does. That is not conducive to an inclusionary-type of principle where we are going to bring kids together. We are a much better society today because we have included people with disabilities. We are a stronger society. As President Clinton says so often, as we enter the next century, we cannot leave one person behind, and we certainly should not leave people behind just because they have a physical or mental disability.

That is what this bill does. It provides those kids with that support and those opportunities the kind of education that allows kids to dream and allows kids with disabilities to know that they can fulfill their potential. We all have different potentials. Kids with disabilities are no different. They have potential, too, to achieve, to dream, and to do wonderful things. We have seen it happen because of the Individuals With Disabilities Education Act.

This bill that we have before us, this reauthorization, as I said, is carefully crafted, very balanced. I think it meets all of the needs of parents and school administrators and, most importantly, meets the needs of the kids themselves not to be segregated out but to be included, to make sure they have the support they need so that they can become fully self-sufficient, productive, loyal American citizens in their adulthood. That is what this bill is all about.

Mr. President, are there situations where a school officials must take immmediate action to remove a disabled child from his or her current placement? The answer is yes, and this bill provides for two limited exceptions to the stay put provision under which children with disabilities are entitled to stay in their current placement pending appeals.

Under the first exception to the stay put provision, school officials are provided authority to remove a child from his or her current placement into an interim alternative educational setting for the same amount of time they could remove a nondisabled child, but for not more than 45 days, if the child carries a weapon or knowingly possesses, uses, or sells illegal drugs or controlled substances.

Under the second exception to the stay put provision, local authorities can secure authority from an impartial hearing officer—in addition to a court—to remove a child from his or her current educational placement into an interim alternative educational setting for up to 45 days if the school officials can demonstrate by substantial evidence—that is, beyond a preponderance of the evidence—that maintaining the child in the current placement is substantially likely to result in injury to the child or others.

Some of my colleagues have raised concerns about allowing impartial hearing officers to make these critical decisions. I support this provision for several reasons.

First, this standard codifies the holding in Honig versus Doe. In that case, the burden was clearly placed on the school officials to rebut the presumption in favor of maintaining the child in the current placement. Thus, the case does not deal with perceptions or stereotypes about disabled children but provides authority to remove a child who truly is dangerous.

Second, in giving the authority to make these determinations to impartial hearing officers, the proposal not only includes the ''substantial likelihood of injury'' standard, but also specifies that the hearing officer must consider the appropriateness of the child's current placement and whether reasonable efforts have been made by the local school officials to minimize the risk of harm, including the use of supplementary aids and services, and if the child is moved, the hearing officer must determine that the new placement will allow the child to continue to participate in the general curriculum and to meet the goals of the IMP and that the child will receive services that are designed to address the behavior that led to the removal.

Third, in placing this additional authority with hearing officers, the bill recognizes the important role already assigned to these individuals in guaranteeing the rights of disabled children. It is because of the importance of this role that the act requires that hearing officers be impartial. This means, for example, that a hearing officer could not be an employee of the child's school district. It is my expectation that the Department will re-examine current policies concerning impartiality in order to ensure that, to the maximum extent feasible, the integrity of these persons, and thus the system, is ensured.

It is also my expectation that hearing officers will be provided appropriate training to carry out this new responsibility in an informed and impartial manner and that both SEA's and the Secretary will closely monitor the implementation of this provision.

In sum, Mr. President, we do not have to choose between school chaos and denying education to children with disabilities in order to maintain schools that are safe and conducive to learning. If anything, parents with disabled children want schools that are safe and conducive to learning more than other parents because their children are frequently more distractible and more likely to be the brunt of attacks and abuse.

Parents who have disabled children are not asking that they be excused from learning responsibility and discipline. What they are asking for is that the approaches used be individually tailored to accomplish the objectives of maintaining a school environment that truly is safe and conducive to learning for all children, including children with disabilities.

Mr. President, this bill provides a fair-balanced approach to ensuring school environments that are safe and conducive to learning. I urge my colleagues to support the underlying bill and reject the Gorton amendment.

I yield the floor.

Mr. JEFFORDS. Mr. President, I compliment my good friend from Iowa, who, along with me, came in about the time that this special education legislation was enacted back in 1975, and we have worked closely together on matters of disabilities ever since that time. It is a pleasure to work with the Senator. I think we have had pretty successful adventures along this line.

The PRESIDING OFFICER. Who yields time?

Mr. JEFFORDS. Mr. President, I yield 10 minutes to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee is recognized for up to 10 minutes.

Mr. FRIST. I thank the Chair.

The amendment that I wish to talk to is the amendment on discipline which would instruct local education agencies to set their own policy in disciplining disabled students. In short, each school district could then have its own distinct policy defined for itself in how to discipline children with and without disabilities. I oppose such an amendment.

A statement was made that the underlying bill is leading us in the wrong direction and that this amendment would set us back in the right direction, at least in that one area of discipline. I disagree.

In the statement, the case was cited that there were two schoolchildren sitting together, one with a disability and one without a disability, and that they both should be treated exactly the same.

I would argue that that is difficult to do. Let me give two brief examples where I find it hard to have a different process other than the one spelled out by Senator JEFFORDS and as spelled out in the definitions. And, yes, it is several pages long because it takes that sort of detail when we are dealing with the issue of individuals with disabilities.

Let us say that one of the people in these chairs has a syndrome called Tourette's syndrome. That individual who would be sitting in that chair could learn just as well as the other individual, could take advantage of the education just as well as that other individual. If that individual has a disability, a disability called Tourette's syndrome where, with everything else hooked up in a normal way, there is one little cross-connection in one little tiny part of the brain that causes that individual, while they are sitting there studying and learning with the same capacity as everybody else, with the potential to be as successful an individual as anybody else, for some reason we do not understand—as a physician, I do not understand, scientists do not understand yet; hopefully, we will change that—that individual all of a sudden blurts out something that does not relate to anything at all.

Should that person have the same process for disciplining as the individual next to him? Some people would say yes. I would say no, that some attention needs to be paid that that is a manifestation. And, yes, we spell it out in the bill. What if we did not? What would we go back to—22, 24 years ago where that student would be thrown out of the classroom and thrown out of school through no fault of their own when they can learn just as well as anybody else? I say no, the process needs to be different. And it is spelled out in detail as the Senator from Vermont has read from the bill earlier—a different process. You can call that a double standard, I guess, because people will react to that and say, no, double standards are wrong. I call it a different process and for a very good reason. If you go back 25 years, you see why.

Or let us say there is another student. Let us call him Tom. Let us put him in the fourth grade. Let us say he can learn well, he has the potential to be everything that one would wish his son to be in the future, yet Tom has a severe developmental disability. Say he is an individual with mental retardation. I do not know exactly what that means, but most people understand generally what I am talking about. And let us say somebody comes up to Tom in the fourth grade—and we all know bullies like this. This is the reality. This is the reality of the classroom today. A bully comes up and says, we are going to get Tom; let's give Tom this little toy gun. ''Tom, this is a little toy gun.'' In truth, this is not a toy gun. In truth, that bully brought it from home, put it in his pocket, and he knows how to get Tom and he gives it to Tom. And Tom says it looks like a toy gun. As a father, I can't tell the difference between toy guns and real guns. I look at them closely. Tom looks at it and says, yes, and I appreciate the gift, and so he puts it in his locker. Now the principal or teacher comes forward and opens the locker and finds what Tom thinks is a toy gun. Remember, Tom can learn just as well as anybody else, can benefit from an education. Should the process be to throw him out of school when it probably is a manifestation of his disability? And so, yes, you can call it a double standard. I call it a process, a very specific process where we do have to spell out manifestation and, yes, it takes more than six lines on one page to do that.

It is not quite so simple, and I would argue that with two people sitting in the same room, if one of them has a manifestation of a disability, we need—and not just we but people across all 16,000 school districts—to have a process, a fair and equitable way, to discipline that individual.

Senator HARKIN mentioned that 2 years ago I held a hearing, and it was really the first hearing I held as chairman of the Subcommittee on Disability Policy. It was about the original enactment and what led to that enactment. I was looking at those hearings, and it was really powerful. I encourage my colleagues to go back and look at that 20-year history, what led up to it. It was very clear that IDEA, the Individuals With Disabilities Education Act, was enacted to establish a consistent policy, not what Senator GORTON's amendment would do, have 16,000 school districts each with their own policy to handle the sort of situation, but it was enacted to establish a consistent policy that people could read and understand for States and school districts to comply with. With what? The equal protection clause under the 14th amendment of the U.S. Constitution.

We hear the words ''unfunded mandate'' and ''mandated.'' We passed IDEA. Unfunded, yes. I will not argue with that. A mandate? This goes back to a civil rights issue as defined by the Supreme Court decision after IDEA was enacted. The Supreme Court, under Smith v. Robinson, recognized IDEA as ''a civil rights statute that aids States in complying with the equal protection clause under the 14th amendment.'' Again, it was very clear to me in those hearings 2 years ago as we went back and looked at the decisions, two landmark decisions that Senator HARKIN talked about yesterday, in 1972 which established the constitutional rights—not a mandate, the constitutional rights—for individuals with disabilities to receive a free, appropriate public education.

So now what we want to do is turn back to allow 16,000—it may be 15,000, it may be 17,000—individual school districts to try to go through this definition to really throw aside what we have learned over the last 20 years, which we have modernized through our current bill, to go back and allow 16,000 school districts to reinvent the wheel, to try to learn once again what we have learned over the last 20 years—potentially 16,000 separate policies.

Talk about lawsuits. We have had many people comment on attorneys and attorney's fees and how difficult it is. Talk about lawsuits with 16,000 different policies. I can see somebody moving from Davidson County where I live to Williamson County only because, as parents of a child with disabilities, they think that the discipline requirements might be fairer. I think lawsuits will explode. Our bill provides one set of rules, an update, defining, yes, manifestation and, yes, discipline

if it is not a manifestation in a very clear way, with discretion for school districts, with protection for children.

The whole manifestation issue I do not think we need go into now. The Senator from Vermont went through it in pretty much detail. But let me just point out again for weapons or drugs—and it has been expanded to cover weapons, possession and use or distribution of illegal drugs—if it is not a manifestation of that disability, the school would discipline that student just as they would a nondisabled student who engaged in such behavior. There is nothing exceptional about that. If it was a manifestation, very clearly—so all 16,000 school districts can understand this civil rights issue—how to discipline that student in an orderly way that parents understand, the individuals with disabilities understand, the principals understand. For all other behavior subject to disciplinary action, again, if it is not a manifestation, that is, other than weapons and other than drugs, again, students are treated just as those without disabilities. If it is a manifestation, again, it is spelled out in IDEA.

I just close and simply say that all major educational organizations do support this bill. It is not perfect. We sat around the table night after night and day after day bringing people together. It is not perfect. But they say support this bill. Why support this bill? Because this bill as clearly defined is the way that we can improve the treatment of individuals with disabilities in discipline.

I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. JEFFORDS. I yield the Senator from Minnesota 5 minutes.

The PRESIDING OFFICER. The Senator from Minnesota is recognized for 5 minutes.

Mr. GRAMS. I thank the Chair.

Mr. President, I want to take this opportunity to commend my friend and colleague, Chairman JEFFORDS, for the exemplary work he has done in regard to the reauthorization of the Individuals With Disabilities Education Act. That this is the first time in 22 years that Congress has attempted major changes to its law with any likelihood of success speaks volumes about the time, energy, and commitment Senator JEFFORDS and others have devoted to it.

Over the last 5 months, I have listened to the concern of school board members, students, parents, principals, teachers, and administrators from all over Minnesota on the issue of IDEA. Primarily, each of these groups stressed concern over proliferating litigation, program inflexibility in regard to discipline, and the tremendous cost burdens associated with the mandates that have been placed on our schools.

In regard to the issue of discipline, this legislation provides additional flexibility to deal with children who are disruptive in the classroom or who are otherwise a danger to themselves or others. Clearly, this is an instance where the interests of the child and the interests of sound learning in the classroom must be carefully balanced to ensure that neither are breached. Unfortunately, current Federal law dictates that a child may only be removed from school if the parents consent to removal or if the student brings a firearm to school.

Mr. President, this is not balance at all. This legislation makes considerable strides toward restoring some balance by returning more decisionmaking to the people who know best, and that is those who actually teach our children.

Another issue is litigation. According to a study done by the Minnesota State Legislature, one of the largest factors contributing to the increased costs in educating their children is the cost of special education. Unfortunately, too many of these expenses have nothing to do with buying things such as Braille for the visually impaired or providing instruction for children with disabilities. Many of these expenses are legal fees resulting from litigation between schools and the parents of children with disabilities.

In light of the limited resources available to pay for the mandates imposed by IDEA, this is a glaring flaw that is ripe for reform. Toward this end, S. 717 requires States to establish a mediation system and provides incentives for parents to avail themselves of mediation instead of litigation to amicably resolve their differences.

The one issue that is not addressed in this legislation, however, and it is, in my view, a critical one, is the issue of funding. The Senator from Vermont has urged Senators to wait for another day to tackle this issue. The Senator's objection to dealing with funding at this juncture is not based on substance but, rather, on process, and I fully appreciate these constraints. We need to pass this bill.

However, because I believe the issue of funding is so vital to the success of IDEA's reforms, I must reluctantly part paths with the chairman. I believe the funding issue should be addressed now. As Senator GORTON has pointed out, IDEA is an unfunded mandate on our 50 States and our schools. As such, consistent with the spirit, if not the letter, of the unfunded mandates legislation we approved last Congress, the mandate imposed by IDEA should either be repealed or it should be paid for. As it stands, the Federal Government pays a mere 7 percent of the total cost we impose on our schools through IDEA. It is my considered opinion that the Federal Government should put its money where its mouth is. In short, Congress must fully appreciate the consequences of its actions. If Congress places a premium on a desired goal or sets a priority for States or local governments to attain, the Federal Government must ante up or then reconsider that mandate. And because I believe IDEA serves an important role in the education of our disabled children in Minnesota and throughout the Nation, in this case I believe Congress should ante up. Accordingly, if it is offered, I will support the Gregg amendment to fully fund the Individuals With Disabilities Education Act.

In conclusion, Mr. President, I just wanted to say again I support S. 717 because it does improve upon the commitment we have made to disabled students in Minnesota and throughout the country. Although I wish it would have gone a little farther, I support the Gregg amendment, as I said, because it backs up this profound commitment. But in my view, if we at the Federal level really desire to help our Nation's schools, we will finish the jobs we started. Beyond this, the Federal Government's next job in furthering the education of our children is to step aside and allow parents and school boards to do the job they were designed to do and not the Federal Government.

I thank the Chair. I yield the floor.

Mr. SMITH of New Hampshire addressed the Chair.

The PRESIDING OFFICER (Mr. ENZI). The Senator from New Hampshire.

Mr. SMITH of New Hampshire. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 27½ minutes.

Mr. SMITH of New Hampshire. Mr. President, I yield 5 minutes to my distinguished colleague from West Virginia.

Mr. BYRD. Mr. President, I thank my friend, the Senator from New Hampshire, [Mr. SMITH].

The PRESIDING OFFICER. The Chair recognizes the Senator from West Virginia.

Mr. BYRD. Mr. President, the Senate is expected to vote shortly on S. 717, the Individuals With Disabilities Education Amendments Act of 1997, also known as the IDEA bill. Mr. President, I compliment the managers of the bill, Mr. HARKIN and Mr. JEFFORDS. They have worked hard and the legislation is certainly an improvement over the current situation.

I do have some reservations about the contents of the bill—I intend to vote for it—and about the manner in which it was brought up for consideration.

Before I cast my vote, I would like to take this opportunity to express my concern with the legislation. First, and foremost, a committee report on S. 717 was not available until early on Monday, yesterday, and the Senate proceeded to debate S. 717 on Monday. That is not anything new around here. We are witnessing more and more of it, and too much of it. I was not able to secure a copy of the report until yesterday afternoon, which constrained my ability to read the committee report as thoroughly as I would have liked. It is unfortunate and unnecessary that our independent judgment as Senators is so often being subjected to

narrow time constraints to render a decision on the ramifications of important bills such as this one.

In addition, I have been contacted by a number of West Virginians who have raised concerns about the ''stay-put'' clause in the current law for violent and disabled students. The ''stay-put'' provision means that a disabled student cannot be removed from his or her current classroom until a hearing is held to resolve the matter. Under S. 717, steps have been taken to attempt to correct this matter by permitting local school authorities to relocate a disabled child into an alternative educational environment for up to 45 days pending an appeal if he or she brings a weapon to a school or a school function, or consumes or solicits a controlled substance.

I think these provisions are improvements, as I say, over the present. But I don't think they go far enough. Why should school authorities be limited to a period of 45 days for the removal of a disabled student—disabled or any other student—who carries a weapon to school or uses drugs at school or school-sponsored events? Why not 90 days? Why not longer, if the situation warrants it? While I applaud the efforts of the sponsors to provide the local schools with more authority to deal with a violent and disabled child, I am disappointed that more stringent discipline provisions are not included in the final draft of the bill. We ought to consider the security and educational needs of every student in the class, in addition to the disabled child.

Finally, I have, over the years, detailed the national problem of alcohol abuse, and have urged people, young and old, not to drink and drive—but not to drink, period. That is the way I feel about it: Not to drink. I have urged people, young and old, to abstain from drinking alcohol. Yet, S. 717 makes no reference to a disabled child who brings or consumes alcohol on school property. I know the sponsors would argue that the bill contains language that would allow local school officials to exact discipline under the same terms that a nondisabled student would face. But it is my opinion that alcohol is just as evil as any other drug defined by the Controlled Substance Act, to which S. 717 refers. Therefore, I believe that the bill should include alcohol under the provisions that relate to school officials' authority for the immediate removal of a disabled child who possesses a weapon or a controlled substance on school property. I hope that, when the managers again consider legislation of this type, they will consider carefully the inclusion of the word ''alcohol.'' It does not hurt to have it in, and it may help.

In conclusion, I will vote for S. 717, the Individuals With Disabilities Education Amendments Act of 1997, but I would like to inform my fellow Senators that the manner in which we have arrived at this point troubles me. Proponents of the bill have argued that the quick markup of the bill and its subsequent expeditious floor clearance was necessary to avoid a subsequent demolition of the fragile agreement that has been reached. Mr. President, if it is all that fragile, perhaps we ought to start over. Mr. President, efforts to ram legislation through, not only in this case but all too many other cases, as we have seen around here in late years, are not consistent with the duties of the Senate to adequately deliberate on a matter that affects millions of disabled and nondisabled children who have a right to a safe and appropriate public education.

Mr. President, I thank the distinguished Senator from New Hampshire for yielding me the time. I again congratulate the managers of the bill and I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH of New Hampshire. Mr. President, I want to indicate, first and foremost, that I understand what the sponsors of the bill are trying to do. I support the concept of reforming the IDEA law. I do not fault them for trying to make the changes. What I fault is the process in which we bring the bill to the floor with a locked-up agreement. One of the greatest aspects of the U.S. Senate is that we have the opportunity to debate, and hopefully sometimes have a couple of people listen to what we say and influence an outcome. I realize that does not happen very often around here. But in this particular case, we do not have the opportunity to influence the outcome because we are told: A deal has been struck between the House and the Senate, minority and majority, White House and everybody else. It is just one happy old time here, everything is done and we do not need to debate it, we do not need to suggest any changes.

Perhaps an analogy might be if we had an agreement to spend $1 billion on cancer research and somebody told us if we spent another $50 million we could cure cancer, I think we would be prepared to amend the bill to add the $50 million to the $1 billion in a hurry. So I do not support this kind of process. I do not think it is right, and I think that we can strengthen a bill and, if somewhere along the line the President specifically decides to veto the bill with the strengthened provision, we have a constitutional process—the Founding Fathers thought it out very clearly—which says that bill would come back here, to the Senate and House, and we could override his veto or not. So I do not think anything is lost by allowing Senator GORTON and myself the opportunity to offer amendments in good faith.

You might say, You are offering your amendments. Yes, we are, but we are offering them with just about everybody out there against us, even though I believe our ideas are good.

Senator GORTON made some very interesting points on his amendment, and I rise in strong support of that amendment, which is the business before us. He made the interesting point that he did not feel U.S. Senators necessarily knew more about what was happening in the various school districts in Washington State or in New Hampshire, for that matter, than the people in those districts did. I could not agree with him more. I bring perhaps a different perspective than many of my colleagues here in the Senate. I spent 6 years in the classroom as a teacher. I also spent 6 years on a school board. I know what Public Law 194 is, and I know the good things that that law has done for people who are in need of special education. It has done wonders for many, many students who were in need.

The Senator from Iowa made specific reference to one individual who had been helped under this program. I applaud that. That is not what we are talking about. What we are talking about is this basically distorting the process to write individualized education plans for people who perhaps should not have IEP's; who really are not in the same category as the young man who was mentioned by the Senator from Iowa.

I took the opportunity, even though this is not a bill that is in the jurisdiction of any of my committees—that is Senator JEFFORDS' committee—I did something that perhaps is not always done around here, I wrote to all the school districts in my State and I asked for input on this legislation. I informed them I felt there was a good opportunity, that Senator JEFFORDS and others were moving the bill through the process here, that it was going to improve the special education program or IDEA as we know it, and I think Senator JEFFORDS has done that. He has improved it. But the question again goes back to my original point. Can we improve it more? I think Senator GORTON's amendment does that. I would like to explain why I think that is the case. I would like to explain the rationale for the amendment, which is intended to ensure that the education of all students not be compromised.

This is an important issue. I wish we had the opportunity for more debate, but unfortunately we do not have that. The problem the Gorton-Smith school safety amendment addresses is, I believe, one of the most serious problems in all of the legislation. A safe school environment is a precondition for learning.

I listened to my colleague, for whom I have the greatest respect, Dr. FRIST, the Senator from Tennessee. He used some medical examples and indicated that there are times when these unexplained medical occurrences occur. I understand that. I respect that. I do not claim to challenge his medical knowledge. But I hope we might speak from the teacher's point of view, because that is what this is all about. We are not talking, here, just about helping children who need help. That is one part of it. There are children who need

help. But there are also children, for whatever reason—whether it is because they need help or because they got an IEP that they should not have gotten, an individual educational plan—they are disrupting the classroom. And there are other students in that classroom.

When I am standing before that classroom, trying to teach 25 other students, and this student blurts something out and disrupts the class, or waves a gun in class, or brings drugs into class, or shouts obscenities, or whatever else the student may decide to do, it really, as far as the other 25 students in the class are concerned—I do not really think that they are overly concerned at that point, when the classroom is disrupted and education is disrupted, as to what the cause is, or what the problem may be specifically with this child. It is a problem. If it is a medical problem, it ought to get medical attention. If it is a discipline problem, it ought to get disciplinary attention. That disciplinary attention ought to come from the decisions of the teacher, parents, school board, school administrators—not from the Federal Government. Not from the U.S. Senate.

So, the school safety amendment is a commonsense addition to this bill. That is all it is. It simply ensures that the rules governing discipline in schools may be formulated in such a way as to treat all students uniformly. Without this amendment, S. 717 will preserve the double standard that exists under current law. Students will see there is one standard for students diagnosed with disabilities and another one for those who do not have such a diagnosis.

Recently, my office received a call from a school board chairman in New Hampshire complaining that a student in one of the districts had brought a gun to school. He reported that because the student had been diagnosed with a disability, the school board was powerless to intervene. It goes without saying that without the diagnosis, the situation would have been different.

I ask you, Mr. President, if you are standing in that classroom trying to teach those other students and a kid waves a gun around, at that point, do you really care specifically what his problem is? When somebody walks into a bank and waves a firearm at a clerk, at that point in time, are we really concerned about how difficult his or her childhood may have been, or are we concerned about dealing with the now, what is of utmost urgency, and that is the violence that is pending, immediately and then deal with the other problem? Doesn't that make more sense, I say to my colleagues? That is all Senator GORTON is trying to do. That is all his amendment does.

If you read on page 157 in the bill, basically what it says is that if you have that student waving that gun, you can get that student out of the classroom, according to the Federal Government now dictating to the school district. You can get the student out of the classroom for 45 days. That is very nice that the Federal Government and the Senate and the House and the President have given the school districts a directive that, yes, if you have a kid waving a gun around in Mrs. Jones' class, let's say in the sixth grade, you can take the kid out of school for 45 days. That is very good of the Federal Government to allow that to happen. I applaud them for letting that happen.

In addition, to show the kindness of the Federal Government even more, if you provide an IEP, an individual education plan, for that student who is waving a gun around—you have to do that—you have to provide that help for this student while he or she is out for 45 days and then, after the 45 days, you have to bring the student back into the classroom again. Now, that is real nice for the Federal Government to get into that kind of micromanaging.

As a teacher who has the responsibility for educating the students and, in this particular case, the safety of the students, we need a better way. I do not want the Federal Government to make that decision. I want the teacher on the spot, the administrators on the spot to get that student out of the classroom and to find out whatever the problem is. If it is a medical problem, fine, then deal with it as a medical problem outside the parameters of the school district. The school district is not a hospital, it is not a social service agency, it is an educational institution, and we have lost sight of that. Everybody in America knows it, the school districts know it, the students know it, in some cases.

I believe honestly that without this amendment we will eventually be forced to revisit this problem. This is not going to resolve the problem despite our best intentions. We are going to be sending the message that the Federal Government is not a help but an impediment to efforts to provide students with a safe learning environment. By sending that message, we will give citizens who want safe schools for their children reason to doubt that the Federal Government considers their concerns worthy of serious attention.

I do not believe we should send that message, Mr. President.

Throughout this debate, we have heard that any successful effort to amend this bill, no matter how worthy, is going to imperil the entire legislation. I ask my colleagues to think about that for a moment. How does it imperil this legislation to say to a local school district, if you have somebody waving a gun around in a classroom, or doing drugs in a classroom, or in other ways disrupting the classroom, how does it imperil this legislation to say that we want to add an amendment on this bill that says that the school district, the teacher, the principal, the enforcement official, the police department, whatever it takes in that local community, should be able to address that problem as they would if any other student were causing it. Deal with the other problems, the problems behind this incident later, but get the child out of the classroom. That is all Senator GORTON and I are asking with this amendment.

It is not unreasonable, Mr. President. Schools should not be forced to adapt their own behavior policies on the basis of IDEA. This is a reasonable amendment. I encourage my colleagues to search their conscience, in spite of the effort to stop all amendments, in spite of the effort to say this will destroy the bill, I plead with my colleagues to support the Gorton amendment because of the reasons I have given.

Bear in mind, we all understand the rules, we understand the constitutional provisions of what we do in the Senate. We all understand that if a bill is defeated, it can be defeated because the President vetoes it, it can be defeated because the Senate or the House defeats it, but in this case, if the Senate passes it with this amendment and the House passes it with this amendment, who knows, the President may sign it with this amendment. We do not know the answer to that. And if he does not sign it, we can override his veto, and if we do not override his veto, we go right back to where Senator JEFFORDS is now. So what have we lost? A little time, that is all.

But I guarantee you, if you talk to those teachers out there in those inner cities and other locations where these kinds of things are happening, it would be very interesting to hear their remarks in terms of how they feel about this.

Let me close by saying, again, I understand and respect what Senator JEFFORDS is trying to do. This is an advancement of current law in the right direction. I applaud that and support that, but I resent the fact that we cannot make an attempt, where there are deficiencies overlooked, where we are denied the opportunity to make the attempt to reform them because we are going to ''undo'' some compromise on the legislation.

Mr. President, I yield the floor and reserve any time I have.

Mr. REED. Will the Senator yield?

Mr. SMITH of New Hampshire. Yes.

Mr. REED. If I may, I would like to comment on the bill in general and the Gorton amendment specifically, if the Senator will yield?

Mr. SMITH of New Hampshire. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Six minutes.

Mr. SMITH of New Hampshire. I see no people on my side. I yield the remainder of my time to the Senator from Rhode Island.

Mr. REED. Mr. President, I thank the Senator for his gracious efforts.

I rise today to support the reauthorization of the Individuals with Disabilities Education Act, and also to oppose the proposed Gorton amendment.

This legislation represents remarkable progress to date, building on progress in the last 20 years with respect to IDEA. In 1975, when IDEA was first passed, 1 million children were excluded from the public school system and another 4 million children did not receive appropriate educational services.

Working in a bipartisan manner years ago, Congress passed IDEA, creating a situation in which all children are entitled to a free appropriate public education.

IDEA has made a real difference in the lives of children throughout this country. Over 5 million children from birth through age 21 are now enjoying the benefits of the Individuals With Disabilities Education Act, and it has made a real difference. Indeed, the number of children with disabilities entering college more than tripled during the period between 1978 and 1991. The unemployment rate for those individuals with disabilities in the twenties is half that for the older generation. Simply put, IDEA demonstrates the positive and powerful role that Congress can play and has played. Today's bipartisan and bicameral effort builds on that great success of the last 20 years.

I commend particularly Senator LOTT, Senator HARKIN, Senator KENNEDY, Senator JEFFORDS, Senator FRIST, and Assistant Secretary for Special Education and Rehabilitative Services, Judith Heumann, for all of their efforts in leading this reauthorization process.

In March, I went up to Rhode Island and met with many of the teachers, administrators, parents and families who are deeply involved and deeply concerned about special education. We talked to them, we got their ideas, and I am very pleased to say this legislation incorporates so many of the important ideas that they expressed to us.

For example, this legislation promotes greater parental participation by providing parents with regular reports about the progress of their children. It also includes parents in group placement decisions which is so critical to the success of their child. This legislation strengthens the individual education plan, the IEP, by including children with disabilities in school reform efforts and also ensuring that performance assessments includes all children, including children with disabilities. All of these efforts will strengthen the education that is provided to these young Americans.

In addition, this legislation strengthens and emphasizes early intervention services which are absolutely critical. In my home State of Rhode Island, we screen every child for disabilities and follow through with those children. People up in Rhode Island speak with great conviction and passion about the success of this aspect of the IDEA bill, and we are building on that success today.

This legislation also reduces the paperwork and the litigation that we have seen in the past and strengthening and emphasizing mediation and reconciliation processes rather than going to immediate litigation. Indeed, it also requires that complaints be specified so that we don't get into an endless litigation process. All these things together add, I think, to the sensibility and the streamlining that this legislation represents.

With respect to the amendment before us at the moment, it would undercut, I think, most of the progress we have made to date in this reauthorization. It would essentially undercut all of the specific goals and objectives that we have laid out carefully after considering this legislation. It would also, in a sense, undo so much of what has been done so positively and progressively by all parties coming together to deal with this legislation.

To defer, once again, to local control I think is to invite what took place before IDEA, not because of insensitivity or any maligned intent, but the fact is, quite frankly, that millions of children with disabilities did not receive an appropriate education. It was only with the passage of IDEA in 1975 that we committed ourselves to ensure that every child, including those with disabilities, would have an appropriate education.

This is the commitment we continue today. This is the work of many months by my colleagues who worked so diligently. I hope today we not only will reject this amendment but that we will overwhelmingly reaffirm the work that has been done, pass this bill, move it forward, let the President sign it and let us build on more than two decades of success and, once again, reaffirm our commitment that in this country, every child, regardless of their abilities or disabilities, will have a free appropriate public education.

I thank the Senator and yield back the remainder of my time.

Mr. JEFFORDS addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Vermont.

Mr. JEFFORDS. Mr. President, we are coming to the end of the discussion on this amendment. It is my intention to have it set aside. I would like to point out that this is not just JIM JEFFORDS versus the cities and towns of America, as Senator GORTON stated. He indicated that the teachers wouldn't like it, but actually, this bill is backed by the National Parent Network on Disabilities, the AFT, and the NEA. It also has the support of the American Association of School Administrators, the National Association of Developmental Disabilities, the Council of Great City Schools, the National Association of Elementary School Principals, and 32 other organizations representing millions of people. I urge everyone to vote against the Gorton amendment.

I yield back the remainder of my time and I ask unanimous consent that the Gorton amendment be set aside temporarily.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SMITH of New Hampshire addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from New Hampshire.

Mr. SMITH of New Hampshire. Is the pending business now the Smith amendment?

The PRESIDING OFFICER. The Senator has not called up his amendment yet.

AMENDMENT NO. 245

(Purpose: To require a court in making an award under the Individuals with Disabilities Education Act to take into consideration the impact the granting of the award would have on the education of all children of State educational agencies and local educational agencies.)

Mr. SMITH of New Hampshire. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Hampshire [Mr. SMITH], for himself and Mr. GORTON, proposes an amendment numbered 245.

Mr. SMITH of New Hampshire. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 156, between lines 8 and 9, insert the following:

''(I) LIMITATION ON AWARDS.—Notwithstanding any other provision of this Act (except as provided in subparagraph (C)), a court in issuing an order in any action filed pursuant to this Act that includes an award shall take into consideration the impact the award would have on the provision of education to all children who are students served by the State educational agency or local educational agency affected by the order.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that with respect to the amendment offered by Senator SMITH, there be 1 hour for debate, equally divided between Senator SMITH and myself. I also ask unanimous consent that no second-degree amendments be in order.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from New Hampshire.

Mr. SMITH of New Hampshire. Mr. President, I appreciate the Senator from Vermont working with me on this amendment. I do not intend to use the full 30 minutes on my side. If it helps to yield back some time on both sides to expedite things, I am more than pleased to do that.

This, again, Mr. President, is another opportunity to strengthen this bill. Like the Gorton amendment, it is just a commonsense amendment that simply underlines a commitment to fairness and equity that I believe every Member in this body shares. My amendment would require a court making an award under the Individuals

With Disabilities Education Act to take into consideration the impact the granting of the award would have on the education of all children in that State or locality.

The problem that the Smith amendment addresses is a very real one. Again, talking with school boards, having served on a school board, I can tell you that litigation costs are consuming a lot of resources that would otherwise be dedicated to education services or infrastructure development.

In one instance, a school district was forced to pay $13,000 in attorney's fees as a result of a dispute over less than $1,000. I simply ask my colleagues if that is reasonable.

I ask unanimous consent that Senator GORTON be added as a cosponsor to my amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SMITH of New Hampshire. Mr. President, Senator GORTON, in discussing his previous amendment, which did not relate directly to attorney's fees, has provided me a copy with some of the litigation costs in various school districts in his State of Washington. I will not go through them all, but if you added all of the litigation costs up in 1 year, the 1994–95 school year, it would be almost $1 million in litigation costs just on special education, $330,000 in Seattle, alone.

Now, if you add up all of those thousands and thousands of dollars and you end up with a total in excess of $1 million, if you are a teacher or an administrator or a private citizen thinking of your own school district, you might ask ''How many teachers, how many textbooks, how much infrastructure could you provide for $330,000?''

We have an adverse reaction around here when we try to get anything done to knock any attorneys out of a dollar or two. There was a Washington Post story recently quoting lawyers bragging—and I will not cite names here, I do not think that is important—but there was a law firm in the city that got $2.4 million, according to school budget records, just on special education, just on this law. In fact, one person was quoted as saying, ''Winning those cases is like taking candy from a baby.''

I might just say, why is that? Well, I took the time, Mr. President, to talk to my school districts—not all of them, but I wrote to them and got a lot of input back and attended some school board meetings. I attended school board meetings, about one a week for 6 years, when I served on the school board in another life before I came here to Congress. Believe me, I have heard a lot of reasons and a lot of things about what is wrong with this law as well as what is good with it. We know there are good things about it.

The Manchester school district, which has 100,000, roughly, citizens—not 100,000 students—a district of a little over 100,000 people, pays litigation costs on this issue alone of between $110,000 and $125,000 every year. That is the cost of three teachers. This may be justified, but sometimes it is not, is the point I am making.

Using the example I cited in my last speech of the youngster with a gun in the classroom, if somebody determines that youngster must have an individual education plan, and the school district says, ''Now, wait a minute. Hold on. This kid has disciplinary problems. He does not have medical problems. He has disciplinary problems. We want to discipline him. We want to get him out of this classroom.'' But somebody disagrees. Maybe the parents, maybe somebody representing the parents, maybe the Civil Liberties Union—whoever—but somebody disagrees. So sometimes when the school district looks at the ramifications, they think, ''Well, if we go to court and fight this and lose, it could cost us $300,000. If we give in and we cave in and say, 'Well, OK, the kid is waving a gun around, he must have a medical problem somewhere, something is wrong, he is waving a gun around a classroom, we need an IEP,' we might as well cave in because that will cost $100,000, and it is better to pay $100,000 than $300,000.''

That is exactly what happens, Mr. President, over and over again, year after year, district after district, all over America. They simply throw up their hands and look at it simply on the basis of a bottom line. ''If I go to court and I lose, I will owe $300,000 in legal fees. If I go to court and win, maybe I will not owe them. But if I lose I will have to pay, and for the sake of $100,000 IEP, knowing that the legal fees' estimate may be three times that, why, then, would I take the risk?'' That is exactly what happens, Mr. President. I have sat as chairman of the school board and seen it happen and participated in those decisions. They were bottom-line decisions.

Now, let me tell you why this hurts children in those schools. Maybe I am mistaken, but I think we are trying to reform this law because we want to help students get a better education. Now, the question you must ask the question you might want to ask is: Is it fair to provide this kind of education, this kind of alternative, at the expense of other students? If it is going to cost $300,000 to go to court, then I have to think, if I am a school board chairman, well, how about the other kids? What happens to them? Let me tell you what happens: Those dollars go to the lawyers. That is what happens. And we are letting it happen.

I thought the point of a civil rights law was to protect people from discrimination, especially minorities, not to provide minority group members with benefits not available to the rest of us. That is what I thought. Maybe I am somehow mistaken in that regard.

So, all my amendment does, all it does, is it simply requires a court, in making an award under the IDEA legislation, to take into consideration the impact the granting of that award would have on the education of all the children, all the children, in the school district—not just one, all of them.

I might say to you, is it fair to take education away from kids who want it, who need it, who deserve it, who ask for it, for the sake of someone who is a discipline problem? Not someone who has a handicap or someone who has a need. I want to make that clear, because I will be accused otherwise. That is not what we are talking about when we talk about kids who have legitimate needs. We are talking about these outrageous individual education plans that are written, and the outrageous examples of the kind that I gave you, a kid is selling drugs on the school ground, you have a kid waving a gun in the classroom, you have a kid shouting obscenities in the classroom, and instead of worrying about getting the kid out of there and out of that environment which is destroying the educational opportunities of other students, we are worried about what the background is, what the reason is for it. There is a justification for finding out the reason, but get them out of the school classroom where these problems are occurring.

We are not talking about a child with Down's syndrome here or a child who is blind or deaf or who needs some special education to help that child learn. We are not talking about that. I voted for hundreds of thousands of dollars of taxpayer dollars to help those children as a school board member and as a Senator. I am talking about some type of reasonable restriction on outrageous legal fees that come right smack out of the pockets of those good kids, good kids who simply want to learn, those good kids and decent parents who say, ''You know, I am sending my child into school. I know the teachers are imperfect. We are all imperfect. We are human beings. I do not expect them to be perfect. I do not expect the school or the administrator to be perfect or the classroom environment to be perfect, but I am asking they be free from the threat of violence, they be free from the threat of drugs, free from the threat of outrageous outbursts of obscenities and other things that may cause an impact on my child or their child's education.'' That is all parents are asking. What is so unreasonable about that?

Who are we in the Federal Government or the U.S. Senate or the House of Representatives or the White House to tell the school district that they can't correct this? Who are we to do that? If you can find that in the Constitution, Mr. President, somewhere, anywhere, even implied, I will withdraw the amendment. It is not there. It is absolutely not there. We need to do something about it.

There was a principal from a school in New Hampshire who wrote to me saying that because of litigation costs, ''funding of other regular education programs is being seriously jeopardized.'' He describes himself, this principal, as a member of a generation that

sought to extend equal opportunity to all. He concluded, with regret, that as a result of excessive litigation the IDEA has become ''a law gone crazy. The students that are disadvantaged now are the regular education children.''

I include in regular education children those who have a disability, who need help. Let me repeat that: I include in regular education, children in that category, those children who have a special need, who need extra help—not the ones that are causing these problems that are so outrageous in these classrooms.

I wish I could say this was just one mere anecdotal example out of millions and that it was not a big deal, but it is not. A study that was conducted by the Advisory Commission on Intergovernmental Relations shows that the IDEA is the fourth most litigated law in its study of unfunded mandates—unfunded Federal mandates. Is it any wonder that some lawyer from Washington, DC would say ''winning those cases is like taking candy from a baby?'' It is not.

I have talked to the school board members. They throw their hands up in the air. It is costing them money by the hundreds of thousands and millions of dollars, money that could be spent on educating, yes, the truly needy special needs kids, as well as the people in that classroom.

Again, for emphasis, I repeat what I said earlier. Can you imagine being in a classroom, as a teacher or as a student, with that kind of outrageous behavior occurring, and then knowing as a school board member that you have to tolerate it unless you want to break the bank with legal expenses?

So, basically, what this amendment does that I am offering, it simply allows the court to pull back on these court costs, to have the flexibility to say, look, $13,000 for a $1,000 IEP or $350,000 for a $10,000 IEP, those kind of fees are outrageous. They are not going to be tolerated because we are not going to let some lawyer who wants to fatten his wallet do so at the expense of decent children in some school district in Anywhere, USA, from having the opportunities of getting what he or she deserves in that classroom.

That is wrong, Mr. President. That is absolutely wrong to let that happen. Yet, it is happening and we are encouraging it to happen. We are encouraging it to happen because we have some deal struck that no one wants to break and, therefore, we can't offer an amendment. ''Yes, you can offer an amendment, Senator SMITH, but everybody is going to oppose it. If you get five votes, good luck.'' Well, I just ask the American people to look very carefully at the votes, frankly. Those of you out there in the school districts around America, look at who votes on the Gorton amendment and Smith amendment and see whether they are there for you or not, because that is what it amounts to.

I don't care what anybody tells you on the floor of this Senate, it is absolutely not true to say that this bill will be defeated if this amendment passes or the Gorton amendment passes. That is not true, because it can be defeated here and the President could veto it, but we can override the veto. That is the constitutional process.

The need to address the problem of litigation costs seems all the more pressing at a time when some of my colleagues have begun calling for the Federal Government to take over the job of building and maintaining the schools from State and local governments. They want to take it over. Can you imagine that? The U.S. Senate, in this vote, is going to use the power of the Federal Government to prevent you from getting that child waving the gun or using the drugs out of the classroom but that same Federal Government is going to take over the job of maintaining school buildings. Can you imagine that?

Do we really want to do for public schools what we have done for public housing? I think some do. I don't. Perhaps we in Congress would do better to ease the burdens of excessive regulation and litigation so that States and localities can devote more of their resources to repairing or replacing crumbling school buildings.

You know, it might be a good idea—I hadn't thought of it; it just came to mind—when the lawyers get the big fat settlements or legal fees by winning these cases, which they take with great glee—''like taking candy from a baby''—maybe we ought to have an amendment that says they ought to give 90 percent of it back to the school district. Maybe they get an IEP or two for some of these kids that really need it. But that would be wrong. That is in violation of capitalism, I guess, isn't it?

Well, all you have to do, Mr. President, is look and see where all the money goes from the legal community and who they are giving it to. There are a lot of lawyers in here and they do pretty well. So it is tough to beat the lawyers in this body.

I ask my colleagues simply to search your consciences, read the two amendments, the Smith and Gorton amendments, read what they do and ask yourself, is it the end of the world if this passes and this bill takes a few more weeks running through the process of getting changed? That is all we are asking. If the process around here is to strike a deal before we get stuff to the floor, I am going to be the first Senator out on the floor the next time that somebody who votes for this bill says, ''I would like to offer an amendment.'' I am going to say, ''Excuse me, why are you offering an amendment? I thought we had a deal here. Isn't that the way you want to govern—strike the deal before you bring the bill to the floor so nobody can make any amendments?''

This amendment would make this legislation a responsible piece of legislation if we were to pass it. That is all I ask. I am not asking for anything else. I am asking for the Senate to adopt this amendment to strengthen this bill, to take money out of the pockets of lawyers and put it into the educational opportunities of young girls and boys throughout this country. That is all my amendment does. If you want it in the pockets of lawyers, vote against me. If you want it to be spent for the schoolchildren, then vote for me. That is it, pure and simple.

Mr. President, I will reserve the remainder of my time and yield the floor.

Mr. JEFFORDS. Mr. President, I rise in opposition to the Smith amendment. I will not go into all I have said before about why that is necessary. But the House today has completed debate of a version which is identical to the bill before us, and any amendment to it would require us to go to conference. The delay would give time for those who are opposed to the bill to try to scuttle it, as they did last year successfully.

I want to point out several things with respect to the Senator's amendment. First, it is not necessary. Under the bill as written, there is no award for legal fees without the courts saying there should be; it's purely discretionary. The courts, with their discretion, can take into account the effect of the award on the school districts, or whomever else. So there is that ability to try to reduce the awards. It is in there now. The amendment is also not necessary, because mediation is working. Due to changes in the approaches that have been taken, the cost of litigation and the number of court suits that have been brought as a result of appeals has gone way, way, way down. So we are talking about something that used to be a problem but is not a problem anymore.

As I pointed out before in addressing Senator GORTON's amendment, I think he is talking about the State of Washington of old, not the State of Washington of the present. In fact, given the dramatic success with voluntary mediation in Washington State and given the success and cost-benefit advantage associated with voluntary mediation of 38 other States, the bill requires all States to offer voluntary mediation.

So the bill is going to try to help replicate what happened in Washington, which has decreased the number of appeals so substantially—a 96-percent decline in due process hearings held between 1993 and 1996. It is a problem of old. We can forget about it.

As far as the comments about waving the gun and there being no remedy, that is not accurate. If a child's behavior is not connected to a disability, then he or she is treated like any other child except that there can be no cessation of services. So that certainly takes care of that. If the behavior is related to the disability, the child can usually be removed for not more than the amount of time that the school system would remove a child without disabilities but for not more than 45 days. If at the end of 45 days the school

personnel propose to change the child's placement and the parents disagree with the proposal, the child must return to the placement prior to the interim placement except if the school personnel maintain that it is dangerous to do so and make a demonstration to the hearing officer that this is so. And that could go on until there is no risk.

The best way to help the communities is to vote for this bill. It is important to understand that, if we increase IDEA funding—and that is the effort this body and its Republican Members are putting their full weight behind—all that increased funding will not go to States. Rather, it will flow to the local governments. So, if you want to help local governments take care of problems—and sometimes there are problems—this money going directly to them will assist them more than anything else. The States can't pick any of it off. It goes right to the local government. So I just emphasize that, in my mind, we have taken care of the problems. We are, again, in the position of considering an amendment which could be seriously disruptive. If adopted, it will have no impact on solving real problems, but it would raise the possibility of killing the bill.

Let me give you an idea about the lawyer's fees and the history of that and let you know exactly what has to occur before you can get an award. There was a case called Smith versus Robinson in 1984. This was a case that came to the U.S. Supreme Court. They went through it and found out that, actually, there was no ability to award attorney's fees. So we went into the 1986 session and said there ought to be an award for some under certain circumstances, but we should make sure that it is not in any way automatic and is purely at the discretion of the court. Let me read some of the phrases:

In any action or proceeding brought by IDEA, or the parent or child with disability against the school, the court may award reasonable attorney's fees.

''May.'' That is discretionary. They could take into consideration everything Senator SMITH wants them to. There is no limit on the discretion. Also:

Attorney's fees may not be awarded and related costs may not be reimbursed in any action or proceeding for services performed subsequent to the time of a written offer of settlement to a parent, and if they had a good deal and didn't accept it, they don't get attorney's fees.

Attorney's fees may not be awarded related to any meeting of the IEP team unless such meeting is convened as a result of administrative proceeding or judicial action or at the discretion of the State or a mediation is conducted prior to the filing of the complaint.

I can go through more. I think you get the drift. It is very hard to get attorney's fees. Therefore, that is really not the problem. Plus the mediation process has reduced almost to zero the number of court appeals—only a hundred all last year. I think we are talking about solving a nonproblem and creating a huge problem with respect to the possibility that this bill might be, as happened last year, scuttled at the last minute.

I retain the remainder of my time and yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. SMITH of New Hampshire. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 10 minutes. The other side has 22½ minutes.

Mr. SMITH of New Hampshire. I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. SMITH of New Hampshire. Mr. President, I yield the remainder of my time.

Mr. JEFFORDS. Mr. President, I yield as much time as the Senator from Iowa desires.

Mr. SMITH. Then I will yield the remainder of my time to the Senator from Vermont.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. Thank you, Mr. President. I don't intend to take a long period of time. I wanted to respond to my friend from New Hampshire. Let me, first of all, recap a little history on the provisions in the bill which provide for reasonable attorney's fees—again, keeping in mind you have to prevail in this case.

The provision here, what is in the bill, is nothing new. This has been in the bill for a long time. In fact, I did a little bit of research and found out that this first came under S. 415, the Handicapped Children's Protection Act of 1986. And the person who was in charge of this provision was none other than our own Senator ORRIN HATCH of Utah. I just thought I would read into the RECORD, again, what he said at that time on July 17, 1986.

He says that the agreement we are now considering is a compromise which I feel accomplishes two major objectives.

First, it provides the reward of reasonable attorneys' fees to prevailing parents in Education of Handicapped Act proceedings.

Second, it includes the application provisions from some court cases, which he mentioned, which I don't have to go through.

In order to protect against excessive reimbursements. Senator HATCH goes on to say, ''Let me again emphasis that the conference agreement developed was a compromise. Without the passage of this carefully crafted document, handicapped children and their parents cannot be fully protected since they have no recourse under current law, if their rights are violated.''

Again, that law now provides that a court may award reasonable attorneys' fees as part of the cost of the parents of a child with a disability who is the prevailing party in a due process proceeding, or court action.

In other words, if a parent prevails at an administrative hearing, they are entitled to fees. What fees? Reasonable? They must be based on rates prevailing in the community for that time, and quality of services performed. Unlike other civil rights statutes, no bonus or multiplier may be used to increase the amount of fee awards. No award of fees may be made for services performed subsequent to the time a written statement offer is made to the parents, if, among other things, the relief finally obtained by the parent is not more favorable to the parents than the offer of settlement.

I think this is really a critical point. Again, I apologize to the Senator from New Hampshire. I do not know if he covered this or not.

Let's say they have a written statement of offer to settle. The parents decide not to do that, and they go on. From that point on, if the final judgment is not more favorable than the written statement offer, they get nothing beyond that point. They go at their own peril.

So, again, how can that be unreasonable attorneys' fees?

And the court must reduce the amount of the fee award whenever the court finds the following:

First, the parent unreasonably protracted the final resolution;

Second, the amount of fees unreasonably exceeds the hourly rate prevailing in the community;

Third, the time spent on the legal services furnished were excessive considering the failure of the action or proceeding.

So this is all in current law—adequate protections to make sure that there are not unreasonable attorney fees in these cases.

So really this amendment offered by the Senator from New Hampshire really undermines the rationale for having attorney's fees.

Again, let's keep in mind one other very important fact that I think keeps being ignored here when we are talking about IDEA. The Individuals With Disabilities Education Act is a civil rights statute. It talks about civil rights for kids with disabilities. I already went through that earlier today talking about not discriminating on the basis of race, sex, creed, or national origin. Well, the courts have now said disability too. You can't discriminate on that basis.

I have here a copy of all of the statutes under which attorneys' fees may be awarded by Federal courts and agencies in other civil rights cases. The Civil Rights Act of 1964; Public Facilities; Equal Opportunities; Fair Housing Act; title 8; Employment Act of 1967; Fair Labor Standards; Voting Rights Act of 1965; the Equal Credit Opportunity Act; the Age Discrimination Act; the Rehab Act of 1973. And all of

those we get reasonable attorneys' fees.

So now are we going to say, ''But, for the civil rights of kids with disabilities and their parents, no, that is different''? Why don't we carve out the Civil Rights Act of 1964, or public accommodations on the basis of race or color? Why don't we say, ''Well, if you have a civil rights case and it is based on race, you don't get attorneys' fees, if you prevail?'' Why not? The Senator from New Hampshire says we will carve it out for kids with disabilities. Why don't we carve it out on the basis of race?

How about religion? What if you got a complaint based upon violations of civil rights based on religion, and you prevail? You say you don't get attorneys' fees? No. We say in the law you get attorneys' fees, if you prevail.

Equal employment I mentioned.

Title IX dealing with discrimination based upon sex, we say, ''Oh. Well, in this case, however, if you are female, your civil rights have been violated under title IX, and you bring action. No. We are not going to give you attorney's fees.''

Why don't we have those amendments offered around here? It is only the kid with disabilities. It doesn't make any sense at all.

So let's keep all of our civil rights laws the same. If your civil right is violated on the basis of race, I submit to you it is no more onerous than if your civil rights is violated based upon disabilities. And we shouldn't discriminate under the Civil Rights Act, and we shouldn't here either.

So I oppose the amendment because it undermines the rationale. It subjects the parents of children to a double standard compared to other civil rights bills. We have to keep these things the same.

Last, the data doesn't support the assertions that the fee is a result of proliferation of litigation. I looked up New Hampshire. For 1 year—1995–1996—New Hampshire had 10 complaints that went through due process. Do you know how many become court cases? Zero. This is an amendment looking for a problem.

There is no problem out there. Vermont has zero. Arkansas has zero.

Again, it is just not a big problem out there at all.

In my State—I might as well talk about Iowa—we had four due process hearings, and we had three cases go to court.

Out of the thousands—this is what is interesting. In California, one of the largest States, we had 1,289 requests for due process hearings. Out of that, 1,114 were disposed in mediation. We had 57 hearing decisions rendered out of 1,289 requests. That is just not much of a problem. That is out of 550,000 students in California receiving special education. Out of 550,000 students, only 57 had a hearing decision rendered.

So, again, the number of due process hearings per year averages about one-hundredth of 1 percent of the number of children served. The law specifically provides for reasonable attorney's fees, and I just outlined what that means when Senator HATCH put this in the bill 11 years ago.

And, third, we would not—no one here, I would think—would want to discriminate on the basis of civil rights that in one civil rights case you get attorneys' fees but in another civil rights case you don't. No. We don't want any of that around here. For those reasons, while I have every respect for the Senator from New Hampshire—and he is a good friend of mine—this is just a bad idea, quite frankly. And I hope Senators will reject this approach of trying to divide out kids with disabilities and their families away from everybody else under the purview of civil rights laws.

Mr. President, I yield the floor.

Mr. JEFFORDS. Right now I would just like to say a couple of things. I think it is very clear that both of these amendments are not necessary—in fact, would create problems rather than solve them, and that what we have is a bill which, if we are able to pass, will save money. That has not been mentioned, but the estimates are it will save up to $4 billion a year in reduced litigation and all of the other problems that are inherent in the process as well as the fact that both amendments are trying to solve problems that are no longer there. In fact, the Gorton amendment will create a monstrous problem and solve none.

Mrs. MURRAY. Mr. President, I rise today to send a message to parents and educators across this nation. No matter if they are the parents of a disabled child, or the superintendent of a rural or urban school system, each one of them will have something to be pleased about in the 1997 reauthorization of IDEA. As with most legislation, no one is completely happy with every paragraph and clause. And yet, with issues so complex and needs so great, I find it remarkable that we have before us such a potentially successful bill.

It is testament to the work we have done over the past 2 months that we have brought the discussions over the past 20 years of IDEA to a productive next step. I have always believed that we do our best work when we agree to sit down, put differences aside, and work toward the common good, using common sense. This is exactly what the American public expects us to do. The negotiations over the IDEA bill represent this philosophy and put it into action.

I want to congratulate Senators HARKIN, KENNEDY, LOTT, JEFFORDS, and FRIST for all the great work they and others have done. I also want to thank the education community for working together through differences, to get to a bill that can pass and will work for students in regular education and special education in schools and communities across the land.

The Individuals With Disabilities in Education Act is 20 years old this year. It has represented a major change in the way our society views students with disabilities—and has helped us take concrete, measurable steps toward improving the lives and education of all American students.

In this process this year, it is my view that we have preserved the basic civil rights protections that were part of IDEA when it was passed, and that we have granted important flexibility to local schools and parents to work together in the best interest of children.

One thing evident from the process of writing this bill—we do a great job here in the Senate in cranking out pieces of legislation, but we must do more to monitor implementation of these laws. Practices in the field of special education have improved dramatically over 20 years; yet our methods of disseminating information—even in the information age—have not kept pace. Much of the disagreement in the classrooms and communities of America between special education folks and regular education folks is because we have let the ball drop on implementation of IDEA. The sad part is that it didn't have to happen—the information was there.

Information about how much more effective it is to use mediation as an option to legal action. Information about what strategies of communication, teaching, and problem-solving can be used to prevent situations from escalating to the point where they need mediation. In places where people have good information, and exercise leadership, you just see fewer problems.

It has been obvious for some time to educators and parents alike that—as with other Federal laws—there is a wide variety in what special education means from community to community. Some of this variety is as it should be. Decisions about how educational services are delivered are best made with local flexibility. But basic protections afforded by civil rights law, and effective techniques that improve student learning, should not be subject to the whims of geography.

The IDEA reauthorization legislation recognizes this, and makes several changes that will benefit all students and members of their community.

First, the new law codifies court decisions, regulations, and other interpretive documents so that the law itself better reflects its current uses.

Second, the law improves educator training, methods for sharing information, and improves the process for developing and using the individualized education plan—the key to disabled students getting the services and challenges they need.

Third, practices to achieve safe and well-disciplined schools have been improved or more clearly articulated in the bill—so it will be clear that students whose behavior causes disturbance in the classroom will get help if that behavior is part of their disability, and if the behavior is determined

not to be part of their disability, they are subject to appropriate disciplinary action.

This bill represents improved results for all students in our schools. It ties a student's individualized education plan to the educational goals and assessments for nondisabled students—so we set high expectations and provide clear opportunities for achievement. The bill includes parents in decisions regarding placement, because we recognize that a child's needs are uniquely the concern of her or his parents.

This bill will serve as a vehicle to increase funding for IDEA, so the Federal Government can meet its obligations to disabled students. The bill holds outside agencies responsible for their share of the health or other costs of serving disabled students, so we can clarify that local schools do not bear all responsibility for these costs.

People from different perspectives will find things to praise in this bill. Perhaps the best thing is that we will reauthorize IDEA this year, so people can predict what the future will hold, and have access to more and better information. The tension in this country between regular education and special education has boiled for too long. This IDEA reauthorization bill will not pit people against one another; it will bring us together in service to all students.

IDEA

Mr. WELLSTONE. Mr. President, at a time when communities are demanding that schools provide quality education; at a time when many schools talk of scarce resources; at a time when parents ask that their children's schools be safe and orderly places to learn—it is easier sometimes to find a scapegoat than to address the real problems. I am greatly concerned that the scapegoat has become children with disabilities. Even though they have only had the right to an education for 22 years—I have heard over and over again that it is those children who gobble up scarce resources and who prevent other children from receiving a decent education.

But I have heard from parents whose children have disabilities, I have met these children. They just want to learn. And the civil rights statute that we passed 22 years ago says that to not educate them is to illegally discriminate against them. But still, these students and parents are afraid that schools will retreat to segregation and separate schooling. We must listen to these voices of pleading and concern.

There are 100,000 children in Minnesota that are protected by this statute, and up to 200,000 parents. IDEA strives to keep these students in school in as normal an environment as possible because integration gives them the chance they deserve. What a noble goal. What achievements we have seen over the years since the law was written. The first generation of IDEA educated children are just now coming into their own in this country and I believe that we all benefit immeasurably from their developed talents and abilities. While there have been problems with IDEA, it is my belief that the problems stem not from the law itself, but from the enforcement and implementation of this law.

I know the bill we have before us represents a delicate compromise—and that any successful amendment has the potential to make the deal crumble. I have not come to the floor this morning seeking to change this bill. But I cannot vote for this bill without pointing out the trouble spots I see. The disability community has not had much time to fully analyze this bill. This is a fact that I mentioned in my letter last Monday to Chairman JEFFORDS and Senator KENNEDY, while asking them to postpone this markup.

A quick review of this bill shows that, at least among parents and students, the discipline section has raised the most red flags. There is a concern that a manifestation determination review will be a very difficult process for parents, particularly low-income parents who may not have access to psychologists and other professionals. Advocates are particularly worried about the courts being replaced by an administrative hearing officer because they may be appointed by an LEA, there are different rules of evidence and there is no assurance that they will be attorneys or appropriately qualified. Another concern raised by parents is how substantially likely to result in injury to self or others will be interpreted. Children with autism, Tourette's syndrome, ADHD or ADD and severe emotional disturbances are especially at risk.

And last we need to ask where children will be placed—what alternative placements are available? If the primary alternative is home-bound placement we will see families facing incredible stress and financial hardships. If the primary alternative is a segregated setting we run the risk of returning to a system that offered minimal education to children in isolated, warehouse-like settings.

That said, I would like to congratulate the leadership team that assembled this bill in marathon sessions for the last 8 weeks. On February 20, 1997 a bipartisan, bicameral working group was established to develop a compromise bill. This working group included a representative from the Department of Education—Judy Heumann, Assistant Secretary for Special Education and Rehabilitative Services—and the following offices: Harkin, Kennedy, Dodd, Jeffords, Coats, Frist, Martinez, Scott, Miller, Goodling, Riggs, and Castle. The facilitator of the group was David Hoppe, the majority leader's chief of staff. A member of my staff was intimately involved in this process, and by his and all accounts this was an impressive display of bipartisan negotiation.

The first work product of the group was a statement of principles. The major goal of the working group was to review, strengthen, and improve IDEA to better educate children with disabilities, and enable them to receive a quality education. With this goal in mind, the working group agreed to start with current law and build on the actions, experiences, information, and research gathered over the life of the law, particularly over the past 3 years. The group met for 7 weeks, often for 12 hours a day, to reach an agreement that all could support.

I believe that the bill improves current law in several ways. The bill includes significant increases for the IDEA preschool program and significant increases for the early intervention program under part H.

The final agreement significantly improves and strengthens the Individualized Education Plan [IEP] by, among other things, relating a child's education to what children without disabilities are receiving and providing report cards just like nondisabled students receive. Of great concern to my home State of Minnesota, the bill retains short-term objectives which are planned goals in the education of children with disabilities that parents consider a crucial device for ensuring success and accountability. The bill also specifies that regular teachers will be part of the IEP team, where appropriate, and the report language encourages the participation of school health professionals where appropriate.

The new bill requires parents to be included in the group making placement decisions about their child, as opposed to current law, which in some States allows another group other than the IEP team to make placement decisions.

The new bill ensures that States and local school districts include children with disabilities in their performance goals, indicators, and general assessments. The bill ensures parental consent for triennial reevaluations—not just initial evaluations as under current law—and ensures that evaluations are relevant to the child's instructional needs.

The bill includes improvements in the early intervention program, including clarification that infants and toddlers should receive services in natural environments, such as their homes, where appropriate.

IDEA funding will now cover support services related to a student's disability. For example, the final agreement now lists orientation and mobility services for vision-impaired children as a related service—currently required by interpretation—and includes report language clarifying that children with disabilities should receive travel training—including how to use public transportation where it is deemed appropriate as part of their IEP.

The bill requires States to monitor school districts to determine whether they are disproportionately segregating minority children in certain placements and to determine whether there

is a disproportionate number of long-term suspensions and expulsions of children with disabilities.

The bill gives the Secretary and State educational agencies [SEA's] greater power to implement the law by providing authority to withhold all or some funds when schools violate IDEA. Currently, the Secretary is required to withhold all funds if there is a violation; this punishment was viewed as too strict and never applied.

The bill contains provisions to ensure that increases in Federal appropriations are not offset by State decreases in spending. The State maintenance of effort provisions give reasonable authority to the Secretary of Education to establish criteria for exceptions if necessary.

The bill codifies local maintenance of effort provisions from regulations and includes reasonable additional exemptions for when a locality need not maintain financial efforts for special education—for example when a teacher at the high end of the pay scale retires and is replaced by a recent graduate.

The bill reduces paperwork. State and local applications need be submitted only once and thereafter they need to submit only amendments necessitated by compliance problems or changes in the law.

Importantly, when it comes to discipline, the bill provides for no cessation of services for IDEA students, no separate IDEA provision on the treatment of disruptive children, and no unilateral authority to determine who is dangerous and remove them.

These improvements in the IDEA law do make a difference and I'm pleased that they were adopted. But the drawbacks I mentioned earlier hamper my enthusiasm for the bill. While I will vote for the bill today, I have chosen not to cosponsor this bill. I hope that Members will continue to listen to the voices of parents, who are faced with the daily task of raising and educating their children. They know firsthand how IDEA is implemented at the local level and thus we must listen to—and address—the concerns that they raise. Let us all remember who this bill is for, and strive to make it work for them.

Ms. MIKULSKI. Mr. President, I am pleased to join with my colleagues in cosponsoring this important legislation, S. 717, to reauthorize the Individuals With Disabilities Education Act [IDEA].

S. 717 is the result of a bipartisan effort, which included parents, special interest groups, and educators. My colleagues in both the House and Senate worked hard in crafting this legislation.

I believe that this bill will strengthen the current law. IDEA is a civil rights statute. It guarantees that every child with a disability has the right to a free appropriate public education. Public education is one of the core values of our country.

Before the enactment of IDEA in 1975, children with disabilities had little opportunity to receive a public education. Over 20 years later, IDEA has been successful in providing opportunity to children with disabilities.

S. 717 retains the principles outlined in the current law. There are five principles that IDEA encompasses: First, educational planning for a child with a disability should be done on an individual basis; second, parents of a child with a disability should participate in educational planning for their child; third, decisions about a child's eligibility and education should be based on objective and accurate information; fourth, if appropriate for a child with a disability, he or she should be educated in general education with necessary services and supports; and fifth, parents and educators should have means of resolving differences about a child's eligibility, IEP, educational placement, or other aspects of the provision of a free appropriate public education to the child.

Under current law infants and toddlers have the right to receive early intervention services and children with disabilities are placed alongside children without disabilities. Children with disabilities deserve no less than fair treatment.

Over 5 million special education students are served under IDEA. Decades of research have shown that educating children with disabilities is successful by having high expectations of special education students; strengthening the role of parents in the education of their child; coordinating State- and district-wide assessments; providing an education in the least restrictive environment; and supporting professional development for teachers who work with special education students.

I am concerned, however, about the disproportionate number of minority students who are identified as special education students. I support the goal of this legislation to provide greater efforts to prevent the problems associated with mislabeling and the high dropout rates among minority children with disabilities.

My State of Maryland will receive approximately $61 million this year to provide support services to over 100,000 students with disabilities in local school systems. I believe this legislation will help support my State's efforts to educate disabled children.

I support Federal funding for implementation of IDEA. I believe that funds should keep pace with student enrollment. This legislation maintains part of the formula in current law, which provides part B funds based on the number of children with disabilities served. Once a trigger of $4.9 billion is reached, which amounts to approximately $850 per child, a new formula based on census, 85 percent, and poverty, 15 percent, will apply to any new funds in excess of the appropriation for the previous year.

Although I have some concerns about how States will be able to implement and handle the additional administrative burdens under the new formula, I believe that this approach goes in the right direction.

S. 717 focuses on the crucial areas of increasing funding for special education, teacher training, and early intervention for children with disabilities.

This legislation reaffirms our country's commitment to educating disabled children. I urge my colleagues to support this legislation.

Mr. DODD. Mr. President, I rise today in strong support of the legislation before us today to reauthorize the Individuals With Disabilities Education Act. It is a strong, balanced bill. One that I am a proud cosponsor of and one that I believe we should all be proud to support.

Getting to this point has not been easy and I would like to thank our majority leader, Senator LOTT, Senator JEFFORDS, Senator KENNEDY, Senator HARKIN, and others for all of the time they have invested in putting together this strong and balanced bill and for assigning it such a high priority for consideration by the full Senate.

There has been a great deal of debate about this bill in the last several years. But one thing is very clear. In its over 20 years, IDEA has made an incredible difference to millions of American children, their families, and society as a whole.

Before the passage of this landmark legislation, children with disabilities were frequently excluded from schools, and some had absolutely no opportunity for education at all. Expectations for these children were low. Not only was great potential undervalued and lost, but also we lost as taxpayers who often picked up the tab for a lifetime of support. State and communities were struggling with increasing litigation and state court rulings requiring them to serve all children in the schools.

IDEA brought us all together—the Federal Government, States, local communities, schools, parents and students—behind a firm commitment, a promise to meet the educational needs of children with disabilities.

Since that time, we have made huge improvements in affording children with disabilities the same opportunities open to other students. Today, more than half of all students with disabilities go onto college and 57 percent of youth with disabilities are competitively employed within 5 years of leaving school.

These students go on to good jobs in every sector of our economy. Not only are they workers, they are taxpayers.

But the impact of IDEA is broader; it works for all students. Nondisabled students live, work, and learn alongside all the members of their community. Those are skills that over the long run make our whole society stronger.

Unfortunately, over the last several years, concerns have been raised about IDEA—concerns about cost of services,

discipline, the low Federal contribution, litigation and inclusion. There is no question, it has been a difficult few years. But we have something to show for all the debates and questions: this bill.

One thing has not changed in this bill—children with disabilities remain at its core. But in this reauthorization, we have improved IDEA to ensure that the law does not stand in the way of meeting children's needs.

Administrative requirements are clarified and streamlined. Discipline procedures, which have been the focus of so much attention, are modified to provided school officials with additional tools to ensure the safety of all children. Mediation systems to resolve disputes about the placements of children are required in each State. We also clarified that attorney's fees are not allowed during the development of the Individual Education Plan or in pre-complaint mediation. In addition, parents must provide school districts with more detailed information on their concerns to avoid protracted legal battles.

This bill also better defines the role of other partners in the effort to meet these special needs. Regular classroom teachers are clearly defined as part of the students' IEP team. The parents' role is strengthened or clarified. In addition, states have new authority to collect from noneducational agencies for noneducational services, such as speech therapy. The IDEA bill before us also provides new enforcement tools for the Department of Education to ensure that this law is properly implemented and enforced.

Beyond the larger issues, there were several issues of deep importance to me that I am pleased to see in this final bill. Language is included reaffirming the importance of braille instruction to students with visual impairments. The bill also reauthorizes a program providing support for an unique and wonderful effort, the National Theater of the Deaf. The Theater, which is based in Chester, CT, has traveled across the country and world inspiring and entertaining hearing and nonhearing audiences.

Mr. President, fundamentally, this is a good bill—a strong bill that will guarantee us the full potential of all of our children. I am hopeful that my colleagues will join me in strong support of this effort.

SECTION 685 COORDINATED TECHNICAL ASSISTANCE DISSEMINATION—NATIONAL CLEARINGHOUSES

Mr. BYRD. Under section 685(d) National Information Dissemination the first five authorized activities listed have traditionally been performed utilizing the services of the national clearinghouses.

The national clearinghouses, which have been in existence for over 25 years, have developed very effective, specialized and targeted lines of communications to State and local entities serving this population of special needs as well as to individual families. Representatives in my own State of West Virginia have communicated to me that they want to continue to be able to be serviced by these clearinghouses with whom they have developed longstanding and trusting relationships.

Does the bill continue to authorize all the activities currently carried out by the national clearinghouses?

Mr. HARKIN. Yes. The bill authorizes all the current activities and allows the Secretary to support national clearinghouses.

Mr. BYRD. I note in section 685 that the statutory language states—and I will paraphrase—that the Secretary should provide these authorized services utilizing ''mechanisms as institutes which include regional resource centers, clearinghouses, and programs that support State and local entities.''

I want to make sure that this language, even though somewhat general would allow the Secretary to utilize a Federal resource center, as well as regional centers. The Federal center provides a longstanding, vital, and supporting role in keeping regional centers supplied with and connected to the latest technical information and research development within this specialized field, in addition, the Federal resource center has traditionally coordinated some of the activities of the regional centers.

Does S. 717 allow the Secretary to utilize a Federal resource center in this role?

Mr. HARKIN. The bill allows the Secretary flexibility in the mechanisms used to provide State and local entities the technical assistance they need to improve results for children, youth, infants, and toddlers with disabilities. A Federal resource center is one mechanism the Secretary could use to carry out his responsibilities under this section.

TREATMENT OF PERSONS WITH DISABILITIES IN ADULT PRISONS

Mrs. BOXER. Mr. President, I would like to enter into a colloquy with Senators HARKIN and JEFFORDS regarding the treatment of those with disabilities who are convicted as adults and incarcerated in adult prisons.

Mr. HARKIN. I would be pleased to enter into a colloquy with my colleague, Senator BOXER.

Mrs. BOXER. As my colleagues are aware, the Department of Education has determined that the requirement that States provide eligible students with a free, appropriate public education extends to people under age 21 convicted of felonies as adults and incarcerated in adult prisons. Under current law, if a State fails to provide special education services to eligible prisoners, that State faces the loss of all Federal special education funding. I believe strongly that this mandate is wrong. I introduced legislation last week, S. 702, which would amend IDEA to exempt people convicted as adults and incarcerated in adult prisons.

This issue is particularly important to the State of California. My State does not provide special education services in adult prisons, and as a result, faces the loss of over $300 million in Federal special education assistance. It seems unconscionable to me that the needs of approximately 600,000 California special needs children could be jeopardized because my State does not provide special education services to an estimated 1,500 prisoners.

It is my understanding that this bill makes several significant amendments to these provisions and dramatically changes the scope of sanctions that can be imposed on States for failing to provide special education services to those incarcerated in adult prisons. Would the Senator elaborate on these changes?

Mr. HARKIN. Under the legislation, States are authorized to transfer the responsibility for educating juveniles with disabilities convicted as adults and incarcerated in adult prisons from State and local education agencies to other agencies deemed appropriate by the Governor, such as the State Department of Corrections.

Mrs. BOXER. What are the consequences of the transfer of authority in terms of the ability of the Secretary to withhold IDEA funds allotted to the State?

Mr. HARKIN. If a State makes such a transfer and if the Secretary finds that the public agency is in noncompliance, the Secretary must limit any withholding action to that agency. Furthermore, any reduction or withholding of payments must be proportionate to the number of disabled children in adult prisons under the supervision of that agency compared to the number served by local school districts. For example, if 1 percent of the disabled students were in adult prisons, the Secretary could only withhold 1 percent of the funds.

Mrs. BOXER. In the State of California, approximately one-fourth of 1 percent of all people eligible for special education are convicted of felonies as adults and incarcerated in adult prisons.

It is my understanding that under this bill, if California does not provide special education services in prisons it stands to lose only one-fourth of 1 percent of its allotted share. California would no longer face the possible loss of 100 percent of its allotted special education funds. I would ask the Senator from Iowa, is my understanding correct?

Mr. HARKIN. The Senator is correct that any withholding of Federal funds will be limited to the proportional share attributable to disabled students in adult prisons. Other funds would not be withheld.

Mrs. BOXER. I would ask the distinguished chairman of the committee, Mr. JEFFORDS, if he agrees that under this bill, States do not face the total loss of Federal special education funds for failing to provide special education services to those convicted as adults and incarcerated in adult prisons.

Mr. JEFFORDS. I do agree.

Mrs. BOXER. I am particularly troubled that under current law, States are required to develop an IEP for eligible students even if they have been sentenced to life without the possibility of parole or even sentenced to death. Would the Senator from Iowa comment on the authority to modify an IEP for such incarcerated individuals?

Mr. HARKIN. Public agencies may modify an IEP for bona fide security or compelling penological reasons. For example, the public agency would not be required to develop an IEP for a person convicted as an adult and incarcerated in an adult prison who is serving a life sentence without the possibility of parole or is sentenced to death.

This exception applies to those inmates for whom special education will have no rehabilitative function for life after prison. Our aim in assuring that prisoners receive special education is to make them better able to cope after prison, resulting in a safer environment for all of us. This goal does not apply for those who will not return to society.

In addition, the provisions requiring participation of students with disabilities in statewide assessments will not apply. Further, the transition services requirements will not apply to students whose eligibility will terminate before their release from prison.

Finally, the obligation to make a free appropriate public education available to all disabled children does not apply with respect to children and 18 to 21 to the extent that State law does not require that special education and related services under this part be provided to children with disability, who, in the education placement prior to their incarceration in an adult correction facilities, were not identified as being a student with a disability, or did not have an IEP.

Mrs. BOXER. Does the legislation modify in any way the responsibilities of adult prisons to prisoners with disabilities under section 504 of the Rehabilitation Act of 1973 or the Americans With Disabilities Act?

Mr. HARKIN. No, these laws still apply.

Mrs. BOXER. Does the bill make any changes to current law with respect to disabled students incarcerated in juvenile facilities?

Mr. HARKIN. No.

Mrs. BOXER. I thank the Senator for entering into this colloquy with me.

Mr. HARKIN. I thank the Senator for raising these important issues.

Mr. JEFFORDS. Mr. President, I would make a point of order that a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JEFFORDS. Reserving the right to object, I would like to just get us out of the situation we are in and then be happy to turn it over to morning business, if that is all right with the Senator.

Mr. WELLSTONE. I am sorry. Yes, of course.

Mr. JEFFORDS. I yield back the remainder of my time.

MORNING BUSINESS

Mr. JEFFORDS. I ask unanimous consent that there now be a period for the transaction of morning business with Senators permitted to speak up to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JEFFORDS. Mr. President, I yield the floor.

RELEASE WEI JINGSHENG

Mr. WELLSTONE. Mr. President, I rise today to ask the Chinese Government that the Chinese Government immediately release Wei Jingsheng, an extraordinary man who tells truth to power, authoritarian and arbitrary power. I meant to bring his book to the floor. It is being released today, May 13.

Mr. President, the publication date of this book is today. The title of the book is ''Courage To Stand Alone.'' I have very limited time, but I just want to say on the floor of the Senate, because I really believe there ought to be a focus on Wei Jingsheng, that this is a man of tremendous courage. I have had a chance to skim-read the book. I am going to read it word for word.

I know that Wei Jingsheng was in prison from 1979, I believe, until 1993. Then he was released, and then again he spoke out, as anyone should do, about the importance of freedom and democracy, and again he finds himself in prison.

Mr. President, I hope that my colleagues will all help me in calling for his release. I know Senator HELMS has signed this letter. So has Senator KENNEDY. I am very pleased to work with both of those Senators, and, in addition, Senator MOYNIHAN has signed this letter as well. We are going to add more and more signatures. We are talking about a man who is in very poor health. I just want to quote from Wei's outline of ''My Defense'' which was delivered at his trial on December 13, 1995.

> To sum up, the basic error of the indictment . . . is that it confounds the actions of defending human rights and promoting democracy and reform with ''conspiracy to subvert the government.'' Therefore, anything that can be linked to the ''Democracy Movement'' or ''human rights'' is an act of conspiracy and subversion. . . . A government that can be subverted by a movement of human rights and democracy can only be a government with a contradictory and opposite nature, a government that does not respect human rights or promote democracy, a government of ''feudal, fascist dictatorship.'' . . . According to our Constitution and laws, the people are the owner of this nation and the government is merely an agent of the people. The government must respect the sovereignty of the people, namely the individual freedoms and political rights of each citizen, including the right of people to know, the right to criticize and supervise the government, even to replace the government. If the government abolishes or suppresses such democratic rights, then it becomes an illegal government and loses its legitimacy, which is based on the Chinese Constitution. Therefore, if the general charges brought by the indictment against the human and democracy movement are valid, then the government it represents is not the legal Chinese Government and the charges it brings are illegal.

Mr. President, these are words that might have been uttered by Thomas Jefferson. I again want to just rise in the Senate today and call on all of my colleagues to stand up for Wei Jingsheng, this extraordinary man. He has now been sentenced to 14 years in prison under austere conditions that threaten his life. Today is the publication of the book, ''Courage To Stand Alone.'' This is a collection of Wei's letters to Chinese leaders, prison officials, and to his family.

He is a remarkable man, as I have said before. This is an extremely important work. He is eloquent. If you think about the conditions under which he has written these letters, it makes this all the more remarkable.

It is not only urgent that the Chinese Government release Wei, but also that it provide him with the medical care that he desperately needs but has been denied. He has a heart disease that threatens his life, severe hypertension, and a serious back ailment that renders him unable to hold his head erect. The Chinese Government ought to release this courageous man. He is a prisoner of conscience.

Today is the publication of a remarkable book, ''Courage to Stand Alone.'' Wei Jingsheng is a man who represents the very best of the tradition of our country. He is a man who has spoken up for human rights and democracy and has paid a terrible price for it. I believe it is important for all of us, regardless of political party, all of us in our country to speak up for prisoners of conscience. In this particular case, I take the Senate floor to call on the Chinese Government to release Wei Jingsheng from prison, to release him from prison today and to provide him with the medical care that he needs.

Mr. President, again, I hope my colleagues will join me in this effort. I hope my colleagues will have a chance to read this remarkable work, ''Courage To Stand Alone.'' I hope it becomes a best seller in the United States of America.

In the 30 seconds I have left, let me just say, personally I do not know how people find the courage. If I lived in such a country and I thought that by speaking up I could wind up in prison, or even worse, that my children could be rounded up and that they could end up being tortured or they could end up

being in prison, which so often happens in these countries headed by repressive governments, I do not think I could find the courage to speak up.

I think it is time all of us in the U.S. Congress speak up for men and women like Wei Jingsheng who have had the courage to stand alone. I think it is extremely important that we do everything we can to call on the Chinese Government and to make it crystal clear to the Chinese Government that they ought to release this courageous man from prison, and other prisoners of conscience as well. If they do not do that, then I think all of us ought to look at trade relations and other relations with China and other countries that violate the basic human rights of their citizens. We need to exert leadership and we need to make a difference.

I yield the floor.

FREEDOM FOR CHINESE DISSIDENT WEI JINGSHENG

Mr. KOHL. Mr. President, I rise today to call for justice for Wei Jingsheng. Mr. Wei is a Chinese citizen who has devoted his life to the cause of democracy and tolerance in the People's Republic of China. In exchange for his selfless effort, Mr. Wei has spent almost 20 years in prison. We must, as a Senate and as a country, call upon Chinese leaders to recognize Mr. Wei's genuine love of his country, to respect his right to dissent, and to set him free to live his life in peace.

I have chosen to make this statement today because today we celebrate the publication of Mr. Wei's book, ''The Courage to Stand Alone: Letters from Prison and Other Writings.'' In these unadorned yet powerful reflections, Mr. Wei provides insight into the tortures he has suffered in prisons and labor camps, as well as the passion and commitment which have maintained his fighting spirit. His straightforward missives on the obvious need for democracy remind us all of our fundamental civic values.

Wei Jingsheng is a hero. With a background as an electrician, and with the weight of the Communist leadership against him, he became what the New York Times called the strongest voice of China's democracy movement. It is with awe and sadness that I note Mr. Wei's ability to persevere these many years despite his and other Chinese dissidents' virtual invisibility on the international scene.

We can not allow Mr. Wei to be invisible. As Americans we have always supported the cause of democracy and tolerance. In our own country we are lucky. Democracy as law and tolerance, though we must always be vigilant for transgressions against it, is an integral part of our social fabric. In other parts of the world, including the People's Republic of China, democracy and tolerance remain elusive. Mr. Wei is a hero because he fights against the tide. The leaders of China will be heroes when they realize that men and women like Wei Jingsheng can strengthen and enrich their country—if only they are set free.

CALLING FOR THE RELEASE OF WEI JINGSHENG

Mr. ASHCROFT. Mr. President, I join with other Senators today in calling for the immediate release of Chinese dissident Wei Jingsheng. Wei Jingsheng exemplifies China's best aspirations for democracy, and his imprisonment exemplifies the worst of the Communist cadre that stands in the way of freedom for a nation of over one billion people. Wei's imprisonment is only one story in the broader tragedy of brutal political repression that has silenced all voices of dissent in China. In a world that is increasingly open to the benefits of freedom and the potential of free markets, the great hope is that the growth of capitalism in China will undermine Beijing's tyranny. The growth of free markets alone, however, will never replace individual acts of courage and conviction by people who defy China's Communist leadership. People willing to spend their lives for the freedom of their countrymen are mankind's true heroes.

Mr. President, Wei Jingsheng was first imprisoned in 1979 after criticizing the Government's suppression of the Democracy Wall movement in China. Since that time, he has spent all but 6 months of the last 18 years in prison. Inside China's prison system, Wei has been a constant target for harassment and reeducation by China's prison guards. Wei has fought the daily battle to maintain his integrity, the strength of his principles, and the conviction of his beliefs. After 14 years in prison, Wei was released in 1993 and promptly began condemning the Government's horrific record of political repression. He was imprisoned again for his courage and remains in a Chinese prison today suffering from a life-threatening heart condition.

Wei's love for his country is most clearly seen in the personal sacrifice associated with his forthright and constant stand against political tyranny. The Clinton administration could learn a lesson from Mr. Wei. In the long run, honesty is the best policy, and a forthright discussion of the atrocities being committed by Beijing will do more for a stable United States-China relationship than repeated acts of appeasement. True constructive engagement means that China is required to honor the trading agreements it signs, to avoid proliferating weapons of mass destruction, and to respect international norms for human rights. We in America need to realize what Wei recognized long ago—that the forces of justice and liberty are at work in the Chinese people just as they have been at work with such stunning effect in other nations around the world.

In the battle between liberty and tyranny in China, I am placing my wager on the side of freedom. As Ronald Reagan said, ''Democracy is not a fragile flower. Still, it needs cultivating. If the rest of this century is to witness the gradual growth of freedom and democratic ideals, we must take actions to assist the campaign for democracy.''

Mr. President, we must ask ourselves if we are taking those actions to cultivate the flower of liberty in China. Has our commitment to human rights and civil liberties been constant? Have we defended international norms against weapons proliferation that the free people of the world have embraced for their mutual protection? One need only look at the record of political repression in China and China's arming of Iran to see that the Clinton administration is failing to press our concern for international human rights and protect our own long-term national security interests.

American foreign policy needs to return to its most enduring and noble aspect: our willingness as a nation to sacrifice in order to help other peoples achieve the individual liberties we enjoy. When the Chinese people eventually rid themselves of tyrannical leadership and establish a democracy—and they will just as the South Koreans, the Japanese, and the Taiwanese have done before them—I hope they will be able to say that America stood by them in their darkest hours. For the Chinese people, the torch lit in Tiananmen Square is flickering. The American people want to stand by the Chinese. The Clinton administration has been less clear. The administration can stand up for America and the Chinese people by insisting that Wei Jingsheng be released.

THE COURAGE TO STAND ALONE

Mr. MOYNIHAN. I rise today to bring to the attention of my colleagues the publication of ''The Courage to Stand Alone,'' the letters of Wei Jingsheng, a fearless and outspoken dissident currently imprisoned by the People's Republic of China. For two decades Wei Jingsheng has been a leader in the struggle for democracy in China, as well as a passionate advocate of human rights for the people of Tibet.

Among the many crimes for which Wei has spent the last 18 years in prison, perhaps none is so onerous to his persecutors as his presumption to hold the totalitarian regime of the People's Republic of China to its own standard of law. As Andrew J. Nathan writes in his Foreword:

> Wei's powerful statement of self-defense [at his 1979 trial] exposes how little difference there is between the new legal system and the old absence of a legal system. The prosecutors and judges search for a crime and find none, but they obey orders. They sentence Wei to fifteen years.
>
> The outside world is outraged, but most Chinese at the time are wiser. They see Wei as the victim of his own naivete. He failed to appreciate the unwritten limits to free speech and legal reform. He committed the greatest offense in a dictatorship: taking words at face value.

The Courage to Stand Alone serves as a testament of resistance to the totalitarian phenomenon so brilliantly dissected in our century by the likes of Hannah Arendt and George Orwell. Wei's letters stand as the literary equivalent of the famous photograph of the lone Chinese individual confronting a column of tanks during the 1989 Tiananmen Square massacre.

In his letter of June 15, 1991 Wei writes:

> It is precisely because human rights are independent of the will of the government, and even independent of the will of all mankind, that people fight for the realization and expansion of human rights as a natural and unprovoked matter of course. They gradually come to the realization that the more widespread and reliable the protection of human rights is, the more their own human rights are protected. Just as man's understanding of objective truths and objective laws is a gradual process, man's understanding and comprehension of human rights is a gradual process. Just as man's grasp and utilization of objective laws is a progressive process, man's protection of the theory and practice of human rights is a progressive process.

Wei Jingsheng—by his words and conduct—has done much to advance our understanding of human rights in China and throughout the world. I commend ''The Courage to Stand Alone'' to all Senators, and I look forward to the day when Wei Jingsheng will again be free to stand together with other Chinese dissidents who struggle to bring a measure of democracy to their ancient and long-suffering homeland.

WEI JINGSHENG

Mr. LEAHY. Mr. President, there are some individuals whose personal courage is almost impossible to fathom, who will be long remembered for the example they set in standing up for what they believed for the sake of all of us. Wei Jingsheng, who is perhaps China's most famous political prisoner, is one such individual. Today I join Senators MOYNIHAN, HELMS, WELLSTONE and KENNEDY in recognizing today's publication of Mr. Wei's collection of letters to Chinese leaders and members of his family, and essays about democracy, ''The Courage to Stand Alone: Letters from Prison and Other Writings.''

Known as the intellectual leader of the Democracy Wall movement, China's first prodemocracy protest, Mr. Wei has spent nearly all of the last 18 years in prison for his outspoken, unrelenting criticism of China's political leaders and his thoughtful and inspiring writings about the need for democratic change and the rule of law in China. In one essay, Mr. Wei describes the law in China as, ''merely a 'legal weapon' that anyone in power can wield against his enemies.''

In an effort to convince the International Olympic Committee to award China the 2000 Olympic Games, the Chinese Government released Mr. Wei in late 1993. The cynicism of that decision was exposed just 6 months later, when he was rearrested and held incommunicado for 20 months, in part for meeting with Assistant Secretary of State John Shattuck. He is currently serving a 14-year sentence.

In addition to the egregious violations of the rights to freedom of expression, due process, and freedom from arbitrary arrest and detention, I am very concerned about Mr. Wei's health. He is suffering from high blood pressure and a heart condition, and has not received the medical attention he needs. He is not permitted to go outside, nor is he allowed physical exercise. I am told that prison authorities have moved other prisoners into Mr. Wei's cell to monitor and limit his political writing. If Mr. Wei serves all of his current 14-year prison sentence, he will be 60 years old when he is released. His health is so fragile it is uncertain whether he will ever get out alive.

Mr. President, Mr. Wei is one of thousands of courageous people who have been thrown in prison, tortured or otherwise silenced in order to squelch any expression for democratic change in China. Despite repeated attempts by our administration to discuss human rights with Chinese authorities, the Chinese Government has continued to insist that internationally recognized human rights are an internal matter. The situation has gotten worse, not better.

I urge all Senators read ''The Courage to Stand Alone,'' and to remember Wei Jingsheng and the thousands of other Chinese citizens who have remained steadfast in support of democracy and human rights, in the face of repression.

RELEASE OF WEI JINGSHENG

Mr. GRAMS. Mr. President, I join my colleagues urging the release of Wei Jingsheng, currently imprisoned in China for his efforts to promote democracy in China. Serving his second long-term sentence, Mr. Wei is seriously ill without access to proper medical care. He has served nearly 18 years in various prisons and labor camps and will not be released until 2009. It is doubtful he will last that long without medical attention.

I hope the leaders of China will grant Mr. Wei's release as an humanitarian gesture that would show the world that China has a commitment to improve the human rights of its citizens.

TRIBUTE TO WEI JINGSHENG

Mr. LUGAR. Mr. President, I rise today to join my colleagues in urging the authorities in Beijing to provide immediate medical care to Wei Jingsheng and to end his prolonged incarceration in Chinese prison. Granting these requests would not only be an act of official compassion but it would also signal to others that the introduction of economic liberalism—and the remarkable economic advancements that it spawned—is leading to improvements in internal freedom, human rights practices, and the quality of life in the People's Republic of China.

Responding to our modest requests would be a positive sign that China, as it seeks to be more fully integrated into the global system, is increasingly self-confident about itself, about the image it projects to the rest of the world and about the role it intends to play in the world.

Wei Jingsheng has spent the better part of his adult life in detention, in jail, and in labor camps. Most of his past 18 years have been spent in solitary confinement in unusually harsh conditions. His health has deteriorated badly and he is deprived of most normal privileges available to political prisoners. Those conditions and these deprivations would have broken the spirit of defiance in most human beings. Not so for Wei Jingsheng.

Wei Jingsheng's remarkable prison letters to the Chinese leadership will be published today, May 13. His book, ''The Courage to Stand Alone: Letters from Prison and Other Writings,'' is a splendid testament to the yearning for democracy by a political dissident who has never experienced true freedom in a land and country that has never experienced true democracy or anything approximating an open society. His writings speak to us about the need for democratic reform at a time when China exhibits little internal visible dissent. There is now no visible political dissent in China because political dissidents have either gone into exile, are in prison, or have redirected their energies in new-found entrepreneurial enterprises.

Mr. President, we are here today not only to laud the publication of Wei Jingsheng's book of letters or to urge Beijing to discard its harsh treatment of its leading political dissident, we are here to honor a true democrat. We should honor true democrats and democracy anywhere, and under any circumstances. We can and should promote human rights practices and democracy abroad just as we pursue other important national interests.

Our foreign policy must express both our values and our interests. That is why we must continue to support the development of political and economic reforms abroad while endorsing those democracy-promoting programs undertaken by such non-government organizations as the National Endowment for Democracy [NED] and the Center for Democracy.

Wei Jingsheng's current prison term expires in the year 2009 but his health is reportedly so poor that he may not survive until then. Keeping Wei Jingsheng in prison under such difficult conditions would be a permanent stain on China's claim that it is misunderstood by the rest of the world. To release this man and other prisoners of conscience would bring good will to China and assure the outside world

that China enjoys the self-confidence to change.

I join with my colleagues in the hope that Wei Jingsheng will be released from prison in the very near future.

Thank you.

URGING THE GOVERNMENT OF CHINA TO RELEASE WEI JINGSHENG—A POLITICAL PRISONER

Mr. DODD. Mr. President, I rise today with a simple message, a message to the Government of China to release Wei Jingsheng. Who is Wei Jingsheng? Born in China, Wei Jingsheng is a dreamer, a political activist, a writer, a silenced leader, an inspiration, a nurturing older brother, and one who possesses an unparalleled faith in democracy and its place in modern China. He is the kind of man who if living in America would undoubtedly grace these Halls. But Wei Jingsheng does not live in the United States, he lives in China, where the courage of his convictions have not been appreciated, in fact quite the opposite, Wei Jingsheng has been severely punished.

In speaking out for democracy and reform, Wei Jingsheng has suffered great consequences—consequences including nearly 18 years of solitary confinement, torturous treatment, the lack of medical attention, and numerous other methods known to squelch a man's spirits and weaken his convictions.

Now that we know about his punishment, let us consider Wei Jingsheng's crimes: numerous writings on democracy, a series of letters to China's paramount leader Deng Xiaoping before his death, communicating with foreign journalists, participating in the 1979 Democracy Wall movement, and most recently meeting with John Shattuck, the United States Assistant Secretary of State for Democracy, Human Rights, and Labor in 1994. Frankly, these do not strike me as crimes, or actions that warrant any sanctions by the state, and most certainly are not at all commensurate with the punishment Wei Jingsheng has endured.

Respect for human rights is an international concept. We only need look to the Universal Declaration of Human Rights to see a sample of the international consensus on human rights. While China may resent United States scrutiny on this topic, we do in fact have a legitimate right, as well as a moral obligation, to call for improved conditions. We can and should have a human rights dialog with Chinese leaders, and I encourage the administration to make more opportunities for such high level discussions to take place.

Wei Jingsheng is reported to be near the end of his life—a life of struggle and hardship. His recently published book ''The Courage To Stand Alone: Letters From Prison and Other Writings'' underscore Wei Jingsheng's struggle to promote democracy in China. I stand with my other colleagues in the Senate today to encourage the Government of China to immediately release Wei Jingsheng.

WEI JINGSHENG

Mr. KENNEDY. Mr. President, I join today with my colleagues in solidarity with a courageous Chinese advocate of human rights, Wei Jingsheng.

Each year, the family and friends of Robert F. Kennedy, and those who honor his legacy present a human rights award in my brothers name. In 1994, Wei Jingsheng won that award.

Except for a brief period in late 1993 and early 1994, Wei has been imprisoned since 1979 because he dared to call for democracy and freedom of expression in his country.

Wei never feared to tell the story of the abysmal conditions imposed on those who dare to speak for human rights, democracy, and freedom of expression in China.

He was an electrician at the Beijing Zoo in 1979, when he earned international praise during the Democracy Wall movement for his courageous essays criticizing the Chinese leadership and calling for democratic reforms.

In his 1978 journal, ''Explorations,'' he publicly exposed the torture of political prisoners. He later wrote one of the most famous essays of the democracy movement, arguing eloquently and powerfully that democracy and free speech were preconditions for China's economic and social growth. In another essay, he challenged China's leader at the time, Deng Xiaoping, saying: ''We cannot help asking Deng what his idea of democracy is. If the people have no right to express freely their opinions or to enjoy freedom of speech and criticism, then how can one talk of democracy? * * * Only a genuine general election can create a government and leaders ready to serve the interests of the electorate.''

For his refusal to remain quiet, he was arrested in 1979, tried secretly, and sentenced to 15 years in prison—most of which he spent in solitary confinement. He was repeatedly tortured.

In September 1993, Wei was released as part of China's public relations attempt to win the opportunity to host the Olympic Games in the year 2000. Upon leaving prison, Wei immediately resumed his leading role in the democracy movement.

On April 1, 1994, after Wei met with Assistant Secretary of State for Human Rights, John Shattuck, he was arrested again and held incommunicado for 20 months. He was formally charged in November 1995 and, after a 1 day trial, was convicted of ''engaging in activities in an attempt to overthrow the Chinese Government.''

Wei is now in a prison cell serving a 14-year sentence. His health is poor, his conditions are deplorable, and he is repeatedly tortured.

Today we celebrate the latest publication of his writings, ''The Courage to Stand Alone.'' Wei has often stood alone against the Chinese Government. But he does not stand alone, and he will not stand alone in the wider world. He will never stand alone, as long as there are those who care about human rights and who are willing to speak out on his behalf. We will go on doing so until Wei is released, all political prisoners in China are released, and the basic human rights he so bravely fights for are enjoyed by all the people of China.

MR. WEI JINGSHENG

Mr. KEMPTHORNE. Mr. President, I rise today to discuss the important issue of political prisoners in China. I want to thank Senators HELMS, MOYNIHAN, KENNEDY, and WELLSTONE for focusing the Senate's attention on this topic.

As we consider United States-China relations, respect for human rights must be at the top of our Nation's agenda. In that regard, today I call on the Government of China to release Mr. Wei Jingsheng from prison so that he may receive the immediate medical care he desperately needs.

Further, I call upon President Clinton to make the release of Mr. Wei Jingsheng, and all Chinese political prisoners, such as the Tibetan prisoners of conscience, a top priority as our Nation discusses our relationship with China.

The first amendment of our Constitution guarantees citizens of the United States freedom of speech, the right of people to peaceably assemble and the right to petition the government for a redress of grievances. Mr. Jingsheng does not have these rights, and so I join my colleagues asking for his freedom.

In the United States of America ''We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness.''

That all men are created equal. This is one of our Nation's unswerving principles and we have never and should never be willing to, as President John F. Kennedy stated in his inaugural address, ''permit the slow undoing of human rights to which this nation has always been committed.'' And, as my colleagues know, there is a tragic lack of respect for human rights in China, which is why we are making these statements today.

Mr. Wei Jingsheng's courage and conviction should be a beacon to all of us. He has received the Robert F. Kennedy Human Rights Award and I would like to quote Senator Robert F. Kennedy:

> Some men see things as they are and say ''why?''
>
> I dream things that never were and say ''why not?''

Mr. Jingsheng has that courage to ask ''why not.'' So today, Mr. President, I rise and ask the Government of

China: Why not—why not release Mr. Wei Jingsheng.

WEI JINGSHENG

Mr. FEINGOLD. Mr. President, I rise today to call for the immediate release of Wei Jingsheng, China's most prominent political prisoner.

Wei Jingsheng is no stranger to harsh unjust treatment. He has spent all but 6 months of the last 18 years in prisons or in labor camps, often in solitary confinement. Now serving his second sentence of 14 years for the crime of peacefully advocating democracy and human rights, Wei Jingsheng is terribly ill. His expected release date is 12 years from now—the year 2009—and that is assuming he lives that long.

At 46 years of age, Wei suffers from life-threatening heart disease, he cannot lift his head, and he complains of severe back pain. His requests for medical attention have gone unfulfilled and all indications are that he has not seen a doctor in more than a year.

A former electrician at the Beijing Zoo, Wei has been one of the strongest voices of China's democratic movement. In recognition of his efforts, Wei was named the 1994 Robert F. Kennedy Human Rights Award laureate and, every year since 1995, Members of Congress have nominated him for the Nobel Peace Prize.

While in prison serving his first sentence, Wei was allowed to write letters on certain topics to his family, prison authorities, and China's leaders. Because most of these letters urged democratic reforms, they were seized by authorities and never sent. Wei was later able to retrieve them and release them publicly, and they have now been translated and published as a book. Today, May 13, is the publication date of this book, ''The Courage To Stand Alone: Letters From Prison and Other Writings.'' This book states what is obvious to Wei and should be clear to Americans: China needs democratic freedoms. Unfortunately, China's leaders continue to show a flagrant disregard for human rights.

In 1994, over the strenuous objections of those of us concerned over China's atrocious and repeated violations of international standards of human rights, the administration delinked granting of most-favored-nation trade status to China to improvements in its human rights record. The administration argued then that through constructive engagement on economic matters, and dialog on other issues, including human rights, the United States could better influence Chinese behavior. That was a mistake.

Let those who support constructive engagement visit the terribly ill Wei Jingsheng in his prison cell, and ask him if developing markets for toothpaste or breakfast cereal will help him win his freedom or save his life. I do not see how closer economic ties alone will somehow transform China's authoritarian system into a more democratic one. Unless we press the case for improvement in China's human rights record, using the leverage afforded us by the Chinese Government's desire to expand its economy and increase trade with us, I do not see how conditions will get much better.

In fact, the harsh prison conditions and lack of medical attention provided to Mr. Wei demonstrate that, after nearly 4 years, dialog and constructive engagement have made no impact on Chinese behavior. We should make it clear that human rights are of real—as opposed to rhetorical—concern to this country. Until Wei Jingsheng and others committed to reform in China are allowed to speak their voices freely and work for change, American-Chinese relations should not be based on a business-as-usual basis. I hope the administration will do everything possible to demand the immediate release of Wei Jingsheng and urge Chinese authorities to provide him with access to medical care that he urgently requires.

CALLING FOR THE IMMEDIATE RELEASE OF WEI JINGSHENG

Mr. D'AMATO. Mr. President, I rise today to call for the release of Wei Jingsheng who has been imprisoned for almost 18 years under the harshest of circumstances in China. Mr. Wei was first jailed in 1979 for advocating democratic reform in China. Can you imagine? The free exchange of such ideas which we take for granted every day in the United States cost Mr. Wei his freedom.

Mr. Wei was released in 1993 in an act which curiously coincided with an upcoming vote by the International Olympic Committee on China's application to host the Olympic games in the year 2000. China's bid for the Olympic games was unsuccessful and shortly thereafter Mr. Wei was imprisoned again. He is not scheduled for release until 2009. This overtly politically motivated move is unconscionable.

Through these years of personal terror Mr. Wei has frequently been held in solitary confinement. He was been the victim of cruelty and mistreatment which had a serious effect on Mr. Wei's health. I am told that Mr. Wei is suffering from heart disease but does not have access to proper medical care. This treatment is simply wrong.

The People's Republic of China wants to assume the status of a responsible nation in the world community. And yet they continue to subjugate the people of Tibet. As a case in point, I spoke earlier this year on the floor about Ngawang Choephel, a former Fulbright scholar at Middlebury College and a friend of the United States, who is serving an 18-year prison term for supposed espionage activities.

The People's Republic of China wants to assume the status of a responsible nation in the world community. And yet they continue to subjugate their own people as well. Mr. Wei is a case in point. The State Department in its annual human rights record for 1996 hit the nail on the head. It said that China ''continued to commit widespread and well-documented human rights abuses, in violation of internationally accepted norms, stemming from the authorities' intolerance of dissent, fear of unrest, and the absence or inadequacy of laws protecting basic freedoms.''

Mr. President, Mr. Wei has suffered enough. The people of Tibet have suffered enough. The people of China have suffered enough. It is time for a change. We must work for that change in areas we can influence. And let's start by calling for the release of Mr. Wei.

THE UNJUST IMPRISONMENT OF WEI JINGSHENG

Mr. DASCHLE. Mr. President, today it is my unhappy duty to note the continued imprisonment of Wei Jingsheng by the Government of China. In an attempt to silence his bold voice for democracy, Mr. Wei has been jailed in solitary confinement or forced to work in a labor camp for all but 6 months of the past 18 years. As a result of his mistreatment, he suffers from a life-threatening heart condition and cannot lift his head due to a neck injury. Today I join my colleagues to call for his immediate and unconditional release, and urge the Government of China to provide him with medical attention.

Mr. Wei's commitment to democracy and freedom despite such mistreatment is a testament to the strength of the human spirit and the power that words hold over the human soul. He was first jailed in 1978 after founding an independent magazine and daring to call for democracy. Despite the hard conditions of prison life, Mr. Wei refused to abandon his beliefs. Over the next decade, he wrote many letters—some to his family telling of his daily life, others to the leaders of his nation urging them to take immediate steps toward democracy. Virtually all were confiscated by prison authorities and never sent. Released as a result of international pressure in 1993, Mr. Wei immediately resumed his advocacy of democracy despite all that he had suffered. Within 6 months he was sentenced to another 14 years in prison. Today Chinese officials consider his writings so threatening that he is constantly monitored by criminal inmates whose job it is to ensure that he puts no words down on paper.

Despite these measures, Mr. Wei's words have echoed throughout China and the world. In 1989, demands for his release helped to stir the demonstration in Tiananmen Square. He also has been honored with the Robert F. Kennedy Human Rights Award, the Sakharov Prize for Freedom, and been nominated many times for the Nobel Prize for Peace.

I am confident that the Chinese Government's attempts to silence Mr. Wei will not succeed. Mr. Wei's letters,

which he reclaimed as a condition of his release in 1993, are published in ''The Courage To Stand Alone: Letters From Prison and Other Writings,'' to be released today. It is my hope that these words will continue to echo throughout the world, and help to bring freedom and democracy to the people of China.

Thinking of Mr. Wei, I am reminded of the words of another man imprisoned for his uncompromising beliefs. As he wrote from his cell:

> Only one thing has remained: the chance to prove—to myself, to those around me and to God—that . . . I stand behind what I do, that I mean it seriously and that I can take the consequences.

Today I will meet the writer of those words, President Vaclav Havel of the Czech Republic. I am filled with hope as I think of President Havel's extraordinary life and his path from political prisoner to president. I know that Mr. Wei shares President Havel's determination to stand behind his beliefs. It is my hope that one day he also will be free to travel to Washington and that this day will come soon. Mr. Wei's unjust imprisonment must end, and I appeal to the Government of China to release him immediately.

CALLING FOR RELEASE OF CHINESE DISSIDENT WEI JINGSHENG

Mr. BIDEN. Mr. President, today marks the publication date of a remarkable compilation of letters from a remarkable man, imprisoned Chinese political dissident Wei Jingsheng. His book, ''The Courage To Stand Alone: Letters From Prison and Other Writings,'' should be required reading for anyone who takes for granted the freedoms enshrined in our Constitution and Bill of Rights. Wei is currently serving 14 years for the crime of advocating democracy in a country where freedom of speech does not extend to criticism of government authorities.

An electrician by training, Wei lacks the formal education of some other famous 20th century champions of democracy and civil rights—Vaclav Havel, Andrei Sakharov, or Martin Luther King—but whatever he may lack in sophistication, he more than makes up for with his blunt eloquence.

Just days before the Chinese crackdown against pro-democracy protesters in Tiananmen Square, Wei offered some candid advice for China's top leaders from his prison cell, urging them to ''take great strides to implement a democratic government as quickly as possible.'' A great tragedy might have been avoided if Beijing's gerontocracy had heeded Wei's call.

Wei was first imprisoned from 1979 to 1993 on charges of ''counter-revolutionary propaganda and incitement,'' the result of his participation in the Democracy Wall Movement. During this brief flowering of officially authorized political dissent in China, Wei had the nerve to argue that China's modernization goals could not be met without democratic reform. For this affront, he was severely punished.

In 1993, on the eve of the International Olympic Committee's decision about whether to award the 2000 Olympics to Beijing, China briefly released Wei in an effort to strengthen its Olympic bid. On April 1, 1994, just days after meeting with U.S. Assistant Secretary of State for Democracy, Human Rights, and Labor, John Shattuck, Wei was detained once more.

He was subsequently sentenced to 14 years for trying to ''overthrow the Chinese Government.'' The actions cited as proof of Wei's ''counter-revolutionary'' intent included publishing articles critical of the government and raising funds for the victims of political persecution in China.

Wei has spent most of his last 18 years in solitary confinement, enduring a variety of physical and psychological hardships. He is now widely reported to be in very poor health, suffering from heart and back ailments that require urgent medical attention. Attention he is currently denied.

Today, I join with my colleagues to urge the Chinese Government to take all necessary steps to release Wei Jingsheng from prison on humanitarian grounds. Chinese authorities should ensure that Wei immediately receives the medical care he requires. Wei's imprisonment comes as a result of his peaceful advocacy of democracy and basic human rights. His words warrant our admiration, not a death sentence.

WEI JINGSHENG

Mr. HELMS. Mr. President, today is the publication date of a book of prison letters by Wei Jingsheng, ''The Courage to Stand Alone: Letters From Prison and Other Writings.'' Wei's book is the subject of a May 5 editorial in the New York Times; I ask unanimous consent that it be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HELMS. Mr. President, Wei is China's most prominent dissident. Perhaps I should say that he is China's most prominent dissident in jail. In any event, there are no active dissidents in China, according to this year's State Department human rights report—they are all in jail, or silent.

Wei became famous for his powerful, articulate statements during the Democracy Wall movement. After his release in 1993, he returned his advocacy of democratic reform. After 6 months, he was rearrested and held incommunicado for almost 2 years before being sentenced to another 14-year prison term in 1996.

Wei shows no concern for himself. His health is poor, threatened by heart problems. Yet he continues to stand up to the Chinese Government, demanding freedom and democracy for the people of China.

Wei's letters reveal courage in the face of a brutal and immoral regime. His example is bound to humble any one who dares take for granted the freedoms enjoyed by the American people.

I hope that, somehow, Wei will learn of the enormous respect and support he has from the American people. I urge Senators to join in calling upon the Chinese Government to release Wei and immediately provide him with the medical treatment he so badly needs.

EXHIBIT 1

[From the New York Times, Monday, May 5, 1997]

LETTERS FROM A CHINESE JAIL—THE BLUNT DEMANDS OF WEI JINGSHENG

(By Tina Rosenberg)

For nearly 20 years, the Chinese government has sought to silence one of the world's most important political prisoners, Wei Jingsheng. Once an electrician in the Beijing Zoo, Mr. Wei is the strongest voice of China's democracy movement. He has spent all but six months of the last 18 years in prisons and labor camps, most in solitary confinement in conditions that would have killed a less stubborn man long ago and may soon kill Mr. Wei, who is 46 and very ill.

Now serving a second long sentence, he is watched around the clock by non-political criminal prisoners who insure he does not put pen to paper. But during his first imprisonment he was permitted to write letters on certain topics to his family, prison authorities and China's leaders. Most were never sent. But they have now been translated and published. They form a remarkable body of Chinese political writing.

The book, ''The Courage to Stand Alone,'' is published by Viking. It shows why the Chinese Government is so afraid of Mr. Wei. His weapon is simplicity. Unlike other Chinese activists, Mr. Wei does not worry about tailoring his argument to his audience and does not indulge in the Chinese intellectual tradition of flattering the powerful. He does not worry about being seen as pro-Western, or a traitor to China. He writes as if what is obvious to him—that China needs democratic freedoms—should be clear to anyone.

''Dear Li Peng: When you've finished reading this letter, please pass it on to Zhao Ziyang and Deng Xiaoping,'' begins one typical letter to three top Chinese leaders. ''I would like to offer several concrete suggestions.'' The first suggestion: ''take great strides to implement a democratic government as quickly as possible.''

He wrote this letter on May 4, 1989, one month before the massacre in Tiananmen Square, ordered by Li Peng and Deng Xiaoping.

Although he was not allowed to write of his worst mistreatment, his letters describe his health and request books, a heater, medicine or a hutch to breed rabbits when he is in a labor camp. The Government expected Mr. Wei to show he was being ''re-educated.'' Instead, he wrote essays on democratic restructuring of the Government.

Mr. Wei has always been uncompromising. In 1978, Mr. Deng was fighting for control of the leadership and encouraged reformist thinking. The activists created a Democracy Wall along a highway outside Beijing, where writers put up posters with their thoughts. Mr. Wei wrote the boldest poster, a tract arguing for real democracy and criticizing Mr. Deng, who was then revered by the activists. Mr. Wei then founded an independent magazine. He was arrested in March 1979, given a show trial and sentenced to 15 years.

He was released six months before completing his sentence, as part of China's bid to

win the Olympics in 2000. He refused to leave before getting back letters the prison authorities had confiscated. Once free, he immediately resumed his work for democracy. He was rearrested, and after a 20-month incommunicado imprisonment he was sentenced to another 14 years.

Although censorship insured that few Chinese heard of Mr. Wei after 1979, he has remained a touchstone of the democracy movement. In January 1989, Fang Lizhi, the astrophysicist, wrote a public letter to Mr. Deng asking for amnesty for political prisoners, mentioning only Mr. Wei by name. That letter touched off more letters and petitions and was one of the sparks of the student movement and the occupation of Tiananmen Square.

There is no visible dissent in China today. Some of the activists went into exile, many were arrested, others gave up politics and turned their talents to commerce.

The moral force of Mr. Wei's writing recalls the prison letters of other famous dissidents, such as Martin Luther King Jr.'s ''Letter From the Birmingham Jail,'' Adam Michnik's ''Letters From Prison'' and Vaclav Havel's ''Letters to Olga.'' Mr. Wei's letters are less eloquent, however. He is not a man of words, and he was probably not writing with an eye to publication.

But the most important thing the others had that Mr. Wei does not is widespread international support. Mr. King, Mr. Michnik and Mr. Havel knew that people all over the world were looking out for them and their governments were under pressure to free them, treat them well and heed their cause.

This security is as important to a political prisoner's survival as food and water, and Mr. Wei and his fellow Chinese dissidents do not have it. Their names are not widely known. While some American and other officials have brought them up during talks with Chinese leaders, in general the outside world treats Beijing officials with the deference due business partners.

Today Mr. Wei suffers from life-threatening heart disease. Because of a neck problem, he cannot lift his head. All indications are that he has not seen a doctor in more than a year. He is due to be released in 2009—if he lives that long.

The PRESIDING OFFICER. The Senator from North Carolina.

VISIT TO THE SENATE BY THE PRESIDENT OF THE CZECH REPUBLIC, HIS EXCELLENCY VACLAV HAVEL

Mr. HELMS. Mr. President, I am proud to present the President of the Czech Republic, His Excellency, Mr. Vaclav Havel. He is here on the floor.

RECESS

Mr. HELMS. Mr. President, I ask unanimous consent the Senate stand in recess for 7 minutes, so the Senate may greet him.

There being no objection, at 5:35 p.m., the Senate recessed until 5:43 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. SMITH of Oregon].

The PRESIDING OFFICER. The Chair recognizes the Senator from Arkansas.

ORDERS FOR WEDNESDAY

Mr. HUTCHINSON. Mr. President, I ask unanimous consent that at 9:15 a.m. on Wednesday, the Senate resume consideration of S. 717 and Senator GREGG be recognized for up to 10 minutes in order to withdraw his amendment, and there be, then, 20 minutes of debate equally divided between Senators GORTON and JEFFORDS; and immediately following that debate, the Senate proceed to a vote on or in relation to the Gorton amendment No. 243, to be followed by a vote on or in relation to the Smith amendment No. 245; immediately following that vote, the bill be read a third time and the Senate proceed to a vote on passage of H.R. 5, the House companion measure, if it is received from the House and if the Senate language is identical to the House bill. I further ask consent that there be 4 minutes of debate, equally divided in the usual form prior to the second vote and 4 minutes equally divided between the chairman and ranking member prior to the third vote and, additionally, the second and third votes be limited to 10 minutes in length; and, finally, immediately following those votes, Senator STEVENS be recognized to speak in morning business for not to exceed 45 minutes, to be followed by Senator LEAHY for not to exceed 45 minutes, and further, following that time, the Senate proceed to the immediate consideration of Calendar No. 31, H.R. 1122, a bill to ban partial-birth abortions.

The PRESIDING OFFICER. Without objection, it is so ordered.

WEI JINGSHENG

Mr. HUTCHINSON. Mr. President, most of the time when I stand on this floor following Senator WELLSTONE, I will be on the opposite side of Senator WELLSTONE's comments. This evening, I would like to associate myself with the comments that Senator WELLSTONE made. I think between the two of us, we pretty well cover the political spectrum as we stand today on the floor of the United States Senate and call for the immediate release of Wei Jingsheng, China's most prominent political prisoner.

Because of his courageous stand as a voice for democracy and human rights, Wei Jingsheng was sentenced in 1979 to 15 years in prison. He served 14½ years of his term and was released in September 1993 as part of China's bid to host the Olympic Games in the year 2000. Wei continued to speak out for human rights and was detained, again, by the Chinese Government less than 6 months after his release.

Wei Jingsheng was first jailed in 1979 because of his peaceful activities and writings during China's democracy wall movement, notably his famous essay, ''The Fifth Modernization—Democracy.'' Following his release from prison in September 1993, he met with journalists and diplomats, wrote articles for publications abroad and continued to assert the rights and aspirations of the Chinese people.

Mr. President, on December 13, 1995, Wei Jingsheng was tried and convicted of the totally unfounded charge of conspiring to subvert the Chinese Government. He was sentenced to 14 years in prison and 3 years deprivation of his political rights.

Human rights organizations and governments around the world have condemned the trial and severe sentence. We, the Congress, have unanimously adopted resolutions calling for Wei's immediate and unconditional release. The European Parliament has also called for his release, declaring that Wei had been ''persecuted because he was demanding democratic rights for Chinese people.''

Mr. President, it is my understanding that Wei's family has appealed to the United Nations for help, increasingly concerned about his failing health, which has further deteriorated. Though he is no longer in solitary confinement, Wei is under constant surveillance from other inmates while cell lights are on 24 hours a day, visits by his family are restricted, and he has no access to outside medical care.

Wei Jingsheng remains a symbol of hope in China for those within China who are voiceless. They have steadfastly refused to give up their beliefs, their principles and their commitment to democratic reforms, despite the suffering and punishment that they have endured.

I believe that by honoring Wei for his courageous commitment to human rights and fundamental freedoms, we will draw attention to the ongoing struggle for fundamental human rights in the People's Republic of China at a crucial time in that nation's history. Calling for the immediate release of Wei sends a strong message to China on behalf of the entire international community.

On Friday of last week, I joined a bipartisan and bicameral effort in honoring Dr. Nguyen Dan Que, along with Mr. Harry Wu, at the third anniversary of the Vietnam Human Rights Day. As I speak today, Dr. Que still remains in prison unable to leave Vietnam to seek medical attention and unable to speak freely about the abuses he has suffered at the hands of the Vietnamese Government. Of course, Mr. Wu, who fought for representative government and human rights in China for many years, was persecuted and held as a prisoner of conscience by China's Communist dictatorship. He was eventually allowed to emigrate to the United States where he has, thankfully, continued his efforts to help the Chinese people gain liberty and human dignity.

On August 25, 1995, Mr. Wu was expelled from China and returned safely to San Francisco. While this case was notable because Mr. Wu is a naturalized American citizen, the Chinese Government holds many thousands of prisoners who, like Mr. Wu and Wei Jingsheng, are guilty of nothing more than speaking out in defense of human liberty.

While the cases of Mr. Wu, Wei Jingsheng and Dr. Nguyen Dan Que

may differ, they are all representative of human rights abuses around the world, and especially by the Chinese Government.

For too many years, Mr. President, these courageous individuals have been deprived of the opportunity to exercise the right to self-determination concerning fundamental human and political aspirations. I say again, for too many years, they have been denied those rights.

Furthermore, it has been almost 3 years since the United States formally delinked American trade with China from its human rights performance of abuse. I say to my colleagues that much has changed in China, but it has not changed for the better. We now see a human rights situation that is worse by every measure: persecution of Christians, forced abortions, sterilization of the mentally handicapped and kangaroo courts for democratic dissenters.

Mr. President, I am deeply concerned with the mounting campaign of religious persecutions waged by the rulers of China. The Roman Catholic Church has effectively been made illegal in China. Priests, bishops, and people of faith have been imprisoned and harassed.

China's recent moves have menaced Hong Kong, in violation of their agreements with Britain and their assurances to the United States. Forty percent of education and social services in that colony are currently run by church-related agencies. China's action in suspending the Hong Kong Bill of Rights threatens the freedom of speech, the freedom of assembly and the freedom of religion.

I believe that these arguments will come to a boil again in coming weeks, when this Congress votes once more on most-favored-nation status for China. It is the obligation of the American Government to uphold the principles of democracy and freedom for all peoples. We must not turn a blind eye to the oppressed in the interest of expanded trade opportunities. The idea that expanded trade would somehow result in improved human rights conditions in China has been disproved. It simply has not happened.

Today's statements calling for the immediate release of Wei Jingsheng heeds hope for those who are victims of oppression. I look forward to the day when all peoples enjoy the countless freedoms that we have in the United States. I salute the efforts of Wei Jingsheng, Mr. Harry Wu, Dr. Nguyen Dan Que, and I urge my colleagues to stand up and voice their opposition to the treatment of these political dissenters and these defenders of liberty and, furthermore, we should stand against all human rights abuses around the world.

Thank you, Mr. President. I yield the floor.

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I ask unanimous consent that I be able to speak as in morning business for as long as necessary.

The PRESIDING OFFICER. Without objection, it is so ordered.

PARTIAL-BIRTH ABORTION

Mr. SANTORUM. Mr. President, I rise today to begin the debate on the issue of partial-birth abortion. This is an issue that, obviously, has garnered a lot of attention over the past couple of years, both in the House and Senate and across the country. While the bill is not formally before us tonight, the bill will come up tomorrow. I have been informed that it will come up approximately at noon tomorrow, when we can actually begin debate on the bill itself.

So the debate on partial-birth abortion will begin tomorrow in the U.S. Senate. For those who have been following this issue, the questions that I have been asked, and Members are being asked on both sides of this issue, is not whether this bill will pass. I believe this bill will pass. The question is whether we are going to have sufficient votes to override what appears to be an almost certain Presidential veto.

In the House a few weeks ago, the House passed the legislation with 295 votes, more than the 290 needed to override the President's veto. We only need 67 votes in the U.S. Senate to be able to override the President's veto.

At this point, I think by all accounts, we are not there yet. We are still several votes short of the 67 votes committed publicly to supporting this legislation on final passage and supporting it in the face of a Presidential veto.

I will say we are at least four or five votes short at this time, and we are narrowing down the time here in which decisions have to be made.

So while I am not particularly optimistic of our opportunities at this point to get the votes necessary to override the President's veto, I think this is an issue that is going to continue to percolate, not only from the time that we debate in the Senate over the next few days, but also after the vote is taken, during the time that the President is considering it, and when the bill comes back here. So there will be plenty of opportunities for further debate, further evaluation as to whether the votes cast by all the Members are the votes that, in fact, will be the votes on the override vote itself.

What I would like to do in starting the debate is to fill in for those Members who may not have been involved in the partial-birth abortion debate—and we have a lot of new Members this year—to fill in the who, what, when, where, why, how and how many. All of the questions that normally would be asked about anything, let's ask them about the issue of partial-birth abortion.

This has been an interesting topic of discussion only because of the fabrications that have been built around what this procedure is about, when it is used, how often it is used, who it is used on, where it is used, how many there are. Those have been the subject of a lot of publications and debate about how the people who oppose this legislation have constructed a fantasy, if you will, as to what this procedure is all about.

So today, as I tried to in the previous debate, I am going to attempt to lay out the truth as we know it. I say as we know it, because a lot of the truth is based upon what the opponents of this legislation tell us is the truth. An example of that is how many of these abortions are performed. The Centers for Disease Control do not track how many partial-birth abortions are done. They only track the abortions and when they are done. They do not track the procedure that is used to perform the abortion. The only people who track that, at least we are told the only people who track that, are the abortion clinics themselves who oppose this legislation vehemently. They are the ones that those of us who have to argue for its passage have to rely upon for the number of partial-birth abortions that are done. That is hardly a comforting position when you have to rely on your opponent for the information that you are to use in challenging the procedure.

But let me, if I can, walk through first what is a partial-birth abortion. I caution those who may be listening, this is a graphic description of this procedure. I just want to alert anyone who might be watching who might feel uncomfortable with that.

A partial-birth abortion is, first, an abortion that is used in the second and third trimester, principally in the second trimester. It is used at 20 weeks gestation and beyond by most practitioners of partial-birth abortion. So, by definition, it is later term, you are into the fifth and sixth month of pregnancy.

The procedure is done over 3 days. You will hear comments by Members who come to the floor of the Senate and suggest this procedure needs to remain legal to protect the life and the health of the mother. First, there is a life-of-the-mother exception in the bill. Very clear. It satisfies any definition of what life-of-the-mother exception needs to be.

Second, health of the mother. I just question anyone, just on its face, not as a medical practitioner, which I am not, but on the face of it, if the health of the mother is in danger, particularly if there are serious health consequences, why would you do a procedure that takes 3 days? That is what this procedure takes. It is a 3-day procedure. You have a mother who is at 20 weeks, or more, gestation, who has to have her cervix dilated. In other words, they have to create the opening through which the baby can come in the womb, in the uterus. And so it takes 2 days of drugs given to the mother. She does not stay at the hospital. It is not an inpatient procedure. She takes the drugs and goes home. If there are complications they happen at home, not anywhere else.

The cervix is dilated. When you dilate the cervix, that opens the womb up to infection, but for a 2-day period, the cervix is dilated. On the third day, after a third day of dilation, the mother comes into the abortion clinic. The procedure then proceeds as follows.

The doctor is guided by an ultrasound, and the abortionist reaches up with forceps and grabs the baby, which is normally in a position head down, grabs the baby by its foot, turns the baby around in the uterus, in the womb, and then pulls the baby out feet first in what is called a breech position. You may have heard of breech birth and the danger of birthing in a breech position. Here we have a doctor who deliberately turns the baby around and delivers it in a breech position.

You may want to ask the question, why do they go through the trouble of pulling the baby out feet first? Why do they not simply deliver the baby head first and do what I will describe later? The reason they pull the baby out feet first and deliver the baby, as the next chart will show, all but the head—they deliver the baby out of the mother, with the exception of the head.

Why do they leave the head? Why do they not take the head out first, which would be a normal delivery, a safer delivery? The reason they do not deliver the head first is because once the head exits the mother, it has constitutional protection and it cannot be killed, because once the head exits the mother, it is considered a live birth and you cannot kill the baby. So they take the baby out feet first so they can then take a pair of scissors, puncture the back of the baby's skull to create a hole, open the scissors up to create a hole large enough for a suctioning tube to be put in the baby's head, and the brains suctioned out, thereby completing the murder of this baby and then having the baby delivered.

I just remind you the reason they do not do it head first is because if they did it head first, which would be safer than reaching in with forceps and grabbing the baby out from a breach position, if they did it head first, they could not do this, because once the baby is outside the mother they could not kill the baby.

Who is this procedure used on? It is used on fully formed babies from 20 weeks on. Now, we will discuss what has been said in the past about who this has been used on. The abortion industry has made claims that this procedure was a rare procedure that was just used—and I will read some quotes—quoting from the Feminist Majority Foundation, ''A procedure used less than 600 times a year, and in every case, to protect the life or health of the woman.'' ''The procedure is used only,'' according to the Feminist News, ''600 time a year to save the life, health, or future fertility of the woman and in cases of severe fetal abnormality.'' Here is another feminist news article, ''used less that 500 times a year when necessary to protect the health of the woman facing severe problems due to the pregnancy.'' This is the National Abortion Federation factsheet on February 26, 1997: ''This particular procedure is used in about 500 cases per year, generally after 20 weeks of pregnancy, and most often when there is severe fetal anomaly or a maternal health problem detected late in pregnancy.''

The Alan Guttmacher Institute, as well as Planned Parenthood, the National Organization for Women [NOW] Zero Population Growth Fund, Population Action International, and the National Abortion Federation sent a letter October 2, 1995, to the Congress that said, ''This surgical procedure is used only in rare cases, fewer than 500 per year. It is most often performed in the cases of wanted pregnancy gone tragically wrong, when a family learns late in pregnancy of severe fetal anomalies or a medical condition that threatens the pregnant woman's life or health.''

Kate Michelman, President of NARAL, on June 2, 1996: ''These are rare terminations. They occur very rarely. They occur under the most difficult of circumstances. As I said, these are pregnancies that have gone awry.''

Let me tell you what Members of the Congress said. From Pat Schroeder, ''There are very, very, very few of these procedures. These procedures are heart-break procedures.'' Senator KENNEDY, the Senator from Massachusetts, said, ''The procedure involved in this case is extremely rare. It involved tragic and traumatic circumstances late in pregnancy, in cases where the mother's life or health is in danger.'' Senator FEINGOLD, ''In fact, these abortions take place only when the life or health of the mother is at risk.'' Senator DASCHLE, ''This is an emergency medical procedure reserved for cases where the life and health of the mother could be endangered or where severe fetal abnormalities are a major factor in the decision made by a woman and her physician.'' Senator CAROL MOSELEY-BRAUN, ''Partial-birth abortion is a rare medical procedure used to terminate pregnancies late in the term of when the life and health of the mother is at risk or when the fetus has severe abnormalities.''

That is what we were told over and over. That is what the media bought. That is exactly how they covered this issue. They covered this issue as a very tragic, rare procedure used only in cases of life, health, and fetal abnormality—in only a few hundred cases.

Now, we knew different. I argued it. Check the record from the last debate, that this was not as rare as they suggested. In fact, I entered into the RECORD an article written last fall by the Bergen County Sunday Record in New Jersey, where a reporter who took the time to do something reporters usually do not do on debate, particularly when it has to do with checking people in the abortion industry on their facts. She actually checked the facts. This reporter checked at an abortion clinic in northern New Jersey how many of the procedures were performed, and the reporter talked to two doctors, two abortionists, who said that they performed 1,500 partial-birth abortions every year, and not on fatally defective babies or not on unhealthy mothers or unhealthy babies, but usually in the fifth and sixth month for no health reasons at all—healthy moms, healthy babies, healthy pregnancies.

We had that article already printed. That did not deter the President from saying what he said. We have quotes from the President here. ''I came to understand that this is a rarely used procedure, justifiable as a last resort when doctors judge it is necessary to save a woman's life or to avert serious health consequences to her.''

Now, the President knew better when he said that. That information was available to the President. It is available to him now. But what happened between now and then that has caused such a stir? Well, I can tell you, unfortunately, the media has not done a very good job of exposing this. I do not know of any other reporters who made calls to their abortion clinics. They will not tell me or National Right-to-Life when they call, but they might. Sometimes they do not. I know of a reporter at the Baltimore Sun who tried to contact abortion clinics in Baltimore, and at least what she related to me was they would not talk to her, they would not tell her. I do not know of any reporters who have taken the time to actually check the facts.

What are the facts as we know them now? Well, thanks to Ron Fitzsimmons, who heads up an organization of abortion clinics—let me repeat this, a man who runs an association here in the Washington area—that represents some 200 abortion clinics all over the country, came out just a couple of months ago and said that he had lied through his teeth and he could not live with it anymore. He had lied through his teeth about what had been said by the abortion industry about the issue of partial-birth abortions. He said that this was not, in fact, a rare procedure, used only in the late term for unhealthy pregnancies and for maternal health reasons or because of a severe fetal abnormality, but this was a procedure used principally in the fifth and sixth month on healthy babies and healthy mothers. In fact, I think the figure 90 percent was used. Then he said, ''We estimate the number of these procedures that are done at between 3,000 and 5,000, not 500.'' He said, ''We have known this all along.'' He said as soon as the bill was introduced he called some of his providers, and he knew this from day one of this debate, of, now, I think, 2 or 3 years ago. Yet the industry, knowing this, up until literally the day before, and in fact on the Web page of some of the abortion rights groups, you still find claims that this is a rare procedure used only in the cases of fetal abnormality. So they

continue to try to perpetrate the lie, and they certainly did until Ron Fitzsimmons blew the whistle.

So what do we know now? I am not too sure we know too much. We know from the Abortion Provider Organization that they are willing to admit to 3,000 to 5,000. There is no check on what that number is. It could be 3,000 to 5,000, 5,000 to 10,000, 10,000 to 20,000, 20,000 to 30,000. There is no independent verification of that number, and we have to rely on the organization that is here fighting this bill to give us the information which we want to fight over. So we know of at least 3,000 to 5,000, but we also know that in one abortion clinic alone 1,500 were performed last year, and the doctors who were interviewed for that story in the Bergen County Sunday RECORD said they had trained other abortion doctors in the New York area who also performed the procedure. The other people who were known to perform the procedure and teach it do not reside in the New York area. And we also have reports from a doctor in Nebraska who said that he has performed 1,000 of these abortions.

So I just caution, as we begin the debate here, that we are debating on some very soft ground when it comes to how many of these abortions are performed, when we make this claim that it is only a few thousand. Maybe I am making too much of the fact that it is a few thousand as opposed to a few hundred. I guess I make the point because it points out the inaccuracy of the opposition's information. Frankly, if it was one, it is as much of a crime, in my mind, and I hope in most Americans' minds. If we subject one baby unnecessarily to this barbarism, is that not enough? Do we need 500? Do we need 1,000? Do we need 3,000 to 5,000? Is that the threshold where Americans will look up and say maybe we should do something about it? One is not enough. It does not stir up moral outrage if it is only 1, 2, 200, or 500.

Why is this procedure used? As I said before, they suggested that this procedure was used to protect the life and health of the mother. That was the argument being used. As I said before, 90 percent of the abortions, according to the people who oppose this bill, 90 percent of the abortions, are performed electively, for no reason other than the mother decides late in pregnancy that she does not want to carry the baby.

The question is, is it ever medically necessary to use this? Because that is the argument, that we need to keep this procedure legal because it is medically necessary to protect, as the amendment from the Senator from California, Senator BOXER, which we anticipate being offered, it is necessary to keep this procedure legal to protect the life and health of the mother. But we have the life-of-the-mother exception in the bill. So we have taken care of the first issue. Although, as I said before, I cannot imagine—and I have asked on the floor this question, and I ask it again—any circumstance where a mother presents herself in a life-threatening situation where you would then conduct a procedure that takes 3 days in which to abort the child. Again, I am a lay person here, not a physician. I have talked to physicians, and they say there is no such situation. But as a lay person, you don't have to be a doctor to figure this one out. You are rushed and presented to a doctor with a life-threatening situation and they say, let me give you medicine and come back, and then give you medicine again and come back, and they give you more medicine and send you home. That isn't going to happen. But to take care of those who have an objection, we put a life-of-the-mother exception in there.

Now they want a health-of-the-mother exception. Let's first look at whether this would be used to protect the health of the mother. I have talked to a lot of physicians, obstetricians who have stated very clearly to me that a partial-birth abortion is never necessary to protect the life or health of a mother. That is a group of more than 400 obstetricians, principally obstetricians and gynecologists, and some other physicians, including C. Everett Koop, former Surgeon General of the United States, who, prior to his fame as Surgeon General, was a well-respected and well-known pediatric surgeon who dealt with children shortly after birth, trying to fix some of the problems that they were born with. So we have clear medical judgment that this procedure is never necessary to protect the health of the mother. In fact, they make the argument that it is contraindicated, that it, in fact, threatens the health of the mother for a variety of different reasons. So we have doctors who say that this is not necessary to protect the health of the mother.

Now, I will ask—and I have asked Members on the other side of this issue—when would this procedure be used to protect the health of the mother? Remember, it is a 3-day procedure. I have talked to physicians who say there are times when the life of the mother is in danger or the health of the mother is in danger and they need to separate the child from the mother. But in none of those cases is it necessary to deliberately kill the baby. They can induce labor, deliver the child vaginally and give it a chance to live. They can do a Cesarean section and deliver the child that way and give the child a chance to live. At no time is an abortion necessary that kills the baby in order to protect the health of the mother. And so why is it performed?

The answer is very simple. It was given by the person who designed the procedure, who is not an obstetrician. He is a family practitioner who does abortions. He designed this procedure, very candidly, because this was a procedure that he could do on an outpatient basis. The woman would present herself after 3 days of having her cervix dilated, and he would be able to quickly do this procedure, so that he could do more in one day. It is done for the convenience of the abortionist. That is why. It is not done to protect anybody's life or health. It is done to make it easier on the abortionist. And it is used, again, on healthy moms, healthy babies in the fifth and sixth month of pregnancy, in almost all cases.

(Mr. BROWNBACK assumed the chair.)

Mr. SANTORUM. Where is this procedure done? Will you find this procedure done in the finest hospitals in this country? Will you find it even described in a medical book? Will you find it taught at any school in this country? The answer to all of those questions is ''no.'' This is not taught anywhere. This has not been peer-reviewed anywhere. This is not used in any major medical center. It is used in abortion clinics exclusively. No hospital will get near this procedure. It is not a peer-reviewed procedure. It is not an accepted medical procedure. It is not in any textbooks or in any kind of educational literature. It is a fringe procedure by someone who wanted to make it easy on themselves to do more late-term abortions and do more of them in 1 day.

So that sort of sums up the who, what, when, why, where, and how many of this procedure. Now, why do we think it is important to outlaw this procedure? Well, there are lots of reasons why I think we should outlaw this procedure. No. 1, because it is a barbaric procedure. I hope that it would shock the consciousness of every Member of the Senate that we would allow innocent human life to be treated in such a deplorable fashion, to be manhandled and destroyed, as we would not even allow a dog to be destroyed. So, on the surface of it, the obvious reason is that this goes beyond the pale of what should be acceptable in our society. I can't imagine a Senator from the United States of America standing on the floor of the U.S. Senate 30 years ago with these charts and having to argue—argue—that this should be illegal in our country. Absolutely incomprehensible. Yet, 30 years later, as a result of Roe versus Wade, we have become so desensitized to the humanity of a baby inside the mother that we will allow this to occur—and defend it, defend it, vehemently defend it as a right.

The abortion debate in this country since Roe versus Wade has focused on the issue of rights, of choice. The reason I think the abortion industry and abortion rights advocates are so upset about this debate is because, in a partial-birth abortion, you can't miss what is at stake here. This is not about a right. It is about a baby. You can't miss the baby here. It is right here before your eyes. It is right there where you can see it. It is outside of the mother and you can't avoid it. That is why they just cringe when this bill

comes to the floor, because now we are talking about the dirty little secret we have had in this country for a long, long time, that abortion—and I will use the words of Ron Fitzsimmons—''One of the facts of abortion is that women enter abortion clinics to kill their fetuses. It is a form of killing. You're ending a life.'' Bravo for Mr. Fitzsimmons for stating the obvious. But that is something that the abortion industry has steadfastly avoided. He is talking about what abortion really is. It is about ending a life. And in this case, you can't miss the life. It is right here, right before your eyes, fully formed. The argument about just a blob of tissue or some protoplasm doesn't hold up at this late stage of a pregnancy. This is a baby. It is a fully-formed little baby. In many cases, it's a viable little baby.

I mentioned Roe versus Wade. There are some people who will argue that this goes over the line, that this violates the provisions of Roe versus Wade. Let me address that issue very briefly and I will refer not only to the committee report in the House, the House Judiciary Committee report, but also the remarks made by my colleague from Pennsylvania, Senator SPECTER, on this issue. It was one of the reasons he supports the ban. When the baby is here in the mother's uterus, Roe versus Wade applies. Roe versus Wade says that, basically, for the first two trimesters, the woman has the right to do whatever she wants to do with that child in her womb. That is what Roe versus Wade says. They said, in the third trimester—it is definitely implied if not stated—because of the fetus', the baby's, potential viability, the rights of the baby come into play and there are limitations on abortion.

Well, see, we have an interesting case here because this procedure takes the baby outside. The baby is not only outside of the uterus, except for the head, but outside of the mother almost completely, and is in the process of being born. In fact, the baby is almost completely born, hence the procedure's name, ''partial birth.'' So the baby is no longer completely within the domain of the uterus and then ruled by Roe versus Wade. By leaving the uterus, the baby gains rights that it didn't have inside.

As an aside, don't you find it an interesting irony that inside the mother's womb this little baby, surrounded by fluid and warmth, is the most vulnerable to be killed and has no protection against someone who wants to kill it. Once it leaves what would be seen by the baby as a safe environment, then it could be protected. But in the place where you would think that the baby would be most secure is the one place where it is the most vulnerable to being killed, and only because this procedure involves partial birth, only because the baby leaves the mother does Roe versus Wade not apply. And so those who argue that we banned second-trimester abortions by banning this procedure—and we would because most do take place in the second trimester—that we violate Roe versus Wade, they don't understand Roe versus Wade. That child is no longer in the uterus and that child, now that it is born and still alive, still feeling, able to feel pain, cannot be killed; or at least we can ban it under Roe versus Wade because it has rights. The baby has rights.

So we very strongly believe that these spurious arguments that somehow or another Roe versus Wade is being violated—by the way, there is nothing more I would rather see than Roe versus Wade being violated, but it doesn't do it here. This procedure does not do it. This procedure falls well within the constitutional boundaries of Roe versus Wade and Doe versus Bolton.

Another issue that is being charged against this procedure—or it comes out in favor of this procedure—is the issue of a fetal abnormality. I am going to have a lot to say about the issue of fetal abnormality. But let me just say this for now. We have had Members of the U.S. Senate stand here in some of the finest hours of the U.S. Senate, and argue forcefully, gallantly, to protect the rights, the health, the safety, the security of disabled children. We passed the Americans With Disabilities Act. We are debating ironically—the irony is not lost—IDEA, which has the rights of disabled children in our discussion today. That bill is actually the bill before us as I speak. You will hear such passion. You should listen to some of the debate—those of you who did not—the passion of the Senators defending the right for children with disabilities to have access to educational opportunities so they can maximize their human potential. Yet, unfortunately some of the most passionate speakers on that issue—turn around and passionately argue that because of their disability we should be able to kill them before they are born.

Abraham Lincoln used a Biblical verse. ''A house divided against itself cannot stand.'' How can you with any kind of reflective conscience argue that the right to be so that children with disabilities have the ability to maximize their human potential and the Government should be there to ensure that their rights are not trampled upon and then not be willing to give them the most precious of all rights, the right to live in the first instance? How can you be a champion of the disabled when you will use fetal abnormality as an excuse to kill them in the first place?

It is a shocking realism in this country that goes back to what I suggested before, which is we have become so desensitized to human life to kill a little baby, that unseen, unborn child, that because it is unseen you can just put it out of your mind, it is not really seen. That desensitization has consequences. We are seeing the consequence right now. We are debating this procedure. It is incredible to me that we even have to debate this. But it is here because people just have forgotten what life is all about, and what life means.

We have across the street, at the Supreme Court, the issue of doctor-assisted suicide. We have had lower courts say that doctor-assisted suicides are OK. We have massive organizations—I do not know how massive—at least organized organizations that advocate for allowing people to kill themselves and to have doctors help them. Again, I look back at 20 or 30 years ago and wonder whether that debate could have occurred at this time. But do not be surprised, particularly if this bill is unsuccessful, if we send the message out to the country that says human life isn't really that valuable, that we can in fact brutalize the most innocent children who have done nothing wrong to anybody.

It is amazing. You can describe this procedure. I saw a television commercial put out by one of the groups who showed a prisoner shackled, both arms and legs, walking down death row and being put in a chair. While he was walking and he was led to the chair, what if a voice describes the procedure, describes taking the scissors and puncturing the base of the skull and sticking a vacuum tube in the base of the skull and suctioning the brain out? The courts would clearly find that cruel and unusual punishment and violative of the Constitution. But you can do that to a little baby who hasn't killed anybody. It hasn't robbed, raped, stolen, nor harmed a soul. And then we wonder what is happening to our culture. We wonder, as we sit at home and we listen to the news, and we listen and we read the papers, and we see the young people out there, and we wonder. Why have they gone astray? What is happened to the fabric of our culture? Why don't they have respect for our country, for people's goods, for other people's lives? Why, indeed? You need to look only this far: 1.5 million abortions a year, as public, and as customary, and as usual, and, as a matter of fact, as any number you will hear on the U.S. floor—1.5 million abortions.

OK, what is next? You will hear it discussed in the news: Abortion. It is a matter of choice. It is someone else's decision. I do not want to get involved. It has nothing to do with me. Look around you. Things are coming to roost in this country. When you have such disdain for human life that we are seeing exemplified, magnified, by allowing this procedure to go forward, by allowing this innocent little baby to be mutilated, butchered in such a way. People who vote for this to remain legal have answered their own question as to why our culture is the way it is, because the great, great leaders of our country, the role models—that is what we are, whether we like it or not. Every Senator who goes into a school—and I go into a lot of them—particularly young kids. I am sure the Presiding Officer now sees this as a new Member of the Senate. Oh, they would love

to have your autograph. They want to have your picture taken with them because you are someone to look up to. You are someone who has achieved a level of excellence that we admire in this country. You are in a position of authority. What you say and think matters. And they look up to us.

Is this what you want them to see? Is this what you want to teach the next generation, that this kind of brutality is OK, and then you wonder why you see random acts of violence and you wonder why you see no respect for human life? The consequences are real. They are here. We don't have to speculate as to what the consequences of this are. They are here, and we are living with it.

All we want to do here is to take one little step in creating some decency again, one meek little message for the people in this country that life should be respected, that children should not be brutalized unnecessarily. That is what this procedure does.

You will hear arguments that this will not stop abortions. It may be true. I wish I could say this would stop hundreds and thousands of abortions. But I am not too sure that it will.

What I am sure of is that this brutality will stop and we will send a very clear, positive message to Americans and to the world that this kind of barbarism has no place in American culture, certainly no place in the laws of our country.

So I hope that as Members come tomorrow and we begin the formal debate on this bill that they will come with open minds and open hearts, that they will seek the truth. This debate has been surrounded by lies from those defending the procedure. Hopefully those admissions of lies will give people the opportunity to look anew at what the facts are, not just the facts of when this is used, but how it is used. I went through all of those things—but what the ramifications are for this country and for our society.

The abortionists are probably right. We are not going to stop a lot of abortions. There are other methods of abortion available if we outlaw this. Abortions unfortunately on babies this age will continue. But we send a signal, as small as it is.

That is why I guess I am so shocked at the vehemence of the opposition, the opposition that says this will not stop abortions, the opposition that admits that this is rare and that this is a fringe procedure. They admit it is not a commonly used procedure, that it is not in the medical literature. They know all of that. Yet, they stand here, backs to the wall, fighting for every last inch of not defendable territory. Folks, this is not defendable territory.

We may not win this time. I don't know what God has planned for this debate. But we may not win this time. That is OK. We will be back.

This is wrong. So when people in the U.S. Senate who believe something is wrong don't stand up and fight to overturn that wrong, we will be in for very serious, even more serious, consequences for this country.

So I hope that my colleagues, enough of my colleagues, would share my concern, would look at the new evidence. There are new facts that are accurate to the degree they can be accurate relying on the other side. There are more accurate facts available now on this debate. There is ample reason to reconsider this vote.

I hope that they would be led by both their hearts and their minds because on both scores we win. There is no medical reason for this procedure to occur. You will not find any physician anywhere describing any condition where this procedure is necessary and is the only one available to be used for whatever situation. In fact, as I said before and I will say over and over again, this is a 3-day procedure. Why would it ever be used in a life-threatening situation when there is imminent health damage? It would not be used. We have hundreds of physicians who have testified via letters that this procedure is never medically indicated.

So on the facts, on the medical facts, using their brain only, this is not only unnecessary, unwarranted, but unhealthy.

I will share one other statistic from the Alan Guttmacher Institute, one of the signatories of the letter I referred to earlier with NOW and NARAL. This is an organization which is very much proabortion. This is a very, very radical group. And here is what their numbers say. After 20 weeks gestation, after roughly 4 and a half months, abortion is twice as dangerous to maternal health as delivering a baby. So to even suggest that abortion is necessary in cases of whatever, fetal abnormality or just because you do not want to have the child, that that is safer for the mother than delivering the baby either via Cesarean section or by vaginal delivery, the pro-choice institute, Alan Guttmacher Institute, says that it is twice as dangerous to the life of the mother to have an abortion after 20 weeks as it is to deliver the baby.

So if you are really wrapped up on this issue of health, abortions are more dangerous than delivering the baby. There is no health reason to do this procedure. In fact, because it is a blind procedure—the abortionist cannot see the base of the skull, and so they have to feel—as you see, they have to feel with their hands and then take a blunt instrument and puncture the base of the skull, which can cause bone fragments. This is a very blood-rich area, a lot of veins exposed. There can be damage done by doing this blind procedure. This is not a procedure that protects the health of the mother.

So using your brain, looking at the facts, this is a no. We should not allow this. This is dangerous. This is wrong. And I would think—I cannot speak to the heart, but I would think that your heart and that your conscience and the reason that so many Members have struggled so hard with this—and I know they have, people who I know believe deeply in this right of privacy and the right to abortion as enumerated in Roe versus Wade, that they have made their moral judgment that this is OK, but even to those Members this stirs a disquiet. This stirs some uncomfortableness in them. Follow your heart. Your brain is there. If you look at the facts, the brain is going to be there. The only thing stopping you is your heart. Open your heart to these babies. Do not let this kind of barbarism continue. Stop the murder, stop the infanticide, and you will not be violating Roe versus Wade, not one word of it.

So as we start this debate tomorrow, I intend to debate the facts. I intend to stand up and go through all of the arguments not only on this procedure but on Senator DASCHLE's amendment, Senator BOXER's amendment, and talk about why those two amendments, particularly the Daschle amendment, I might add, not only is a sham in the sense it is just political cover, which is exactly what it is, it does not accomplish anything. The Daschle amendment which we will debate, I am sure, tomorrow will not stop one partial birth abortion, not one. The Daschle amendment will not stop any abortion. In fact, I will argue tomorrow, and I think I can point out clearly from the language of the text, the Daschle amendment expands Roe versus Wade. Yes, this amendment which is supposed to be a compromise—interesting we use the term ''compromise'' when the Democratic leader never talked to anybody on our side of the issue. You would think when you are trying to compromise with someone you would talk to the other side in reaching a compromise.

That did not happen. I did not receive one phone call or even the hint of a phone call. No one else that I know of who supports the bill—of the 42 cosponsors of the bill, it is my understanding none of them received a phone call. And so this compromise, which was drafted by people who oppose this bill to give political cover by saying things like, well, we are going to ban all postviability abortion, then leaves it to the abortionist to decide what is viable and what is a health exception because they have a health exception—we will ban all postviability abortions except for life and health. Who determines health? The person performing the abortion.

Wait a minute. Let me get this straight. You have someone performing an abortion. They are doing it. They are performing an abortion on a client. They are killing a baby. After they finish killing the baby, then they have to certify whether this baby was either viable or there was an exception for the life or health of the mother.

Put yourself in the position of the abortionist. Are you going to say the baby was viable and I killed it? There

was no health exception and I went ahead and killed the baby. Raise your hands. How many people think that the abortionist is going to claim that they violated the law? Because they are the only ones who certify to it. No one else can. Many times I have seen in the paper this debate has been analogized to the debate on the second amendment, the right to bear arms.

Let me give you this analogy. It is like passing a piece of legislation on assault weapons. That was a very popular topic. It is like passing a piece of legislation on assault weapons and saying that the gun dealer will define what an assault weapon is for purposes of whether they break the law.

That is exactly what this bill does. It allows the doctor to define what the law is, in other words, what the exceptions to the law are, and no mentally competent abortionist who has just aborted a baby is going to claim they broke the law, just like no mentally competent arms dealer is going to sell a howitzer and say it is an assault weapon. They are not going to say it is an assault weapon. I broke the law. You let me certify it. A howitzer is not an assault weapon. And under the Daschle bill, if we could apply it to guns, the arms dealer is OK. Wait a minute. We have the certification here. No problem. He certified it is not a howitzer. He said it is not an assault weapon. He said it is something else.

Again, just remember the people offering this amendment have a 100 percent voting record against pro-life issues. They have vehemently opposed this bill from day one. You can always tell the validity of this kind of legislation by who supports and who opposes.

Now, you would think that an industry—and that is what abortion, unfortunately, has turned into with 1.5 million a year. It is an industry. You would think that an industry that has gone to tremendous lengths and expense to oppose a ban on a procedure which they admit is infrequent, that does not happen very often, that is only an alternative and others could be done in place of it, that they argue is not going to stop one abortion, that they would fight vehemently against this that will not, in their own words, stop one abortion, they argue against this, yet they support Senator DASCHLE's proposed amendment.

Now, wait a minute. If Senator DASCHLE's proposal actually stopped abortion, do you think they would support it? I think you can answer that for yourself. The people who oppose it are people like myself who understand what it is. It is a sham. The proposal does nothing except one potentially very dangerous thing. By giving the abortionist the right to determine what health and viability is, you expand Roe versus Wade because under Roe versus Wade at least third-trimester babies are somewhat protected. Under the DASCHLE proposal, there is no protection, none. It is whatever the abortionist wants to do and the mother agrees to do at any time. Oh, you can probably string the viability issue along to 35 or 36 weeks and you probably have to admit that after 35 weeks that baby is viable. But the health, there is all sorts of health things that can go on even at that late time.

So I would just caution my colleagues who are considering this legislation that this is a real change in the law. This will have an impact on stopping a procedure that has no place in American society. The Daschle proposal not only does not change the face as far as the existing rights of abortionists and abortion, I have argued and will continue to argue that it expands the right to abortion. Anyone voting for the amendment of the Senator from South Dakota will vote to strike this procedure—in other words, vote against this procedure because his amendment which will be offered tomorrow strikes this procedure from the bill. In other words, cuts it, amends it out and replaces it, substitutes it with his phony ban which not only does not ban anything but expands the right to an abortion.

So I would just caution Members when they vote on Senator DASCHLE's amendment that they are doing two things, one of which they will admit they are doing. They are getting rid of this legislation. That is No. 1. So they will be voting against this procedure being banned. And No. 2, they will be expanding the rights of abortionists and abortion beyond what Roe versus Wade currently does by allowing the abortionist to have complete authority over what is a health exception, what is viability.

So, this is really a very clear debate, and we will commence tomorrow in formality between those who want to at least take a procedure and say this goes too far, that the right to an abortion is not so absolute as to allow this kind of barbarism to occur, and others who believe that Roe versus Wade did not go far enough. In spite of all the rhetoric we will hear tomorrow, the bottom line, with the amendment of the Senator from South Dakota, is that he will be arguing in fact—not by his words, because I am sure he will not agree with that—but in fact—read the language, his amendment will loudly say that Roe versus Wade is not broad enough, that we need more access to abortion than we have today.

I think, of anything that I have learned in dealing with this issue, particularly when it comes to children who are in utero, with disabilities, that the issue is not the ability to get an abortion in this country. If you have a child with a disability, and it is diagnosed in utero, I guarantee not only will the abortion option be made available to you, because they are legally required to do that, but if they see a badly deformed baby, they will do everything, most of the physicians, most genetic counselors, will do everything to encourage you to have an abortion.

I will talk about one such instance tomorrow. For those Members I spoke about earlier who can come to terms with this debate on the intellectual level and have trouble crossing the threshold of the heart, I will put a face on partial-birth abortion. It will put a face on what is going on out in our country, with doctors who are so afraid of malpractice, so afraid of difficult and complicated deliveries that they choose the easy way out. ''Let's get her to abort the baby now so we don't have to deal with this.''

Many of you are thinking, ''Oh, I can't believe that.'' Believe it. Believe it. It happens every day. You do not see any wrongful death suits, do you, against abortionists for terminating a pregnancy? I am not aware of any. But you will see wrongful birth suits for children born, and their parents, incredibly, believe that their child was better off dead than born.

So, for doctors, as normal human beings, risk averse, it is easier to abort. You can't get sued when you abort. They sign all these waivers and consents. We will be fine. But they can sue us if we do not do everything we can to get them to abort beforehand and we have a complicated delivery and things happen, or the baby is deformed and we did not explain maybe well enough how deformed the baby was.

I would argue it is easier to get an abortion in this country when you are carrying a child with a fetal abnormality than it is to find a doctor who will deliver it. I will tell you a story tomorrow of exactly that case. I am sure there are other cases out there. In fact, I know there are other cases out there.

It goes back to the point I was making. Not only do we as a society, but unfortunately the people who are most responsible for delivering our children become so callous, many of them—not all of them. Certainly not all of them. I hope most would understand the significance of a human life and protect it and honor it and dignify it. But, sadly, that is not the case in far too many instances with the professionals in the field of genetics counseling.

My father-in-law, Dr. Kenneth Garver, went into genetic counseling when he was a pediatrician in Penn Hills, PA. He decided to go into genetic counseling and medical genetics. I know one of the reasons that drove him to do so was not only the fascinating developments in medical genetics, which were certainly a lure to someone as bright as he and as interested as he was in the subject, but a fear, that has been borne out to be a legitimate fear, that the people who have been drawn to that field are people who do not believe that that baby has a right to life, who very much believe in abortion and counsel for it and, in far too many cases, encourage it. It is a field that he got into because he wanted at least someone—someone—where men and women who are going through a difficult pregnancy could come and not be browbeaten into having an abortion.

You say, ''Oh, Senator, you are being extreme here.'' I will tell you the story

of little Donna Joy Watts and you tell me how extreme I am. And I will tell the stories of people who have written to me and talked to me and called me and e-mailed me about situation after situation where those same set of facts have come forward. What have we come to when we encourage people who desperately want to hold onto their children that this is the only way?

Some will say it is by ignorance. I suggest in many cases it is ignorance, but in many cases it is ignorance of convenience that a lot of these physicians would just rather not have to deal with the situation. So the first knee-jerk reaction is, ''Well, the baby is not going to live long. Abort it.'' Or, ''The baby is going to have all sorts of complications. Abort it.''

All we are trying to do here is to say stop the infanticide. That is the term used by the Senator from New York, Senator MOYNIHAN, and I believe the Senator from Pennsylvania, Senator SPECTER—both of whom are generally on the opposite side of the issue on the issue of abortion. But they recognize that when a baby is outside the mother's womb and, as nurse Brenda Shafer said, moving its arms and legs, in the case that she described, the partial-birth abortion she described, the baby had the face of an angel. It was a perfectly healthy, normal baby.

It thought—and yes, thought, because babies have brains; they are human beings—thought as it was leaving this environment that was so warm and protected, little did it know that it would meet with this kind of brutality. Folks, it's not just once, or twice, or 10, or 20, or 100, or 500—thousands. Untold thousands.

I am hopeful that, as a result of all the things that were discussed for the past several months as a result of the statements by Ron Fitzsimmons, Members of this Senate will look again, look at this procedure, look at the consequences, real consequences of what the U.S. Senate and the Government of the United States will convey to the young people of our country, to any person in our country, that we will allow these innocent babies to be murdered like this.

If we send that kind of message, I guarantee I will be down here when one of the Senators who did not support this stands up and beats his breast, complaining about why the crime rate is so high, why there is no respect for property, why there is no respect for life, why there is no respect for—you name it.

Kids aren't dumb. They pay attention. I have a 6-year-old and a 4-year-old and a 1-year-old. It frightens me how much they pay attention to everything you do, whether you know it or not. They pick up so much.

You see yourself. You know. You see yourself in your kids so much you just don't even realize all the little things that you do that they see. They will see this. They will understand what this means. They will understand that life is not important, that, unless you are big, strong, healthy, able to protect yourself, there is no protection. It is survival of the fittest. We wonder why we have a cynical generation X; everyone believes they are out for themselves, that everyone does things in their own self-interest. What could be more in self-interest than this? What can be more selfish than this? What kind of message are we conveying? This is ultimate selfishness. It was not convenient. I was not ready. I—I—I—I.

This is a baby. It is not ''I,'' it is ''we.'' But we have told the message to the young people, only ''I'' matters. Then we wonder why they feel the way they do. We wonder why they act the way they do. We wonder what has happened to our culture, what has happened to our society. You need only look this far. You need only look at the selfishness, the individual self-centeredness of this procedure. A procedure we would not do on Jeffrey Dahmer, a procedure we would not do on the worst criminal in America, we will do on a healthy little baby.

I hope the Senate says no. I hope the Senate can just muster the moral courage to say no and live up to the dignity of this place. It is an impressive place. Great men and great women have stood in this hall and fought for noble causes. I cannot think of any more noble a cause than protecting a helpless, beautiful—whether deformed or not, in the eyes of God, beautiful baby.

I ask everyone within the sound of my voice to pray that that happens, that the Senate says no more, this is where we begin to draw the line. I ask you not only to contact your Senators by e-mail or write or call or drop by their offices, I ask you to pray that somehow their eyes will open to what the consequences of our actions are, what it means to us as a society, as a culture. What the reporters are writing today is this bill will fall short of the 67 votes needed to override the President's veto. If you do, those things I have asked, who knows?

Mr. President, I yield the floor.

CONGRATULATIONS TO FATHER THOMAS J. DUGGAN ON HIS 50TH YEAR IN THE PRIESTHOOD

Mr. ASHCROFT. Mr. President, I rise today to congratulate Father Thomas J. Duggan as he celebrates 50 years as a priest. I want to commend him for the outstanding service he provides to the Catholic Church in the central Missouri area.

This historic occasion commemorates Father Duggan's labor both now and in days past. His 50 years of dedication have served many important missions: From caring for young World War II victims in the Manchester-Liverpool area of England to serving, since 1960, the diocese of Jefferson City. The high standards he has been able to maintain are a tribute to his faithfulness. As our Nation looks increasingly for moral guidance in this period of moral decay, his example provides a standard for others to follow.

I wish Father Duggan a memorable celebration as he renews his commitment to the redemptive mission of Christ. May God bless his ministry with many more years of celebrations.

HONORING THE 200 YEARS OF MARRIAGE OF THE CHILDREN OF MORRIS AND IDA MILLER

Mr. ASHCROFT. Mr. President, families are the cornerstone of America. The data are undeniable: Individuals from strong families contribute to the society. In an era when nearly half of all couples married today will see their union dissolve into divorce, I believe it is both instructive and important to honor those who have taken the commitment of ''till death us do part'' seriously, demonstrating successfully the timeless principles of love, honor, and fidelity. These characteristics make our country strong.

For these important reasons, I rise today to honor the children of Morris and Ida Miller, who will celebrate together 200 years of marriage:

Son—Dennis and Marcella Miller, married June 7, 1946; Daughter—Eileen and Bill Keehr, married April 8, 1947; Daughter—Melda and Merwin Miller, married July 3, 1947; Son—Loren and Miriam Miller of Bois D'Arc, Missouri, married September 1, 1947.

My wife, Janet, and I look forward to the day we can celebrate a similar milestone. These families' commitment to the principles and values of their marriage deserves to be saluted and recognized.

HONORING THE BARLOWS ON THEIR 50TH WEDDING ANNIVERSARY

Mr. ASHCROFT. Mr. President, families are the cornerstone of America. The data are undeniable: Individuals from strong families contribute to the society. In an era when nearly half of all couples married today will see their union dissolve into divorce, I believe it is both instructive and important to honor those who have taken the commitment of ''till death us do part'' seriously, demonstrating successfully the timeless principles of love, honor, and fidelity. These characteristics make our country strong.

For these important reasons, I rise today to honor Harold and Helen Barlow of Raytown, MO, who on May 17, 1997, will celebrate their 50th wedding anniversary. My wife, Janet, and I look forward to the day we can celebrate a similar milestone. The Barlows' commitment to the principles and values of their marriage deserves to be saluted and recognized.

LAUREN'S RUN AGAINST PEDIATRIC CANCER

Mr. COVERDELL. Mr. President, it is a great honor for me to draw the attention of my distinguished colleagues

to a very special event which will take place in Atlanta this coming Sunday, May 18—the Fifth Annual Lauren's Run.

Lauren's Run is a fantastic kids-only fun run which is held every year at Zoo Atlanta. The purpose of the event is to raise funds for the Lauren Zagoria Pediatric Cancer Research Fellowship at City of Hope National Medical Center in Duarte, CA. The fellowship assists in the fight against pediatric cancer in all its forms through advanced research and clinical treatments at City of Hope, an institution renowned for the compassionate care it brings to children suffering from life-threatening diseases.

Mr. President, all of us in this body have undoubtedly devoted ourselves at one time or another to worthy causes and humanitarian endeavors. But in my opinion, Lauren's Run is a truly special cause, and this is so for two reasons.

First, because it honors a very special and beautiful little girl named Lauren Zagoria who was diagnosed when she was only 21 months old with neuroblastoma, a rare and fatal form of pediatric cancer. Lauren's parents, Janis and Marvin Zagoria, watched as their precious daughter was transformed not only by the ravages of the disease, but also by the ordeal of radiation treatments, bone marrow biopsies, and surgery. As Janis and Marvin have written about Laura, ''She never complained; she never quit; she never stopped loving or trusting those who cared for her. After 14 months of struggling, the disease was just too big for one little girl.''

Lauren's Run was borne of that child's tragic and painful struggle. Determined to honor Lauren's life and to sustain her legacy, Janis and Marvin Zagoria began to lay the groundwork for the children's run just 2 months after her death in March 1992. The first Lauren's Run was held in 1993.

I will have the honor of attending the Fifth Annual Lauren's Run on May 18, and I will be presenting an American Hero award to Janis and Marvin Zagoria on that occasion. They are truly two wonderful points of light—people who inspire others in their community to do what is right on behalf of those in need.

Mr. President, the other reason that I believe Lauren's Run is a special cause is because little Lauren Zagoria could have been any child in America today. We owe it to Lauren and to all the children we know and love to do everything in our power to eradicate the scourge of pediatric cancer. At City of Hope, pioneering work is underway to increase the long-term survival rate of children suffering from such illnesses. There is hope indeed that one day we may overcome the tragedy of pediatric cancer—provided that we open our hearts and, yes, our pocketbooks to enable research to discover the cures which are surely within reach.

Mr. President, I ask all of my colleagues to join me in honoring the memory of Lauren Zagoria and the work of two great Americans, Janis and Marvin Zagoria. And I ask that this body recognize the special significance and importance of the Fifth Annual Lauren's Run on May 18 in Atlanta.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Monday, May 12, 1997, the Federal debt stood at $5,344,444,824,118.40. (Five trillion, three hundred forty-four billion, four hundred forty-four million, eight hundred twenty-four thousand, one hundred eighteen dollars and forty cents)

Five years ago, May 12, 1992, the Federal debt stood at $3,886,829,000,000. (Three trillion, eight hundred eighty-six billion, eight hundred twenty-nine million)

Ten years ago, May 12, 1987, the Federal debt stood at $2,271,664,000,000. (Two trillion, two hundred seventy-one billion, six hundred sixty-four million)

Fifteen years ago, May 12, 1982, the Federal debt stood at $1,060,830,000,000. (One trillion, sixty billion, eight hundred thirty million)

Twenty-five years ago, May 12, 1972, the federal debt stood at $427,349,000,000 (Four hundred twenty-seven billion, three hundred forty-nine million) which reflects a debt increase of nearly $5 trillion—$4,917,095,824,118.40 (Four trillion, nine hundred seventeen billion, ninety-five million, eight hundred twenty-four thousand, one hundred eighteen dollars and forty cents) during the past 25 years.

NET DAYS

Mr. KENNEDY. Mr. President, last year Massachusetts was ranked 48th in the Nation in networked classrooms. Only 30 percent—700 out of our more than 2,400 schools—had adequate computer technology and wiring. In a State with such a critical mass of knowledge-based industries requiring a highly-trained, highly skilled work force, this was unacceptable.

So in May 1996, we created the MassNetworks Educational Partnership as a nonprofit collaborative effort to assist our schools in becoming wired to the Internet, and to coordinate what are now called NetDays not only in Massachusetts but all across the country.

We began this effort, to be sure, with an advantage over most other States. Our information technology industries have grown rapidly in recent years. We enjoy strong labor unions and highly dedicated teachers, principals and superintendents, which have combined their expertise to allow us to accomplish much in a brief amount of time.

For our two State NetDays since last May, we have had more than 14,000 volunteers help wire over 800 additional schools in Massachusetts. These volunteers, aided by 15 million dollars' worth of donated and discounted goods, services, and technical support, already have had an enormous impact on the future of Massachusetts. We have truly become a model to the Nation.

However, this effort is not limited to these two NetDays, and we are far from finished. All across the State, parents, children, educators, labor leaders, businesspeople, public servants, and others who care so deeply about education will be continuing to work together to wire more schools, train more teachers and install more hardware throughout the rest of the school year and summer.

The investment we are making will continue to pay off in better results in our schools—students with sharper skills, improved grades, lower absenteeism, improved grades, reduced dropout rates, and improved standards of living when they enter the work force. Studies show that in the year 2000, 70 percent all new jobs will require the type of high-technology skills that only 20 percent of our work force currently possess. If we are to succeed in our endeavor, we must prepare our children with the knowledge they need to be competitive in the next century.

Toward that end, I will work to help Massachusetts be the first State in the Nation to meet President Clinton's goal of wiring all of America's schools to the Internet by the year 2000.

The Internet is the ticket to the information superhighway. The effort taking place in Massachusetts is putting this incredible resource within reach of all students. I strongly commend all those involved.

Education is one of the best investments we can make in the future of this State, and wiring students to the Internet is one of the wisest forms our investment can take. The Internet is the blackboard of the 21st century, and we should be prepared to use it to the fullest of our capability. The Internet is the newest world of information, and the newest frontier to conquer. Much like the shot heard around the world, our dedication to our students must be heard all over the globe.

Ultimately, the strength of this effort comes not from computers and wire, but from our ability to help schools teach and help students learn in new ways. I am confident that we will make the most of the tremendous opportunity that is at hand.

FAMILY CHILD CARE APPRECIATION DAY

Mr. HATCH. Mr. President last Friday, May 9, was ''Family Child Care Provider Appreciation Day'' in Utah and perhaps in other States as well. It is fitting to pay tribute to family-based child care providers who are an essential component of our child care system, both in Utah and throughout the United States.

Family Child Care Providers are self-employed business people caring for up to six children at a time in their own homes for as much as 50 hours per

week. Utah has over 2,000 family child care homes which service about half of the children in child care. Currently, it is estimated that 65 percent of mothers with children under 5 work outside the home, so the need certainly exists for a variety of child care options. Child care provided in individual family homes is one such option.

Some parents for a variety of reasons prefer home environments for their children. Debbie, a child care provider in West Valley City, UT, watched a 2-year-old who was on a feeding tube. It is often very difficult to find care for sick or disabled children; but, in the flexible setting of her home, Debbie was able to provide the personal attention and care needed, making this particular child's experience as positive as possible.

Vicki is a family child care provider in Cedar City, UT. She has provided help for parents who are trying to rebuild their lives. In one case, she provided care for a little girl while her father was in jail and her mother was working, but not earning a lot. Vicki says this family is doing better now. The father is out of jail and holding down a job. Vicki is still caring for their son while his mother works. Vicki says she likes to help families to get off of welfare and to build a better future.

Family child care providers help families like these to achieve the American Dream. Family child care not only helps parents in the work force with peace of mind, but it also provides a supplemental income for mothers who want to be home with their own children.

But do not confuse family child care providers with babysitters. Family care providers in Utah follow the highest of standards; they renew their licences every year by taking 12 credit hours of classes and updating certification in both CPR and first aid on a yearly basis. Utah has over 2,000 family child care homes which service about half of the children in child care. These statistics as well as the level of professionalism in which family child care providers operate is very important when it comes to quality care for our children.

The future of our country depends on the quality of the early childhood experiences provided to young children today. Family child care providers provide important choices for parents who must work. As a strong advocate for putting our children first, I am pleased to honor these outstanding citizens in our communities who are making such a difference. I am happy to join in recognizing their achievements as well as their importance as part of our child care system.

REPORT CONCERNING THE NATIONAL EMERGENCY WITH RESPECT TO IRAN—MESSAGE FROM THE PRESIDENT—PM 34

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs.

To the Congress of the United States:

I hereby report to the Congress on developments since the last Presidential report of November 14, 1996, concerning the national emergency with respect to Iran that was declared in Executive Order 12170 of November 14, 1979. This report is submitted pursuant to section 204(c) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(c) (IEEPA). This report covers events through March 31, 1997. My last report, dated November 14, 1996, covered events through September 16, 1996.

1. The Iranian Assets Control Regulations, 31 CFR Part 535 (IACR), were amended on October 21, 1996 (61 *Fed. Reg.* 54936, October 23, 1996), to implement section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, by adjusting for inflation the amount of the civil monetary penalties that may be assessed under the Regulations. The amendment increases the maximum civil monetary penalty provided in the Regulations from $10,000 to $11,000 per violation.

The amended Regulations also reflect an amendment to 18 U.S.C. 1001 contained in section 330016(1)(L) of Public Law 103–322, September 13, 1994, 108 Stat. 2147. Finally, the amendment notes the availability of higher criminal fines for violations of IEEPA pursuant to the formulas set forth in 18 U.S.C. 3571. A copy of the amendment is attached.

2. The Iran-United States Claims Tribunal (the ''Tribunal''), established at The Hague pursuant to the Algiers Accords, continues to make progress in arbitrating the claims before it. Since the period covered in my last report, the Tribunal has rendered eight awards. This brings the total number of awards rendered to 579, the majority of which have been in favor of U.S. claimants. As of March 24, 1997, the value of awards to successful U.S. claimants from the Security Account held by the NV Settlement Bank was $2,424,959,689.37.

Since my last report, Iran has failed to replenish the Security Account established by the Algiers Accords to ensure payment of awards to successful U.S. claimants. Thus, since November 5, 1992, the Security Account has continuously remained below the $500 million balance required by the Algiers Accords. As of March 24, 1997, the total amount in the Security Account was $183,818,133.20, and the total amount in the Interest Account was $12,053,880.39. Therefore, the United States continues to pursue Case A/28, filed in September 1993, to require Iran to meet its obligation under the Algiers Accords to replenish the Security Account. Iran filed its Rejoinder on April 8, 1997.

The United States also continues to pursue Case A/29 to require Iran to meets its obligation of timely payment of its equal share of advances for Tribunal expenses when directed to do so by the Tribunal. The United States filed its Reply to the Iranian Statement of Defense on October 11, 1996.

Also since my last report, the United States appointed Richard Mosk as one of the three U.S. arbitrators on the Tribunal. Judge Mosk, who has previously served on the Tribunal and will be joining the Tribunal officially in May of this year, will replace Judge Richard Allison, who has served on the Tribunal since 1988.

3. The Department of State continues to pursue other United States Government claims against Iran and to respond to claims brought against the United States by Iran, in coordination with concerned government agencies.

On December 3, 1996, the Tribunal issued its award in Case B/36, the U.S. claim for amounts due from Iran under two World War II military surplus property sales agreements. While the Tribunal dismissed the U.S. claim as to one of the agreements on jurisdictional grounds, it found Iran liable for breach of the second (and larger) agreement and ordered Iran to pay the United States principal and interest in the amount of $43,843,826.89. Following payment of the award, Iran requested the Tribunal to reconsider both the merits of the case and the calculation of interest; Iran's request was denied by the Tribunal on March 17, 1997.

Under the February 22, 1996, agreement that settled the Iran Air case before the International Court of Justice and Iran's bank-related claims against the United States before the Tribunal (reported in my report of May 17, 1996), the United States agreed to make ex gratia payments to the families of Iranian victims of the 1988 Iran Air 655 shootdown and a fund was established to pay Iranian bank debt owed to U.S. nationals. As of March 17, 1997, payments were authorized to be made to surviving family members of 125 Iranian victims of the aerial incident, totaling $29,100,000.00. In addition, payment of 28 claims by U.S. nationals against Iranian banks, totaling $9,002,738.45 was authorized.

On December 12, 1996, the Department of State filed the U.S. Hearing Memorial and Evidence on Liability in Case A/11. In this case, Iran alleges that the United States failed to perform its obligations under Paragraphs 12–14 of the Algiers Accords, relating to the return to Iran of assets of the late Shah and his close relatives. A hearing date has yet to be scheduled.

On October 9, 1996, the Tribunal dismissed Case B/58, Iran's claim for damages arising out of the U.S. operation of Iran's southern railways during the Second World War. The Tribunal held that it lacked jurisdiction over the claim under Article II, paragraph two, of the Claims Settlement Declaration.

4. Since my last report, the Tribunal conducted two hearings and issued

awards in six private claims. On February 24–25, 1997, Chamber One held a hearing in a dual national claim, *G.E. Davidson* v. *The Islamic Republic of Iran*, Claim No. 457. The claimant is requesting compensation for real property that he claims was expropriated by the Government of Iran. On October 24, 1996, Chamber Two held a hearing in Case 274, *Monemi* v. *The Islamic Republic of Iran*, also concerning the claim of a dual national.

On December 2, 1996, Chamber Three issued a decision in *Johangir & Jila Mohtadi* v. *the Islamic Republic of Iran* (AWD 573–271–3), awarding the claimants $510,000 plus interest for Iran's interference with the claimants' property rights in real property in Velenjak. The claimants also were awarded $15,000 in costs. On December 10, 1996, Chamber Three issued a decision in *Reza Nemazee* v. *The Islamic Republic of Iran* (AWD 575–4–3), dismissing the expropriation claim for lack of proof. On February 25, 1997, Chamber Three issued a decision in *Dadras Int'l* v. *The Islamic Republic of Iran* (AWD 578–214–3), dismissing the claim against Kan Residential Corp. for failure to prove that it is an ''agency, instrumentality, or entity controlled by the Government of Iran'' and dismissing the claim against Iran for failure to prove expropriation or other measures affecting property rights. Dadras had previously received a substantial recovery pursuant to a partial award. On March 26, 1997, Chamber Two issued a final award in Case 389, *Westinghouse Electric Corp.* v. *The Islamic Republic of Iran Air Force* (AWD 579–389–2), awarding Westinghouse $2,553,930.25 plus interest in damages arising from the Iranian Air Force's breach of contract with Westinghouse.

Finally, there were two settlements of claims of dual nationals, which resulted in awards on agreed terms. They are *Dora Elghanayan, et al.* v. *The Islamic Republic of Iran* (AAT 576–800/801/802/803/804–3), in which Iran agreed to pay the claimants $3,150,000, and *Lilly Mythra Fallah Lawrence* v. *The Islamic Republic of Iran* (AAT 577–390/381–1), in which Iran agreed to pay the claimant $1,000,000.

5. The situation reviewed above continues to implicate important diplomatic, financial, and legal interests of the United States and its nationals and presents an unusual challenge to the national security and foreign policy of the United States. The Iranian Assets Control Regulations issued pursuant to Executive Order 12170 continue to play an important role in structuring our relationship with Iran and in enabling the United States to implement properly the Algiers Accords. I shall continue to exercise the powers at my disposal to deal with these problems and will continue to report periodically to the Congress on significant developments.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *May 13, 1997.*

MESSAGES FROM THE HOUSE

At 5:05 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House agrees to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 66. Concurrent resolution authorizing the use of the Capitol grounds for the sixteenth annual National Peace Officers' Memorial Service.

At 6:50 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 5. An act to amend the Individuals with Disabilities Education Act, to reauthorize and make improvements to that Act, and for other purposes.

MEASURES REFERRED

The following concurrent resolution, previously from the House for the concurrence of the Senate, was read, and referred as indicated:

H. Con Res. 8. Concurrent resolution recognizing the significance of maintaining the health and stability of coral reef ecosystems; to the Committee on Commerce, Science, and Transportation.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–1851. A communication from the Chief Financial Officer of the Department of State, transmitting, pursuant to law, a rule entitled ''Visas'' received on April 30, 1997; to the Committee on Foreign Relations.

EC–1852. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, the report of the texts of international agreements, other than treaties, and background statements; to the Committee on Foreign Relations.

EC–1853. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, the report of the certification of the proposed issuance of an export license; to the Committee on Foreign Relations.

EC–1854. A communication from the President of the Inter-American Foundation, transmitting, a draft of proposed legislation to authorize funds for fiscal year 1999; to the Committee on Foreign Relations.

EC–1855. A communication from the Performance Evaluation and Records Management, Federal Communications Commission, transmitting, pursuant to law, fifteen rules including rules relative to FM radio stations; to the Committee on Commerce, Science, and Transportation.

EC–1856. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, thirty-nine rules including a rule entitled ''Public Availability of Information'' (RIN2105–AC58, 2125–AE12, 2115–AA97, 2115–AE47, 2120–AF08, 2120–AA66, 2120–AA64, 2120–A64, 2120–AG24, 2105–AB73, 2105–AC36, 2115–AA97, 2115–AE46, 2115–AF24, 2115–AE84, 2137–AD00, 96–ASW–36, 96–ASW–35, 96–ASW–34, 2120–AG17); to the Committee on Commerce, Science, and Transportation.

EC–1857. A communication from the Acting Administrator of the Federal Aviation Administration and the Administrator of the National Aeronautics and Space Administration, transmitting jointly, pursuant to law, a report on subsonic noise reduction technology; to the Committee on Commerce, Science, and Transportation.

EC–1858. A communication from the Director of the National Science Foundation, transmitting, pursuant to law, a report on polar issues; to the Committee on Commerce, Science, and Transportation.

EC–1859. A communication from the Secretary of Transportation, transmitting, a draft of proposed legislation entitled ''The Saint Lawrence Seaway Development Corporation Performance Based Organization Act of 1997''; to the Committee on Commerce, Science, and Transportation.

EC–1860. A communication from the Secretary of Transportation, transmitting, a draft of proposed legislation to authorize certain programs of the Federal Aviation Administration, and for other purposes; to the Committee on Commerce, Science, and Transportation.

EC–1861. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report on the guarantee of obligations; to the Committee on Commerce, Science, and Transportation.

EC–1862. A communication from the Secretary of Transportation, transmitting, pursuant to law, the report of the Maritime Administration for fiscal year 1996; to the Committee on Commerce, Science, and Transportation.

EC–1863. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report entitled ''The Automotive Fuel Economy Program''; to the Committee on Commerce, Science, and Transportation.

EC–1864. A communication from the Director of the Office of Sustainable Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, eight rules including a rule entitled ''Fisheries Off West Coast and Western Pacific States'' (RIN0648–AJ09, AJ39); to the Committee on Commerce, Science, and Transportation.

EC–1865. A communication from the Acting Assistant Administrator For Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, a rule entitled ''Financial Assistance for Research and Development Projects'' (RIN0648–ZA09) received on May 5, 1997; to the Committee on Commerce, Science, and Transportation.

EC–1866. A communication from the Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, three rules including a rule entitled ''Fisheries Off West Coast States'' (RIN0648–AI19, 0648–XX77); to the Committee on Commerce, Science, and Transportation.

EC–1867. A communication from the Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, three rules including a rule entitled ''Fisheries in the Exclusive Economic Zone Off Alaska'' (RIN064–AJ35, ZA28); to the Committee on Commerce, Science, and Transportation.

EC–1868. A communication from the Acting Director of the Office of Sustainable Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, a rule entitled ''Fisheries Off West Coast and Western Pacific'' received on April 25, 1997; to the Committee on Commerce, Science, and Transportation.

EC–1869. A communication from the Assistant Administrator for Satellite and Information Services, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, a rule entitled ''Schedule of Fees'' received on May 7, 1997; to the Committee on Commerce, Science, and Transportation.

EC–1870. A communication from the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska''; to the Committee on Commerce, Science, and Transportation.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. DOMENICI:

S. 736. A bill to convey certain real property within the Carlsbad Project in New Mexico to the Carlsbad Irrigation District; to the Committee on Energy and Natural Resources.

By Mr. BAUCUS (for himself and Mr. CHAFEE):

S. 737. A bill to authorize the extension of nondiscriminatory treatment (most-favored-nation treatment) to the products of the People's Republic of China; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOMENICI:

S. 736. A bill to convey real property within the Carlsbad project in New Mexico to the Carlsbad Irrigation District; to the Committee on Energy and Natural Resources.

THE CARLSBAD IRRIGATION PROJECT ACQUIRED LAND TRANSFER ACT

● Mr. DOMENICI. Mr. President, today I am introducing legislation that will convey tracts of land, referred to as ''acquired lands,'' to the Carlsbad Irrigation District in New Mexico. These are lands that were once owned by the beneficiaries of the irrigation project, and acquired by the Federal Government when the Bureau of Reclamation assumed the responsibility of construction and operation of the irrigation project in the early part of this century. Since that time, the Carlsbad Irrigation District has repaid its indebtedness to the Federal Government, which included not only its contractual share of construction costs, but also all costs associated with the project land and facilities that were acquired from the project beneficiaries.

This legislation is specific to the Carlsbad project in New Mexico, and directs the Carlsbad Irrigation District to continue to manage the lands as they have been in the past, for the purposes for which the project was constructed. It will accomplish three things: First, convey title to acquired lands and facilities to the District; second, allow the District to assume the management of leases and the benefits of the receipts from these acquired lands; and third, provide authority for the Bureau of Reclamation to cooperate with the Carlsbad Irrigation District on water conservation projects at the Carlsbad project. This bill protects the interests that the State of New Mexico has in some of those lands.

During the 104th Congress, the Carlsbad Irrigation District presented testimony related to the transfer of acquired lands before the Committee on Energy and Natural Resources on one occasion, and before the House Committee on Resources on two occasions. Additionally, the administration expressed on several occasions before these two committees that they want to move forward with acquired land transfers where they make sense. The Commissioner of the Bureau of Reclamation, Eluid Martinez, has informed the district and me that he believes that the Carlsbad project is one of several projects where the Bureau would like to pursue transfer opportunities. With this in mind, I believe that the legislation I am introducing today will provide the Bureau with the ability to accomplish their stated goal in a fair and equitable manner.

Mr. President, I understand that similar legislation will soon be introduced in the House of Representatives by Congressman JOE SKEEN, and I am hopeful that we will be able to move this bill through Congress, and coordinate our efforts with the administration's stated objectives. I encourage my colleagues to support this legislation, and ask unanimous consent the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 736

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Carlsbad Irrigation Project Acquired Land Transfer Act''.

SEC. 2. CONVEYANCE.

(a) LANDS AND FACILITIES.—

(1) IN GENERAL.—Except as provided in paragraph (2), and subject to the conditions set forth in subsection (c) and section 2(b), the Secretary of the Interior (in this Act referred to as the ''Secretary'') is hereby authorized to convey all right, title, and interest of the United States in and to the lands described in subsection (b) (in this Act referred to as the ''acquired lands'') in addition to all interests the United States holds in the irrigation and drainage system of the Carlsbad Project and all related lands including ditch rider houses, maintenance shop and buildings, and Pecos River Flume to the Carlsbad Irrigation District (a quasi-municipal corporation formed under the laws of the State of New Mexico and in this Act referred to as the ''District'').

(2) LIMITATIONS.—

(A) The Secretary shall retain title to the surface estate of such acquired lands which are located under the footprint of Brantley and Avalon dams or any other project dam or reservoir diversion structure.

(B) The Secretary shall retain storage and flow easements for any tracts located under the maximum spillway elevations of Avalon and Brantley Reservoirs.

(b) ACQUIRED LANDS DESCRIBED.—The lands referred to in subsection (a) are those lands (including the surface and mineral estate) in Eddy County, New Mexico, described as the acquired lands in section (7) of the ''Status of Lands and Title Report: Carlsbad Project'' as reported by the Bureau of Reclamation in 1978.

(c) TERMS AND CONDITIONS OF CONVEYANCE.—Any conveyance of the acquired lands under this Act shall be subject to the following terms and conditions:

(1) The conveyed lands shall continue to be managed and used by the District for the purposes for which the Carlsbad Project was authorized, consistent with existing management of such lands and other adjacent project lands.

(2) Except as provided in paragraph (3), the District shall assume all rights and obligations of the United States under—

(A) the agreement dated July 28, 1994, between the United States and the Director, New Mexico Department of Game and Fish (Document No. 2–LM–40–00640), relating to management of certain lands near Brantley Reservoir for fish and wildlife purposes; and

(B) the agreement dated March 9, 1977, between the United States and the New Mexico Department of Energy, Minerals, and Natural Resources (Contract No. 7–07–57–X0888) for the management and operation of Brantley Lake State Park.

(3) EXCEPTIONS.—In relation to agreements referred to in paragraph (2)—

(A) The District shall not be obligated for any financial support agreed to by the Secretary, or the Secretary's designee, in either agreement; and

(B) The District shall not be entitled to any receipts or revenues generated as a result of either agreement.

(d) SENSE OF THE CONGRESS.—It is the sense of the Congress that the Secretary should complete the conveyance authorized by this Act, including such action as may be required under the National Environmental Policy Act of 1969 (42 U.S.C. et seq.) within 9 months of the date of enactment of this Act.

(e) REPORT TO CONGRESS.—If the conveyance authorized by this Act is not completed by the Secretary within 9 months of the date of enactment of this Act, the Secretary shall prepare a report to the Congress which shall include a detailed explanation of problems that have been encountered in completion of the conveyance, and specific steps that the Secretary has taken or will take to complete the conveyance. The Secretary's report shall be transmitted to the Committee on Resources of the House of Representatives, and to the Committee on Energy and Natural Resources of the Senate within 30 days after the expiration of such 9 month period.

SEC. 3. LEASE MANAGEMENT AND PAST REVENUES COLLECTED FROM THE ACQUIRED LANDS.

(a) IDENTIFICATION AND NOTIFICATION OF LEASEHOLDERS.—Within 120 days after the date of enactment of this Act, the Secretary of the Interior shall provide to the District a written identification of all mineral and grazing leases in effect on the acquired lands on the date of enactment of this Act, and the Secretary of the Interior shall notify all leaseholders of the conveyance authorized by this Act.

(b) MANAGEMENT OF MINERAL AND GRAZING LEASES, LICENSES, AND PERMITS.—The District shall assume all rights and obligations of the United States for all mineral and grazing leases, licenses, and permits existing on the acquired lands conveyed under section 2, and shall be entitled to any receipts from such leases, licenses and permits accruing after the date of conveyance: *Provided,* That all such receipts shall be used for purposes for which the project was authorized. The District shall continue to adhere to the current Bureau of Reclamation mineral leasing stipulations for the Carlsbad Project: *Provided further,* That all future mineral leases from acquired lands within a one mile radius of Brantley and Avalon dams shall subject to the approval of the Secretary prior to consummation of the lease.

(c) AVAILABILITY OF AMOUNTS PAID INTO RECLAMATION FUND.—Receipts paid into the reclamation fund which exist as construction credits to the Carlsbad Project under the terms of the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351–359) as amended shall be made available to the District as credits towards its ongoing operation and maintenance obligation to the United States until such credits are depleted: *Provided,* That immediately following the enactment of this Act, such receipts collected by the Minerals Management Service, not to exceed $200,000, shall be made available to the Secretary for the purpose of offsetting the actual cost of implementing this Act: *Provided further,* That any receipts collected by the Minerals Management Service, prior to the actual date of conveyance, which are in excess of $200,000 shall be deposited into the reclamation fund and added to existing construction credits to the Carlsbad Project.

SEC. 4. WATER CONSERVATION PRACTICES.

The Secretary, in cooperation with the District, is hereby authorized to expend not to exceed $100,000 annually, from amounts appropriated for operation and maintenance within the Bureau of Reclamation, for the purposes of implementing water conservation practices at the Carlsbad Irrigation Project, including but not limited to phreatophyte control: *Provided,* That matching funds shall be provided by the District in direct proportion to the amount of project lands held by the District in relation to withdrawn or other project lands held by the United States: *Provided further,* That nothing in this Act shall be construed to limit the ability of the District to voluntarily implement water conservation practices.●

By Mr. BAUCUS (for himself and Mr. CHAFEE):

S. 737. A bill to authorize the extension of nondiscriminatory treatment (most-favored-nation treatment) to the products of the People's Republic of China; to the Committee on Finance.

CHINA TRADING RELATIONS LEGISLATION

Mr. CHAFEE. Mr. President, today I am joining with Senator BAUCUS to introduce legislation authorizing the President to extend most-favored-nation, or normal trading relations, status to China on a permanent basis.

Since 1989, Congress has engaged in an annual, and very public, debate about the extension of MFN to China. These debates have been highly charged. But over the years, the repetition of this debate has carried a heavy price tag, with little to no positive results to show for it.

In fact, the constant debate as to whether or not the United States should continue normal trade relations with China has come at great expense to the overall health of the bilateral relationship between these two great and powerful nations. And that, in turn, has had real—and negative—repercussions for the United States, its citizens, and even the Chinese people themselves. We need to look toward a day where this annual MFN rollercoaster will be replaced by a stable, long-term economic foundation between these two superpowers. It is toward that end that we are introducing this legislation.

CONDITIONING MFN IN ORDER TO INFLUENCE CHINA'S BEHAVIOR HAS NOT WORKED

China has received MFN treatment every year since 1980. In 1989, however, after the brutal suppression of demonstrators at Tiananmen Square, some legislators proposed trying to influence Chinese behavior by threatening to revoke China's MFN status, starting this cycle of highly charged—and often political—debates.

But is MFN an effective tool for influencing Chinese behavior, as those legislators hoped? No. We saw that all too clearly in 1993, when President Clinton attempted to condition further renewal upon improvements in human rights. Were there improvements during that time? No. Finally, in 1994 the President came to the conclusion that retaining MFN, rather than threatening its removal, ''offers us the best opportunity to lay the basis for long-term sustainable progress in human rights, and for the advancement of our other interests with China.''

It is clear that revoking MFN is not an effective tool for promoting change in China—a fact other nations recognized long ago. Therefore, we should begin removing MFN entirely from the debate, and eventually render it permanent.

ANNUAL MFN DEBATE OVERALL HAS NOT BEEN PRODUCTIVE FOR THE UNITED STATES–CHINA RELATIONSHIP

Not only is MFN status a poor tool for spurring change in China, but the annual debate itself has contributed to poor United States-China relations. By focusing solely on the renewal of MFN, we in the United States have found ourselves distracted from the larger, critically important issues involving the United States–China bilateral relationship. Indeed, I believe that for the past 8 years, the ability of the two nations to work together productively has been partly paralyzed by the ongoing MFN debate.

Progress on important matters—both those in which we and China have a common interest, such as stability in Asia, and those in which our two nations do not see eye to eye—such as international involvement in human rights—has not been helped by the continuing controversy over MFN. The Chinese, who, as history has shown, tend to react negatively to public confrontation, have been less open to working with the United States to address issues of common concern. The United States, which must continue to deal with China as an emerging superpower, has been forced on the defensive when dealing with the Chinese.

This state of affairs cannot continue indefinitely. We need to move toward removing MFN as a factor in our already complicated and complex bilateral relationship with China if we want to stabilize that relationship and make progress on issues that matter to the American public. Too much else is at stake—for both nations.

THE STABILITY OF THE UNITED STATES-CHINA RELATIONSHIP IS IMPORTANT FOR AMERICANS—AND FOR THE CHINESE PEOPLE

Why is a stable United States-China relationship important for Americans? For a number of reasons.

First, Americans traditionally have worked to promote democratic ideals around the globe. As a society, we have an interest in encouraging such ideals as respect for human rights in other nations. A solid, stable relationship with the Chinese can, over time, bring such improvements to pass—with great benefit for the Chinese people.

Second, American have a vested interest in promoting international security. Securing nuclear nonproliferation and defusing regional conflicts overseas mean a great deal to the overall well-being of Americans and their families. If we want to see these goals advanced, we must work with China, an emerging superpower.

Third, and very importantly, Americans have a direct economic tie to the Chinese economy. We now export some $12 billion worth of goods to China—exports that include plastic packaging systems made by the 125 employees at Marshall & Williams Co. in Providence, Rhode Island. And we import nearly four times as much—$46 billion—from China—imports that include toys for children. Not only do families across the United States buy those toys, but the 1,600 workers at Hasbro in Pawtucket, RI, rely on those sales to keep their company strong and their jobs in place. Clearly, there is much to do to address the enormous trade imbalance between our two nations. But notwithstanding that imbalance, the current level of the United States/China economic interaction is so significant that if it were disrupted, the negative repercussions for our own economy would be staggering.

In sum, we have many important challenges facing us that require a steady, stable United States/China relationship. Whether it is nuclear nonproliferation, adherence to human rights, security around the globe, protection of intellectual property, or the transition of Hong Kong, we must continue to work with the Chinese, using the tools of diplomacy and of laws that are tailored to those purposes.

PERMANENT MFN WILL BE ESPECIALLY APPROPRIATE AS CHINA ENTERS THE GLOBAL TRADING SYSTEM

The eventual adoption of permanent MFN for China is in the interests of the United States. Our actions today are

meant to encourage Congress and the administration to begin consideration of that next step. We do not expect or intend for this bill to be considered this year.

But our action does come at an important time. The Chinese Government now is taking steps to join the world community and its institutions. Chief among these steps is China's bid to join the global trading system known as the World Trade Organization. If successful, this move will bring China into line with the trading practices of the 120-plus nations that now are WTO members.

To be successful, China will have to agree to accede to the WTO on terms that are commercially viable—or to put it more simply, that are fair to other nations in terms of market access, nondiscrimination, enforcement, and other important areas. Should China enter the global trading system on such terms, it would be a natural point at which the United States could move forward with permanent MFN.

If we begin considering this issue now, it may ripen at a time that is beneficial to both the United States and China.

SUMMARY: PERMANENT MFN IS IN THE BEST INTEREST OF THE UNITED STATES

In sum, the permanent grant of MFN to China is in the best interest of the United States and her citizens. It will end for once and for all the annual debate that is actively hindering—not helping—the achievement of important American goals, thereby allowing the establishment of a stable relationship that would bring prosperity and growth to both nations. Over the next year, as China takes serious steps toward full integration in the global economy, the granting of permanent MFN will make more and more sense. We think the United States should begin laying the groundwork now, and we are introducing our bill today toward that end.

ADDITIONAL COSPONSORS

S. 50

At the request of Mr. FAIRCLOTH, the names of the Senator from Nevada [Mr. REID], the Senator from Vermont [Mr. JEFFORDS], and the Senator from Mississippi [Mr. LOTT] were added as cosponsors of S. 50, a bill to amend the Internal Revenue Code of 1986 to provide a nonrefundable tax credit for the expenses of an education at a 2-year college.

S. 143

At the request of Mr. DASCHLE, the name of the Senator from Georgia [Mr. CLELAND] was added as a cosponsor of S. 143, a bill to amend the Public Health Service Act and Employee Retirement Income Security Act of 1974 to require that group and individual health insurance coverage and group health plans provide coverage for a minimum hospital stay for mastectomies and lymph node dissections performed for the treatment of breast cancer.

S. 294

At the request of Mrs. HUTCHISON, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 294, a bill to amend chapter 51 of title 18, United States Code, to establish Federal penalties for the killing or attempted killing of a law enforcement officer of the District of Columbia, and for other purposes.

S. 369

At the request of Mr. JEFFORDS, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of S. 369, a bill to amend section 1128B of the Social Security Act to repeal the criminal penalty for fraudulent disposition of assets in order to obtain medicaid benefits added by section 217 of the Health Insurance Portability and Accountability Act of 1996.

S. 381

At the request of Mr. ROCKEFELLER, the name of the Senator from Oregon [Mr. SMITH] was added as a cosponsor of S. 381, a bill to establish a demonstration project to study and provide coverage of routine patient care costs for medicare beneficiaries with cancer who are enrolled in an approved clinical trail program.

S. 387

At the request of Mr. HATCH, the names of the Senator from Florida [Mr. MACK] and the Senator from West Virginia [Mr. ROCKEFELLER] were added as cosponsors of S. 387, a bill to amend the Internal Revenue Code of 1986 to provide equity to exports of software.

S. 389

At the request of Mr. ABRAHAM, the name of the Senator from Tennessee [Mr. FRIST] was added as a cosponsor of S. 389, a bill to improve congressional deliberation on proposed Federal private sector mandates, and for other purposes.

S. 422

At the request of Mr. DOMENICI, the name of the Senator from Maine [Ms. SNOWE] was added as a cosponsor of S. 422, a bill to define the circumstances under which DNA samples may be collected, stored, and analyzed, and genetic information may be collected, stored, analyzed, and disclosed, to define the rights of individuals and persons with respect to genetic information, to define the responsibilities of persons with respect to genetic information, to protect individuals and families from genetic discrimination, to establish uniform rules that protect individual genetic privacy, and to establish effective mechanisms to enforce the rights and responsibilities established under this Act.

S. 456

At the request of Ms. MOSELEY-BRAUN, the name of the Senator from California [Mrs. FEINSTEIN] was added as a cosponsor of S. 456, a bill to establish a partnership to rebuild and modernize America's school facilities.

S. 460

At the request of Mr. BOND, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of S. 460, bill to amend the Internal Revenue Code of 1986 to increase the deduction for health insurance costs of self-employed individuals, to provide clarification for the deductibility of expenses incurred by a taxpayer in connection with the business use of the home, to clarify the standards used for determining that certain individuals are not employees, and for other purposes.

S. 497

At the request of Mr. COVERDELL, the name of the Senator from Arkansas [Mr. HUTCHINSON] was added as a cosponsor of S. 497, a bill to amend the National Labor Relations Act and the Railway Labor Act to repeal the provisions of the Acts and that require employees to pay union dues or fees as a condition of employment.

S. 586

At the request of Mr. MOYNIHAN, the names of the Senator from Alaska [Mr. STEVENS] and the Senator from Alaska [Mr. MURKOWSKI] were added as cosponsors of S. 586, a bill to reauthorize the Intermodal Surface Transportation Efficiency Act of 1991, and for other purposes.

S. 609

At the request of Mr. KENNEDY, the names of the Senator from Georgia [Mr. CLELAND], the Senator from Arkansas [Mr. BUMPERS], and the Senator from South Dakota [Mr. JOHNSON] were added as cosponsors of S. 609, a bill to amend the Public Health Service Act and Employee Retirement Income Security Act of 1974 to require that group and individual health insurance coverage and group health plans provide coverage for reconstructive breast surgery if they provide coverage for mastectomies.

S. 693

At the request of Mr. D'AMATO, the names of the Senator from Alaska [Mr. MURKOWSKI] and the Senator from Mississippi [Mr. COCHRAN] were added as cosponsors of S. 693, a bill to amend the Internal Revenue Code of 1986 to provide that the value of qualified historic property shall not be included in determining the taxable estate of a decedent.

S. 717

At the request of Mr. COVERDELL, the name was added as a cosponsor of S. 717, a bill to amend the Individuals with Disabilities Education Act, to reauthorize and make improvements to that Act, and for other purposes.

SENATE CONCURRENT RESOLUTION 21

At the request of Mr. MOYNIHAN, the names of the Senator from New Hampshire [Mr. GREGG] and the Senator from Alabama [Mr. SHELBY] were added as cosponsors of Senate Concurrent Resolution 21, a concurrent resolution congratulating the residents of Jerusalem and the people of Israel on the thirtieth anniversary of the reunification of that historic city, and for other purposes.

SENATE RESOLUTION 16

At the request of Mr. LUGAR, the name of the Senator from Arkansas

[Mr. HUTCHINSON] was withdrawn as a cosponsor of Senate Resolution 16, a resolution expressing the sense of the Senate that the income tax should be eliminated and replaced with a national sales tax.

SENATE RESOLUTION 63

At the request of Mr. DOMENICI, the names of the Senator from Michigan [Mr. ABRAHAM], the Senator from Texas [Mrs. HUTCHISON], the Senator from Georgia [Mr. COVERDELL], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Nevada [Mr. REID], the Senator from Idaho [Mr. CRAIG], the Senator from Delaware [Mr. BIDEN], the Senator from Louisiana [Mr. BREAUX], the Senator from Florida [Mr. MACK], the Senator from Wyoming, [Mr. ENZI], the Senator from Ohio [Mr. DEWINE] were added as cosponsors of Senate Resolution Act 63, a resolution proclaiming the week of October 19 through October 25, 1997, as ''National Character Counts Week.''

SENATE RESOLUTION 85

At the request of Mr. GREGG, the names of the Senator from New Jersey, [Mr. TORRICELLI] and the Senator from Pennsylvania [Mr. SANTORUM] were added as cosponsors of Senate Resolution 85, a resolution expressing the sense of the Senate that individuals affected by breast cancer should not be alone in their fight against the disease.

AMENDMENTS SUBMITTED

THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT AMENDMENTS OF 1997

JEFFORDS AMENDMENT NO. 242

Mr. JEFFORDS proposed an amendment to the bill (S. 717) to amend the Individuals With Disabilities Education Act, to reauthorize and make improvements to that act, and for other purposes; as follows:

On page 3, strike the item relating to section 641 of the Individuals with Disabilities Education Act and insert the following:

''Sec. 641. State Interagency Coordinating Council.''

On page 3, strike the item relating to section 644 of the Individuals with Disabilities Education Act and insert the following:

''Sec. 644. Federal Interagency Coordinating Council.''

On page 19, line 19, strike ''Alaskan'' and insert ''Alaska''.

On page 26, line 4, strike ''are'' and insert ''is''.

On page 26, line 12, strike ''are'' and insert ''is''.

On page 26, line 15, strike ''include'' and insert ''includes''.

On page 35, line 5, strike ''identify'' and insert ''the identity of''.

On page 55, line 17, strike ''ages'' and insert ''aged''.

On page 55, line 19, insert ''the'' before ''Bureau''.

On page 94, line 24, strike ''Federal or State Supreme court'' and insert ''Federal court or a State's highest court''.

On page 102, strike line 3 and insert the following: ''(i) Notwithstanding clauses (ii) and''.

On page 140, line 15, strike ''team'' and insert ''Team''.

On page 140, line 22, strike ''team'' and insert ''Team''.

On page 177, line 8, strike ''661'' and insert ''661,''.

On page 196, line 18, strike ''allocations'' and insert ''allotments''.

On page 201, line 22, strike ''with disabilities'' after ''toddlers''.

On page 203, line 23, strike '', consistent with State law,'' after ''(a)(9)''.

On page 208, line 22, strike ''636(a)(10)'' and insert ''635(a)(10)''.

On page 216, line 6, strike ''the child'' and insert ''the infant or toddler''.

On page 216, line 7, strike ''the child'' and insert ''the infant or toddler''.

On page 221, line 5, strike ''A'' and insert ''At least one''.

On page 221, line 8, strike ''A'' and insert ''At least one''.

On page 226, line 4, strike ''paragraph'' and insert ''subsection''.

On page 226, line 7, strike ''allocated'' and insert ''distributed''.

On page 229, line 20, strike ''allocations'' and insert ''allotments''.

On page 229, line 24 and 25, strike ''allocations'' and insert ''allotments''.

On page 231, strike line 17, and insert the following ''ferred to as the ''Council'') and the chairperson of''.

On page 260, line 4, strike ''who'' and insert ''that''.

On page 267, line 15, strike ''paragraph'' before ''(1)''.

On page 326, between lines 11 and 12, insert the following:

''(D) SECTIONS 611 AND 619.—Sections 611 and 619, as amended by Title I, shall take effect beginning with funds appropriated for fiscal year 1998.''

GORTON (AND SMITH OF NEW HAMPSHIRE) AMENDMENT NO. 243

Mr. GORTON (for himself and Mr. SMITH of New Hampshire) proposed an amendment to the bill, S. 717, supra; as follows:

On page 169, between lines 11 and 12, insert the following:

''(10) UNIFORM DISCIPLINARY POLICIES.—Notwithstanding any other provision of this Act, each State educational agency or local educational agency may establish and implement uniform policies with respect to discipline and order applicable to all children within its jurisdiction to ensure the safety and appropriate educational atmosphere in its schools.''

On page 169, line 12, strike ''(10)'' and insert ''(11)''.

THE FAMILY FRIENDLY WORKPLACE ACT OF 1997

MURRAY AMENDMENT NO. 244

(Ordered to lie on the table.)

Mrs. MURRAY submitted an amendment intended to be proposed by her to the bill (S. 4) to amend the Fair Labor Standards Act of 1938 to provide to private sector employees the same opportunities for time-and-a-half compensatory time off, biweekly work programs, and flexible credit hour programs as Federal employees currently enjoy to help balance the demands and needs of work and family, to clarify the provisions relating to exemptions of certain professionals from the minimum wage and overtime requirements of the Fair Labor Standards Act of 1938, and for other purposes; as follows:

At the end, add the following:

TITLE II—SCHOOL INVOLVEMENT LEAVE

SEC. 201. SHORT TITLE.

This title may be cited as the ''Time for Schools Act of 1997''.

SEC. 202. GENERAL REQUIREMENTS FOR LEAVE.

(a) ENTITLEMENT TO LEAVE.—Section 102(a) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2612(a)) is amended by adding at the end the following:

''(3) ENTITLEMENT TO SCHOOL INVOLVEMENT LEAVE.—

''(A) IN GENERAL.—Subject to section 103(f), an eligible employee shall be entitled to a total of 24 hours of leave during any 12-month period to participate in an activity of a school of a son or daughter of the employee, such as a parent-teacher conference or an interview for a school, or to participate in literacy training under a family literacy program.

''(B) DEFINITIONS.—In this paragraph:

''(i) FAMILY LITERACY PROGRAM.—The term 'family literacy program' means a program of services that are of sufficient intensity in terms of hours, and of sufficient duration, to make sustainable changes in a family and that integrate all of the following activities:

''(I) Interactive literacy activities between parents and their sons and daughters.

''(II) Training for parents on how to be the primary teacher for their sons and daughters and full partners in the education of their sons and daughters.

''(III) Parent literacy training.

''(IV) An age-appropriate education program for sons and daughters.

''(ii) LITERACY.—The term 'literacy', used with respect to an individual, means the ability of the individual to speak, read, and write English, and compute and solve problems, at levels of proficiency necessary—

''(I) to function on the job, in the family of the individual, and in society;

''(II) to achieve the goals of the individual; and

''(III) to develop the knowledge potential of the individual.

''(iii) SCHOOL.—The term 'school' means an elementary school or secondary school (as such terms are defined in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801)), a Head Start program assisted under the Head Start Act (42 U.S.C. 9831 et seq.), and a child care facility operated by a provider who meets the applicable State or local government licensing, certification, approval, or registration requirements, if any.

''(4) LIMITATION.—No employee may take more than a total of 12 workweeks of leave under paragraphs (1) and (3) during any 12-month period.''.

(b) SCHEDULE.—Section 102(b)(1) of such Act (29 U.S.C. 2612(b)(1)) is amended by inserting after the second sentence the following: ''Leave under subsection (a)(3) may be taken intermittently or on a reduced leave schedule.''.

(c) SUBSTITUTION OF PAID LEAVE.—Section 102(d)(2)(A) of such Act (29 U.S.C. 2612(d)(2)(A)) is amended by inserting before the period the following: '', or for leave provided under subsection (a)(3) for any part of the 24-hour period of such leave under such subsection''.

(d) NOTICE.—Section 102(e) of such Act (29 U.S.C. 2612(e)) is amended by adding at the end the following:

''(3) NOTICE FOR SCHOOL INVOLVEMENT LEAVE.—In any case in which the necessity

for leave under subsection (a)(3) is foreseeable, the employee shall provide the employer with not less than 7 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subsection. If the necessity for the leave is not foreseeable, the employee shall provide such notice as is practicable.''.

(e) CERTIFICATION.—Section 103 of such Act (29 U.S.C. 2613) is amended by adding at the end the following:

''(f) CERTIFICATION FOR SCHOOL INVOLVEMENT LEAVE.—An employer may require that a request for leave under section 102(a)(3) be supported by a certification issued at such time and in such manner as the Secretary may by regulation prescribe.''.

SEC. 203. SCHOOL INVOLVEMENT LEAVE FOR CIVIL SERVICE EMPLOYEES.

(a) ENTITLEMENT TO LEAVE.—Section 6382(a) of title 5, United States Code, is amended by adding at the end the following:

''(3)(A) Subject to section 6383(f), an employee shall be entitled to a total of 24 hours of leave during any 12-month period to participate in an activity of a school of a son or daughter of the employee, such as a parent-teacher conference or an interview for a school, or to participate in literacy training under a family literacy program.

''(B) In this paragraph:

''(i) The term 'family literacy program' means a program of services that are of sufficient intensity in terms of hours, and of sufficient duration, to make sustainable changes in a family and that integrate all of the following activities:

''(I) Interactive literacy activities between parents and their sons and daughters.

''(II) Training for parents on how to be the primary teacher for their sons and daughters and full partners in the education of their sons and daughters.

''(III) Parent literacy training.

''(IV) An age-appropriate education program for sons and daughters.

''(ii) The term 'literacy', used with respect to an individual, means the ability of the individual to speak, read, and write English, and compute and solve problems, at levels of proficiency necessary—

''(I) to function on the job, in the family of the individual, and in society;

''(II) to achieve the goals of the individual; and

''(III) to develop the knowledge potential of the individual.

''(iii) The term 'school' means an elementary school or secondary school (as such terms are defined in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801)), a Head Start program assisted under the Head Start Act (42 U.S.C. 9831 et seq.), and a child care facility operated by a provider who meets the applicable State or local government licensing, certification, approval, or registration requirements, if any.

''(4) No employee may take more than a total of 12 workweeks of leave under paragraphs (1) and (3) during any 12-month period.''.

(b) SCHEDULE.—Section 6382(b)(1) of such title is amended by inserting after the second sentence the following: ''Leave under subsection (a)(3) may be taken intermittently or on a reduced leave schedule.''.

(c) SUBSTITUTION OF PAID LEAVE.—Section 6382(d) of such title is amended by inserting before '', except'' the following: '', or for leave provided under subsection (a)(3) any of the employee's accrued or accumulated annual leave under subchapter I for any part of the 24-hour period of such leave under such subsection''.

(d) NOTICE.—Section 6382(e) of such title is amended by adding at the end the following:

''(3) In any case in which the necessity for leave under subsection (a)(3) is foreseeable, the employee shall provide the employing agency with not less than 7 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subsection. If the necessity for the leave is not foreseeable, the employee shall provide such notice as is practicable.''.

(e) CERTIFICATION.—Section 6383 of such title is amended by adding at the end the following:

''(f) An employing agency may require that a request for leave under section 6382(a)(3) be supported by a certification issued at such time and in such manner as the Office of Personnel Management may by regulation prescribe.''.

SEC. 204. EFFECTIVE DATE.

This title takes effect 120 days after the date of enactment of this Act.

THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT AMENDMENTS OF 1997

SMITH OF NEW HAMPSHIRE (AND GORTON) AMENDMENT NO. 245

Mr. SMITH of New Hampshire (and Mr. GORTON) proposed an amendment to the bill, S. 717, supra; as follows:

On page 156, between lines 8 and 9, insert the following:

''(I) LIMITATION ON AWARDS.—Notwithstanding any other provision of this Act (except as provided in subparagraph (C)), a court in issuing an order in any action filed pursuant to this Act that includes an award shall take into consideration the impact the award would have on the provision of education to all children who are students served by the State educational agency or local educational agency affected by the order.''.

THE FAMILY FRIENDLY WORKPLACE ACT OF 1997

McCAIN AMENDMENTS NOS. 246–252

(Ordered to lie on the table.)

Mr. MCCAIN submitted seven amendments intended to be proposed by him to the bill, S. 4, supra; as follows:

AMENDMENT NO. 246

On page 10, strike lines 4 through 7 and insert the following:

''(10) In this subsection—

''(A) the terms 'monetary overtime compensation' and 'compensatory time off' shall have the meanings given the terms 'overtime compensation' and 'compensatory time', respectively, by subsection (o)(7); and

''(B) the term 'unduly disrupt the operations of the employer', used with respect to the use of compensatory time off by an employee of the employer, means create a situation in which the absence of the employee during the time requested would likely impose a burden on the business of the employer that would prevent the employer from providing an acceptable quality or quantity of goods or services during the time requested without the services of the employee.''.

On page 23, strike line 23 and insert the following: has the meaning given the term in section 7(e).

''(10) UNDULY DISRUPT THE OPERATIONS OF THE EMPLOYER.—The term ''unduly disrupt the operations of the employer', used with respect to the use of flexible credit hours by an employee of the employer, means create a situation in which the absence of the employee during the time requested would likely impose a burden on the business of the employer that would prevent the employer from providing an acceptable quality or quantity of goods or services during the time requested without the services of the employee.''.

AMENDMENT NO. 247

On page 10, strike lines 4 through 7 and insert the following:

''(10) In this subsection—

''(A) the terms 'monetary overtime compensation' and 'compensatory time off' shall have the meanings given the terms 'overtime compensation' and 'compensatory time', respectively, by subsection (o)(7); and

''(B) the term 'unduly disrupt the operations of the employer', used with respect to the use of compensatory time off by an employee of the employer, means create a situation (as determined by the employer, acting in good faith) in which the absence of the employee during the time requested would likely impose a burden on the business of the employer that would prevent the employer from providing an acceptable quality or quantity of goods or services during the time requested without the services of the employee.''.

AMENDMENT NO. 248

On page 23, strike line 23 and insert the following: has the meaning given the term in section 7(e).

''(10) UNDULY DISRUPT THE OPERATIONS OF THE EMPLOYER.—The term 'unduly disrupt the operations of the employer', used with respect to the use of flexible credit hours by an employee of the employer, means create a situation (as determined by the employer, acting in good faith) in which the absence of the employee during the time requested would likely impose a burden on the business of the employer that would prevent the employer from providing an acceptable quality or quantity of goods or services during the time requested without the services of the employee.''.

AMENDMENT NO. 249

In lieu of the matter proposed to be inserted, insert the following:

''(10) In this subsection—

''(A) the terms 'monetary overtime compensation' and 'compensatory time off' shall have the meanings given the terms 'overtime compensation' and 'compensatory time', respectively, by subsection (o)(7); and

''(B) the term 'unduly disrupt the operations of the employer', used with respect to the use of compensatory time off by an employee of the employer, means create a situation in which the absence of the employee during the time requested would likely impose a burden on the business of the employer that would prevent the employer from providing an acceptable quality or quantity of goods or services during the time requested without the services of the employee.''.

AMENDMENT NO. 250

In lieu of the matter proposed to be inserted, insert the following:

has the measuring given the term in section 7(e).

''(10) UNDULY DISRUPT THE OPERATIONS OF THE EMPLOYER.—The term 'unduly disrupt the operations of the employer', used with respect to the use of flexible credit hours by an employee of the employer, means create a situation in which the absence of the employee during the time requested would likely impose a burden on the business of the

employer that would prevent the employer from providing an acceptable quality or quantity of goods or services during the time requested without the services of the employee.''.

AMENDMENT NO. 251

On page 10, strike lines 4 through 7 and insert the following:

''(10) In this subsection—

''(A) the terms 'monetary overtime compensation' and 'compensatory time off shall have the meanings given the terms 'overtime compensation' and 'compensatory time', respectively, by subsection (o)(7); and

''(B) the term 'unduly disrupt the operations of the employer', used with respect to the use of compensatory time off by an employee of the employer, means create a situation in which the absence of the employee during the time requested would likely impose a burden on the business of the employer that would prevent the employer from providing an acceptable quality or quantity of goods or services during the time requested without the services of the employee.''.

AMENDMENT NO. 252

On page 23, strike line 23 and insert the following: has the meaning given the term in section 7(e).

''(10) UNDULY DISRUPT THE OPERATIONS OF THE EMPLOYER.—The term 'unduly disrupt the operations of the employer', used with respect to the use of flexible credit hours by an employee of the employer, means create a situation in which the absence of the employee during the time requested would likely impose a burden on the business of the employer that would prevent the employer from providing an acceptable quality or quantity of goods or services during the time requested without the services of the employee.''.

GRASSLEY AMENDMENT NO. 253

(Ordered to lie on the table.)

Mr. GRASSLEY submitted an amendment intended to be proposed by him to the bill, S. 4, supra; as follows:

On page 28, after line 16, insert the following:

(d) PROTECTIONS FOR CLAIMS RELATING TO COMPENSATORY TIME OFF AND FLEXIBLE CREDIT HOURS IN BANKRUPTCY PROCEEDINGS.—Section 507(a)(3) of title 11, United States Code, is amended—

(1) by striking ''$4,000'' and inserting ''$6,000'';

(2) by striking ''for—'' and inserting the following: ''provided that all accrued compensatory time (as defined in section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) or all accrued flexible credit hours (as defined in section 13(A) of the Fair Labor Standards Act of 1938) shall be deemed to have been earned within 90 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for—''; and

(3) in subparagraph (A), by inserting before the semicolon the following: ''or the value of unused, accrued compensatory time (as defined in section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207)) or the value of unused, accrued flexible credit hours (as defined in section 13A of the Fair Labor Standards Act of 1938)''.

NOTICE OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES—SUBCOMMITTEE ON NATIONAL PARKS, HISTORIC PRESERVATION, AND RECREATION

Mr. THOMAS. Mr. President, I would like to announce for the public that a hearing has been scheduled before the Subcommittee on National Parks, Historic Preservation, and Recreation of the Committee on Energy and Natural Resources.

The hearing will take place on Wednesday, May 21, 1997, at 2 p.m. in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of this hearing is to receive testimony on Senate Resolution 57, to support the commemoration of the bicentennial of the Lewis and Clark Expedition; S. 231, the National Cave and Karst Research Institute Act of 1997; S. 312, to revise the boundary of the Abraham Lincoln Birthplace National Historic Site in Larue County, KY; S. 423, to extend the legislative authority for the Board of Regents of Gunston Hall to establish a memorial to honor George Mason; S. 669, to provide for the acquisition of Plains Railroad Depot at the Jimmy Carter National Historic Site; and S. 731, to extend the legislative authority for construction of the National Peace Garden Memorial.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Subcommittee on National Parks, Historic Preservation, and Recreation, Committee on Energy and Natural Resources, U.S. Senate, 304 Dirksen Senate Office Building, Washington, DC 20510–6150.

For further information, please contact Jim O'Toole of the subcommittee staff at (202) 224–5161.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the public that an oversight field hearing has been scheduled before the Committee on Energy and Natural Resources. The hearing will take place Saturday, June 21, 1997 at 9:30 a.m. in the Saddle Mountain Intermediate School Gymnasium, 500 Riverview Drive, Mattawa, WA. The purpose of this hearing is to review issues and management options associated with the Hanford Reach of the Columbia River and to receive testimony on S. 200, a bill to amend the Wild and Scenic Rivers Act to designate a portion of the Columbia River as a recreational river.

The committee will invite witnesses representing a cross-section of views and organizations to testify at the hearing. Others wishing to testify may, as time permits, make a brief statement of no more than 2 minutes. Those wishing to testify should contact Senator GORTON's office in Kennewick at (509) 783–0640 or Senator MURRAY's office in Spokane at (509) 624–9515. The deadline for signing up to testify is Friday, June 13, 1997. Every attempt will be made to accommodate as many witnesses as possible, while ensuring that all views are represented.

Witnesses invited to testify are requested to bring 10 copies of their testimony with them to the hearing, it is not necessary to submit any testimony in advance, Statements may be also be submitted for inclusion in the hearing record. Those wishing to submit written testimony should send two copies of their testimony to the attention of Jim O'Toole, Committee on Energy and Nature Resources, U.S. Senate, 354 Dirksen Senate Office Building, Washington, DC 20510.

For further information, please contact Jim O'Toole of the committee staff at (202) 224–5161.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Tuesday, May 13, for purposes of conducting a full committee hearing which is scheduled to begin at 9:30 a.m. The purpose of this hearing is to receive testimony on S. 417, reauthorizing EPCA through 2002; S. 416, administration bill reauthorizing EPCA through 1998; S. 186, providing priority for purchases of SPR oil for Hawaii; S. 698, the Strategic Petroleum Reserve Replenishment Act, and the energy security of the United States.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, May 13, 1997, at 10 a.m. to hold a hearing.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. LOTT. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Committee to meet on Tuesday, May 13, 1997, at 1 p.m. for a hearing on the President's plan for the District of Columbia.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate Committee on Indian Affairs be authorized to meet during the session of the Senate on Tuesday, May 13, 1997, at 10:30 a.m. in room 485 of the Russell Senate Building to conduct an oversight hearing on Public Law 102–477, the Indian Employment, Training and Related Services Demonstration Act of 1992.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Tuesday, May 13, 1997, at 10 a.m. to hold a hearing on chemical weapons implementing legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON AVIATION

Mr. LOTT. Mr. President, I ask unanimous consent that the Subcommittee on Aviation of the Senate Committee on Commerce, Science, and Transportation be authorized to meet on May 13, 1995, at 2:30 p.m. on barriers to entry.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

RECOGNITION OF WORLD WAR II EXERCISE TIGER OPERATION

● Mr. BOND. Mr. President, during the Memorial Day weekend, Veterans of Foreign Wars Post 280 in Columbia, MO will recognize a group of heroic men. Until recently, few people knew of the secret operation code named ''Exercise Tiger,'' because the details of the tragedy were not disclosed until after the Battle of Normandy and even then proper recognition was not given.

In December 1943, several training operations began in order to prepare for the Battle of Normandy. These operations, organized by the United States Army, were undertaken off a beach in Devon, England. It was known by all participating parties the dangers they could encounter. At the time, several German ships patrolled this stretch of water looking for American and English ships. One such evening during practice operations, with only one English ship to guard, there was a surprise attack on the American ships.

On April 28, 1944, the German Navy ''E,'' patrolling the English Channel, attacked the eight American tank landing ships who became aware of the attack only after the U.S.S. *LST–507* was struck by an incoming torpedo. Next, the U.S.S. *LST–531* was attacked and sunk in a matter of minutes. The convoy returned fire and the last ship to be torpedoed, the U.S.S. *LST–289*, made it safely to shore.

Even after this frightening turn of events, to it's credit, Exercise Tiger continued operations and remained on schedule. Normandy was attacked as planned and the D-day invasion was a success.

Information of the fatalities was not released until after the D-day invasion due to the secrecy of the mission and in order to keep the Germans from becoming aware of the impending strike. It took many years, and the passage of the Freedom of Information Act, to learn of the significance of these missions. I feel now is the time for these courageous men to get the long awaited recognition they deserve.

Four thousand men partook in this operation and of those, nearly a quarter was reported missing or dead. Records from the Department of Defense estimate 749 men died in addition to 441 Army and 198 Navy casualties. Approximately 200 of these men were from my home State of Missouri.

This Memorial Day weekend commemorates the heroic actions of the men who participated in Exercise Tiger and particularly the ones who lost their lives in this crucial preparation for the D-day invasion. VFW Post 280 has the great privilege of being the first in the State of Missouri to recognize these brave individuals.

In the words of Gen. Douglas MacArthur, ''Old soldiers never die, they just fade away * * *.'' I hope that through this long delayed acknowledgment of these fine soldiers, their memory will not fade away, but will remain in our minds and hearts for years to come. These men were an example for all American soldiers to live by and a credit to the United States as it remains the free and great country that it is today.●

PAUL CHARRON ON CHILD LABOR

● Mr. HARKIN. Mr. President, on April 17, 1997, a momentous occasion took place at the White House when a group of apparel manufacturers, importers, labor officials, and President Clinton announced their actions to reduce the incidence of abusive child labor in the manufacturing of imported articles into the United States. As one who has been working on this issue for many years, I am pleased with the progress that is being made, although I recognize we have a long way to go. Most importantly, we need leaders in the apparel industry who are willing to take that step forward and work to include all manufacturers and importers in this effort to ban abusive and exploitative child labor. In the recent past, many apparel manufacturers have resisted this effort, supposedly in the name of ''free trade,'' but I suspect there was probably another reason. On the other hand, there have been manufacturers and importers, who have stepped forward to courageously take the different course and that is to do everything they can to ensure that their products are not made with exploitative child labor.

One such person is Mr. Paul Charron, the chief executive officer of the Liz Claiborne Corp. He has been in the forefront of the fight to ban the use of exploitative child labor in the manufacturing of wearing apparel. Mr. Charron gave remarks at the White House that day, which I found to be most encouraging. His comments, indeed, echo my feelings, and I know the feelings of President Clinton when he said that ensuring human rights is the right thing to do, and it is the smart thing to do. Good working conditions are productive working conditions. He is absolutely right, and I want to applaud Mr. Charron and thank him for his courageous stance and leadership on this issue. I would also like to encourage the participants of the White House Apparel Industry Partnership to take the next step and adopt a labeling system giving consumers the information they need and companies the recognition they deserve.

At this point, I submit Mr. Charron's remarks into the RECORD, and I urge my colleagues and their staffs to review his remarks.

The remarks follow:

REMARKS FOR THE WHITE HOUSE APPAREL INDUSTRY PARTNERSHIP: PAUL R. CHARRON, APRIL 14, 1997

Thank you, Linda.

And thank you, Mr. President, for having the foresight to recognize that companies could work together with labor, human rights and consumer organizations towards the common goal of improving labor conditions around the world.

But let's not forget the contributions of this administration, particularly the Department of Labor and former Labor Secretary Robert Reich. I also want to acknowledge the tireless efforts of Maria Echaveste and Gene Sperling.

Furthermore, I would like to express my deep appreciation to all those from the industry, labor, human rights, consumer groups who contributed to this effort. And, of course, I would like to thank Roberta Karp, Liz Claiborne's general counsel, who co-chaired the task force.

The standards and processes developed by the Apparel Industry Partnership are groundbreaking. Together we have built a framework to more credibly address a serious and complex problem.

But the success of the Partnership's framework for improving working conditions depends upon the industry's ability to recruit its peers.

We must be realists. We must be problem solvers. And our first challenge is this: persuading our colleagues in the apparel and footwear industries—colleagues who are not represented here today—to join the fight.

In short, we have come here not to announce victory, but to proclaim a new challenge. And that is to make this a truly industry-wide effort. There is no other way.

The skeptics may ask—why do this? The answer is simple: it's good business. Some in the industry may think the companies standing here are taking an unnecessary risk; they may wonder how we can afford to make this commitment.

I would ask them in return—how can we afford not to?

Ensuring human rights is the right thing to do, and it is the smart thing to do. Good working conditions are productive working conditions.

Let me emphasize that we are faced with a unique opportunity to make further progress, and, again, our goal is to make this into an unprecedented industry-wide effort. This is only the start—the truly great accomplishments are yet to come.

Please join us to help this Partnership fulfill its potential.

And now, it is my great honor to introduce the President of the United States. Mr. President. . . .●

THE 50TH ANNIVERSARY OF THE TRANSISTOR

● Mr. LAUTENBERG. Mr. President, I rise today to mark one of those rare discoveries which not only make history, but actually change history. On

December 16, 1947, three Bell Laboratories scientists, Nobel Prize winners John Bardeen, Walter Brattain and William Shockley, working in Murray Hill, NJ, successfully operated the world's first transistor. The transistor allows the flow of electrons through solid materials to be controlled without requiring any moving parts.

Mr. President, I'm not a scientist, so I don't completely understand the technology that makes this tiny device work. But I do understand that, without it, an amazing array of products which have revolutionized our lives could simply not work. In fact, the transistor's impact on microelectronics, computers, telecommunications, and so much more reminds me of the words of Ralph Waldo Emerson, ''The creation of a thousand forests is in one acorn.'' And the forests of products which have sprung from the transistor is indeed dazzling.

Mr. President, not only is the transistor practically ubiquitous in our society, there is neither an individual nor an industry that has not benefited from this device. It has helped us advance the study of biology and medicine, permitting us to understand and heal the human body in ways that our ancestors could never even have imagined. It has altered our sense of community by permitting us to negate the effects of both time and distance through the development of worldwide communication networks. By doing so, the transistor changed the way we learn by instantly placing knowledge at our fingertips. And it has allowed us to explore the depths of the ocean, walk on the moon, and chart the solar system and the invisible domains of the universe. Obviously, the transistor not only revolutionized our lives, it has helped to lengthen our lives, enrich our lives, and provide our lives with greater meaning.

Mr. President, the tradition and tenacity of Bell Laboratories lives on in its linear descendent, Lucent Technologies. The men and women of Lucent continue to make innovative communications products using solid state technologies that are an outgrowth of the transistor's development. I salute their work, and as the direct heirs of Bell Laboratories, I congratulate them on the 50th anniversary of the transistor.●

APPOINTMENT BY THE MAJORITY LEADER

The PRESIDING OFFICER (Mr. ENZI). The Chair announces, on behalf of the majority leader, pursuant to Public Law 101–509, his appointment of C. John Sobotka, of Mississippi, to the Advisory Committee on the Records of Congress.

APPOINTMENT BY THE DEMOCRATIC LEADER

The PRESIDING OFFICER. The Chair announces, on behalf of the Democratic leader, pursuant to Public Law 101–509, his reappointment of John C. Waugh, of Texas, to the Advisory Committee on the Records of Congress.

ORDERS FOR WEDNESDAY, MAY 14, 1997

Mr. SANTORUM. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 9:15 a.m. on Wednesday, May 14. I further ask unanimous consent that on Wednesday, immediately following the prayer, the routine requests through the morning hour be granted, and the Senate immediately resume consideration of S. 717, the Individuals With Disabilities Education Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. SANTORUM. Mr. President, for the information of all Members, tomorrow morning, the Senate will resume the IDEA bill under the earlier time agreement. All Senators can expect a series of three rollcall votes beginning at approximately 9:45 or 9:50 a.m. Senators should be prepared to be on the floor for the stacked votes beginning early Wednesday morning in that the second and third votes will be limited to 10 minutes in length. Following the votes and a short period for morning business, the Senate will begin consideration of the partial birth abortion ban. The Senate might also consider the CFE Treaty during Wednesday's session. As always, Senators will be notified as to when any additional votes are scheduled.

ADJOURNMENT UNTIL WEDNESDAY, MAY 14, 1997, AT 9:15 A.M.

Mr. SANTORUM. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:18 p.m., adjourned until Wednesday, May 14, 1997, at 9:15 a.m.