United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 105th CONGRESS, FIRST SESSION

Vol. 143 WASHINGTON, WEDNESDAY, MAY 14, 1997 *No. 63*

Senate

The Senate met at 9:15 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 God, in a world of qualified love it is so encouraging to hear the five wonderful words You greet us with as we begin this day: ''I will always love you.'' We are amazed at all the territory that word ''always'' covers. It spans the full spectrum of all that we have ever done or said and extends to difficulties, problems, and even failures of the future. It also includes those times when we forget that You are the source of our strength and we take the glory that belongs to You. Amazing love. Your love keeps.

You come to us at the point of our needs, but You also help us come to the point about our needs. You encourage us to confess our hopes and hurts to You. You wait for us to ask for what You are ready to give. It's a mystery: Your willingness, coupled with our willingness to ask, make for dynamic prayer.

Thus, we commit the deliberations, debates, and decisions of this day to You. Bless the Senators with a profound sense of Your personal care so they can be Your agent of caring for our Nation, for one another, and their families. In the name of our Lord and Saviour. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

SCHEDULE

Mr. JEFFORDS. Mr. President, for the information of all Members, today the Senate will resume the IDEA bill under the agreement reached last evening. Following closing remarks on the IDEA amendments, the Senate will begin 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 these stacked votes beginning at 9:45 a.m.

Following the disposition of S. 717, there will be a short period of morning business after which the Senate will begin consideration of the partial-birth-abortion ban. The Senate may also consider the CFE treaty during today's session of the Senate. As always, Senators will be notified as to when any additional votes are scheduled.

I thank my colleagues for their attention.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT AMENDMENTS OF 1997

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 717, which the clerk will report.

The assistant 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.

Pending:

Gregg amendment No. 241, to modify the provision relating to the authorization of appropriations for special education and related services to authorize specific amounts or appropriations.

Gorton amendment No. 243, to permit State and local educational agencies to establish uniform disciplinary policies.

Smith amendment No. 245, 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.

The PRESIDING OFFICER (Mr. ENZI). Under the previous order, the Senator from New Hampshire is recognized.

AMENDMENT NO. 241, WITHDRAWN

Mr. GREGG. Mr. President, I ask unanimous consent to vitiate the yeas and nays and withdraw my amendment which is No. 241.

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

The amendment (No. 241) was withdrawn.

Mr. GREGG. Mr. President, just to clarify the record on this, this amendment was addressing the issue of funding relative to special education which is, I believe, a critical element of the whole issue obviously of special education, especially the fact that the Federal Government has failed to live up to its obligation to fund 40 percent of the cost of special education. It is only funding approximately 7 to 8 percent of the cost.

After discussions with the majority leader, and with members of the Appropriations Committee on which I serve, I think there is a reasonable opportunity that we will receive the type of funding and support we need in order to start on the path toward reaching the 40 percent.

This path was outlined in S. 1, Senate bill 1, which is the Senate Republican position and which commits to having us fund 40 percent over a 7-year period. This year I am hopeful we can increase funding for special ed so we can get up above the $4 billion mark in this account, which would allow us to—under the new bill, if it is passed, as I presume it will be—allow us to kick in the ability of the local communities to use some of this special ed funding which the Federal Government was supposed to be paying for, which presently is being paid for by local taxpayers, to use those local taxpayer dollars for other areas of education and to relieve some of the pressure on the communities and the local taxpayers.

So with that understanding, which is not formal—I appreciate that—but which I believe was made in good faith, I am withdrawing this amendment. I

recognize a lot of work has gone into this bill, that there is a great desire to pass this bill without amendments so it will be able to be moved quickly and because it involves an intricate and delicate, delicate compromise. And it is a step forward in the attempt to address the IDEA question and issue of caring for children with disabilities.

This amendment I believe would have had a good chance of passing, but I believe it also would have undermined the desire of those who want to reach an accommodation to make sure to move the process forward and improve the basic special ed bill, and we can do so with this bill, and it would undermine the capacity to do that.

I still believe we can still get to the role of the funding issue which runs on a parallel course without necessarily having to attach this specific language to this bill.

I would note that the law continues to retain in it the 40 percent language. It remains the commitment of the Federal Government and it is a commitment which I and I know the majority, the chairman of the committee, ranking member on the subcommittee, and the majority leader are committed to try to reach.

Mr. JEFFORDS. Will the Senator yield?

Mr. GREGG. I yield to the Senator from Vermont.

Mr. JEFFORDS. I want to thank you for what you have just done. You have provided a way for clear passage of this bill today. But most of all, I want to commend you for your continuous efforts to try to fully fund the 40 percent that we promised the people when this bill was passed some 22 years ago.

I also want to remind Members that your amendment—I think it was on the goals 2000 bill—passed 93 to 0, where we said we would do what JUDD GREGG wants. So I am hopeful that will be kept in mind as the people go forward with the budget. I certainly am going to do all I can to make sure that we live up to the obligations of our own party's promise, which is in S. 1, to do what the Senator from New Hampshire believes we should do.

Mr. GREGG. I thank the Senator from Vermont. I thank him for his courtesy and enjoy working with him.

AMENDMENT NO. 243

The PRESIDING OFFICER. Under the previous order, there will now be 20 minutes of debate equally divided between the Senator from Washington [Mr. GORTON], and the Senator from Vermont [Mr. JEFFORDS], on the pending question, amendment No. 243 by the Senator from Washington [Mr. GORTON].

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Washington.

Mr. GORTON. Mr. President, the amendment which we are about to vote on is extremely simple, plain, easy to understand and totally logical.

It reads in its entirety:

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.

Mr. President, I have spoken about the fact that this bill imposes a huge unfunded mandate, $35 billion a year, on the schools of this country with no more than 10 percent of that money paid for by the Federal Government.

I have spoken of the huge complexity—327 pages in this bill—imposing identical rules on every school district in the country no matter how large or how small. But the single aspect of this bill that is most questionable and most unjust is the double standard it sets with respect to discipline, response to violence, disorder in the classroom. Each and every school district retains its full and complete authority over all of these questions as they apply to students who are not disabled. They lose almost all of that authority under the present IDEA statute and regain only a modest amount of it under this revision.

This double standard makes it difficult to provide an appropriate education to tens of thousands, perhaps hundreds of thousands of our students around the country. They make it difficult to impose rational disciplinary measures on those students who are denominated disabled. They create a tremendous incentive to seek some ''expert'' who will provide for a given student the title ''disabled.'' We find the decisions that the very disorder, the very violence in classrooms that is to be the subject of discipline is found to be evidence of disability so that the discipline cannot be imposed.

For the educational attainment of all of our students, for the proper protection of all of our students, we should allow each school, each school district, each State to set rules with respect to disorder, to discipline, to violence that are the same for all of the students. Nothing could be simpler.

This amendment will not in any way undercut the right created by this bill for a free and complete education for every student, disabled or not. That remains. What is restored to each school district is the right on its own to make those decisions while looking at the educational atmosphere in which all of its students must learn. The vice of this bill is that it pretends that there are no nondisabled students, only the disabled students count, only their rights count. The rights of all other students and their parents are ignored.

So we ask very simply that this bill be amended to allow each educational agency to establish and implement uniform policies with respect to discipline and order applicable to all children within its jurisdiction in order that they may be safe and have an appropriate educational atmosphere—nothing more, nothing less.

This bill says that the U.S. Senators know more about how to educate students than do their teachers, their administrators, their school board members, people who have spent their lives and careers at this job. We do not know more. They know more. We should permit them to do their jobs.

Mr. JEFFORDS addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Vermont.

Mr. JEFFORDS. I wish to speak in strong opposition to the amendment. I understand the emotionalism that has gone on in our States throughout this Nation over the years, and even up to the point that we speak, about the problems that were created, and which the Senator from Washington is attempting to address.

I point out, first of all, that the bill tries its best to preserve the order in the classroom through uniform policies for all school districts, and to ensure that every child with a disability is treated fairly, but also balances the needs of those in the classroom to have a safe and peaceful, shall we say, learning environment. That is done. The House voted yesterday with only three dissenting votes on this bill, recognizing that those kinds of balances had been reached after an incredible effort on the part of so many to give us a bill that everyone who is deeply involved in this issue can agree with.

I know this body respects the order that is necessary in the classroom and also the ability of local schools to be able to try and accommodate the interests of all, but I believe this bill, by doing this, what it says is, ''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.''

Now, what does that mean? I do not know. But if it means what it says, it wipes out everything. It would be contrary to what they want to do. That means we could have thousands or hundreds of different ideas on how to bring order to the classroom. It would set back the system.

I know the Senator from Washington speaks sincerely, and I know that Washington had a terrible problem, initially, in the early parts of this decade. Almost half the cases, I believe, went to due process hearings and ended up in court. However, this past year, 96 percent of those cases that were heard in mediation were solved and did not go to court. So his own State, I think, has solved the problems he is trying to deal with.

I hope Members would not vote for this amendment. At the appropriate time I will move to table it. This would create havoc in the whole system.

Mr. President, I yield 3 minutes to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. FRIST. Mr. President, I rise to speak in strong opposition, as well, to this amendment before the Senate, put forth by the Senator from Washington,

an amendment which would instruct local education agencies to set out their own policy, a potentially very different policy, in disciplining students with disabilities. In short, under his amendment, each school district potentially would have its own distinct policy in disciplining disabled children, and with 16,000 school districts, the potential for conflicting policies is very real, and I am afraid this would be a turnback to the pre-1975 era before IDEA.

Is this a double standard? I say ''no.'' Clearly, we have outlined a process whereby students, if there is a manifestation of a disability, would go down one process, and if a discipline problem was not a manifestation of a disability, that student would be treated just like everyone else.

I think this is fair. This is equitable. Remember, if behavior is not a result of that disability, all students are treated the same in this bill. If behavior is secondary to a disability, there is a very clear process, which is outlined in detail. Yes, it does take several pages to outline that, but it sets up a balance between the school, between school boards, between parents, and between children.

Senator GORTON claims this amendment is about local control, and I feel that it will be used, I am afraid, to turn back the hands of the clock to the pre-1975 conditions where we know that children with disabilities were excluded from the opportunity to receive a free and appropriate public education.

I urge my colleagues to vote against this amendment, not just because, as has been pointed out, it will kill our overall bipartisan effort that we brought forward, but that it would, in fact, turn back the clock and lead, potentially, to discrimination that children with disabilities faced before IDEA was enacted 22 years ago.

Mr. JEFFORDS. Could I inquire to the time remaining?

The PRESIDING OFFICER. The Senator from Vermont has 4½ minutes and the other side has 3 minutes, 45 seconds.

Mr. JEFFORDS. I yield 2 minutes to the Senator from Iowa.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. I thank Senator JEFFORDS for his leadership and I thank Senator FRIST for his eloquent comments.

I rise in strong opposition to the amendment proposed by my colleague Senator GORTON.

The amendment drives a stake through the heart of the bipartisan, bicameral, fair, and balanced provisions in the bill relating to disciplining children with disabilities.

The amendment states plain and simple that local school districts can totally ignore every word of the bill if they so choose. In other words, the amendment effectively repeals every protection in the law for disabled children.

Last night, this extreme position was rejected by 420 of my colleagues in the House in favor of the commonsense approach included in the bill.

The bill specifies procedures for the immediate removal to an alternative setting of disabled children who bring weapons to school or who knowingly use, possess, or sell illegal drugs.

The bill also authorizes: The removal to an alternative setting of truly dangerous children; proper referrals to police and appropriate authorities when disabled children commit crimes, so long as the referrals, do not circumvent the school's responsibilities under IDEA.

And, the transfer of student disciplinary records.

Under the amendment, local school districts could cease educational services for any disabled child regardless of whether or not the child's behavior was related to his or her disability. Cessation of services is not only opposed by all disability organizations, but is opposed by the major groups representing general education and the police and prosecutors. That is why the bipartisan bill rejects cessation.

My colleague raised a number of other points in the course of the debate which I would like to respond to at this point.

My colleague constantly refers to IDEA as an unfunded Federal mandate.

According to the Congressional Budget Office, the American Law Division of the Congressional Research Service, and the U.S. Supreme Court, IDEA is not an unfunded mandate.

IDEA is a civil rights statute that implements the equal protection clause of the U.S. Constitution. IDEA helps States and local school districts pay for the costs of implementing their constitutional obligation to disabled children.

My colleague also talks about the high costs of educating disabled children but fails to talk about the savings to society, not to mention the enhanced quality of life for disabled children and their families.

Prior to the enactment of IDEA, 70,655 children were in institutions. Because of IDEA, that number is down to 4,001. The average cost of serving a child in a State institution is $82,256 per person. With 66,654 fewer children institutionalized, the savings to States is $5.46 billion per year.

Danny Piper from Ankey IA, was born with Down's syndrome. He has an IQ of 39. At birth, his parents were told to institutionalize him because he would be a burden and would not benefit from education. The cost to the taxpayers of Iowa over the course of his life would have been $5 million. His parents said no and instead placed him in early intervention and then in an intergrated program at Ankeny High School where he was a manager of the wrestling team.

The cost of special education over his 18 years was $63,000. Was it a good investment? You decide. Today, Danny works, he pays taxes, and he has his own apartment.

My colleague also quotes a parent of a nondisabled child who was told by a lawyer that she has no rights when her child's class is disrupted by a disabled child. I say to that parent she better get a new lawyer.

They have a right to a class environment that is safe and conducive to learning.

That parent has a right to insist that the schools develop positive behavioral approaches and train teachers and provide them with the necessary supports.

What they don't have is the right to kick that disabled kid out of the class just as school systems cannot kick out African-American children when a white child or his parents are uncomfortable around African-Americans.

Can we have school environments that are safe and conducive to learning without kicking disabled kids out? Yes we can. Just ask Dr. Mike McTaggart of West Middle School in Sioux City, IA. In just 1 year, the number of suspensions of nondisabled children went from 692 to 156 of which 7 were out-of-school suspensions. 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.

His philosophy of discipline for all students is to use discipline as a tool to teach rather than to punish.

In closing, let's reject the Gorton amendment and send a message that we can ensure school environments that are safe and conducive to learning without gutting the rights and protections of disabled children.

The PRESIDING OFFICER. The Chair recognizes the Senator from Washington.

Mr. GORTON. Mr. President, in a recent article in the National Review, the author, Chester Finn, Jr., made the following comments about the present statute equally applicable to this bill.

> . . . prescriptive federal mandates that create heavy costs and regulatory burdens for local communities; extra benefits for government-protected populations and their exemption from rules that others must obey; ample opportunities for activists and lawyers to hustle taxpayer-financed largesse for their clients; barriers to needed reforms of school quality and discipline; . . . [and above all] the smug assumption that Washington knows best how the nation's schools should be run.

While various professional organizations have more or less been required to endorse this bill because, as I have already said, it is an improvement over present law, just last month, USA Today published the results of a poll of 6,000 principals, 80 percent of whom said Federal law interfered with their ability to create safe schools.

My two friends on this side of the aisle used the word ''balance.'' There is no balance in this bill. There is no balance at all. There is no consideration—no consideration, none—of the rights of nondisabled students. Yes, there are 16,000 school districts in this country. That is the genius of our country, that

we solve our problems locally, and yet as far as these are concerned, we should have one school district, one Department of Education that should set one set of rules applicable to everyone under all circumstances and at all times. That is wrong. Let our teachers and our principals and our school boards make the decisions as to how their schools should be operated.

If all time has been taken on the other side, I yield back the balance of my time.

Mr. JEFFORDS. Mr. President, very quickly, the balance has been reached in this bill. The most critical question is, what can you do with the dangerous child? It is very simple: If it is not a matter involved with the disability, that child could be disciplined like any other child. If it is related to the disability, as determined by a hearing officer, then there can be up to 45 days removal in an appropriate educational setting. If the problem still exists and the school can demonstrate that the child may be substantialy likely to cause harm to himself or others, the child will remain in an interim alternative educational setting for an additional 45 days, et cetera—tremendous balance, tremendous help to the present situation.

Mr. President, I urge the defeat of the Gorton amendment.

The PRESIDING OFFICER. Do both sides yield back their time?

Mr. JEFFORDS. Yes.

Mr. GORTON. Yes.

Mr. JEFFORDS. I move to table the Gorton amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table amendment 243 offered by the Senator from Washington [Mr. GORTON].

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from West Virgina [Mr. ROCKEFELLER] is necessarily absent.

The result was announced—yeas 51, nays 48, as follows:

{Rollcall Vote No. 64 Leg.}

YEAS—51

Akaka	Dodd	Lautenberg
Baucus	Domenici	Leahy
Biden	Durbin	Levin
Bingaman	Feingold	Lott
Boxer	Ford	Mack
Breaux	Frist	McConnell
Bumpers	Glenn	Mikulski
Campbell	Harkin	Moseley-Braun
Chafee	Hutchinson	Moynihan
Cleland	Inouye	Murray
Coats	Jeffords	Reed
Collins	Kempthorne	Robb
Coverdell	Kennedy	Sarbanes
Craig	Kerrey	Snowe
D'Amato	Kerry	Stevens
Daschle	Kohl	Wellstone
DeWine	Landrieu	Wyden

NAYS—48

Abraham	Graham	Murkowski
Allard	Gramm	Nickles
Ashcroft	Grams	Reid
Bennett	Grassley	Roberts
Bond	Gregg	Roth
Brownback	Hagel	Santorum
Bryan	Hatch	Sessions
Burns	Helms	Shelby
Byrd	Hollings	Smith (NH)
Cochran	Hutchison	Smith (OR)
Conrad	Inhofe	Specter
Dorgan	Johnson	Thomas
Enzi	Kyl	Thompson
Faircloth	Lieberman	Thurmond
Feinstein	Lugar	Torricelli
Gorton	McCain	Warner

NOT VOTING—1

Rockefeller

The motion to lay on the table the amendment (No. 243) was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. HARKIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. May we please have order so that we can continue the Senate's business.

We have several more votes to go. We have some short debate between them. The quicker we have order, the quicker we can continue. Please take your discussions to the Cloakroom or the hallway.

AMENDMENT NO. 245

The question now recurs on amendment No. 245 offered by the Senator from New Hampshire [Mr. SMITH]. There will be 4 minutes of debate equally divided in the usual form. Who yields time?

Mr. SMITH of New Hampshire addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from New Hampshire.

Mr. SMITH of New Hampshire. Mr. President, could I have order, please. The Senate is not in order.

The PRESIDING OFFICER. Please clear the well. Staff please take their seats.

The Senator deserves to be heard. There are 4 minutes of debate equally divided.

The Senator from New Hampshire.

Mr. SMITH of New Hampshire. Like the previous amendment offered by my colleague from Washington, Senator GORTON, this is a very reasonable amendment. It simply requires the courts, when they make an award under IDEA, to take into consideration what impact that award will have on all of the students in the district or in the particular classrooms. For example, we have cases where a $1,000 IDEA program or plan, educational plan costs $13,000 or $14,000 in legal fees. There are millions of dollars in legal fees spent in all 50 States, all over America, that are taken out of the classroom. These are dollars that you cannot use for teachers, you cannot use for computers, you cannot use for textbooks or, frankly, for infrastructure or schools or buildings.

The issue here is whether or not you want to have these dollars go to the students or go to the lawyers. That is the simple issue. This is a very reasonable amendment. There is nothing unreasonable about it.

I think the process here where we say we cannot amend a bill to strengthen it, to make a better bill is a bad process and one for which I wish we had not set the precedent. I urge my colleagues to think about it because at some point in the not too distant future you are going to have another piece of legislation coming through here, and you are going to be on the other side. You are going to want to offer an amendment and you are going to have to say to yourself, well, when I had the opportunity before, I opposed that opportunity for another colleague. Sure, I can offer the amendment but the deal by the leadership is to oppose the amendment because we have a deal. The answer is very simple. You can vote for my amendment and take dollars out of the pockets of lawyers and put them into the classroom for the students or you can oppose my amendment and favor the lawyers.

I thank the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Vermont.

Mr. JEFFORDS. I yield 30 seconds to the Senator from Tennessee.

The PRESIDING OFFICER. The Chair recognizes the Senator from Tennessee.

Mr. FRIST. Mr. President, this amendment would require a court before awarding attorney fees to prevailing parents to do an analysis of the impact of the award on the local school district. The point is that the court already has the discretion to assess the impact of an award on a school district. Thus, this is unnecessary. Awarding fees today is at the court's discretion. This amendment would actually require a formal cost analysis, an additional bureaucratic burden on a school district. It is unnecessary. It is covered in the underlying bill. I urge opposition to the amendment.

Mr. JEFFORDS. I yield 1 minute to the Senator from Iowa.

The PRESIDING OFFICER. The Senator from Iowa is recognized for 1 minute.

Mr. HARKIN. Mr. President, I rise in strong opposition to the Smith amendment which adds limitations on the awarding of attorneys fees to parents of disabled children that are unprecedented in any other fees provision.

The provisions in current law relating to attorneys fees were added by our colleague Senator ORRIN HATCH. He modeled the IDEA fees provisions on provisions in other civil rights laws. On final passage of these provisions he explained that they reflected a carefully crafted compromise that provides for reasonable attorneys fees to a prevailing parent while at the same time protecting against excessive reimbursement.

Let's not upset that carefully crafted compromise. Let's retain the parity between the fees provisions in the IDEA

with the fees provisions in other civil rights statutes. It is inappropriate to establish a double standard for parents with disabled children.

Listening to Senator SMITH, one might get the impression that there is a proliferation of litigation under IDEA. The data does not bear out such an assertion. The number of court cases under IDEA is actually declining from 199 in 1992 to 120 last year. This is out of 5.3 million disabled children. The number of due process hearings in New Hampshire last year was 10. In my State of Iowa, the number was four. In the entire State of California, with almost 600,000 disabled children in the IDEA program, the number of due process hearings was 57—1,289 requests for hearings but the overwhelming majority were resolved in mediation.

Let's reject the Smith amendment.

Mr. JEFFORDS addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Let me speak to my colleagues very sincerely.

Last year we came almost to the point where we passed a bill similar to this for the disabled community and for the schools. It broke down at the last minute because there was dissension over one issue. You have had your opportunity this time to show your concern about how the bill goes, but if we have one amendment, then it has to go back and there are those out there now who want to disrupt it. Senator LOTT and Dave Hoppe spent hundreds of hours to bring these communities together to agree on this bill which is a tremendous step forward. If you vote no on the motion to table, you could kill this bill and we could start over again.

Mr. President, I move to table.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. JEFFORDS. I ask for the yeas and nays.

The PRESIDING OFFICER. There is a sufficient second. The yeas and nays are ordered.

The question is on agreeing to the motion to table amendment No. 245 offered by the Senator from New Hampshire. The clerk will now call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from West Virginia [Mr. ROCKEFELLER] is necessarily absent.

The PRESIDING OFFICER (Mr. SESSIONS). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 68, nays 31, as follows:

[Rollcall Vote No. 65 Leg.]

YEAS—68

Abraham	Campbell	DeWine
Akaka	Chafee	Dodd
Baucus	Cleland	Dorgan
Biden	Coats	Durbin
Bingaman	Cochran	Feingold
Boxer	Collins	Feinstein
Breaux	Conrad	Ford
Bryan	Coverdell	Frist
Bumpers	Craig	Glenn
Burns	D'Amato	Graham
Byrd	Daschle	Grassley
Harkin	Leahy	Reid
Hollings	Levin	Robb
Hutchinson	Lieberman	Roth
Inouye	Lott	Santorum
Jeffords	Lugar	Sarbanes
Kempthorne	Mack	Smith (OR)
Kennedy	McConnell	Snowe
Kerrey	Mikulski	Stevens
Kerry	Moseley-Braun	Torricelli
Kohl	Moynihan	Wellstone
Landrieu	Murray	Wyden
Lautenberg	Reed	

NAYS—31

Allard	Gregg	Roberts
Ashcroft	Hagel	Sessions
Bennett	Hatch	Shelby
Bond	Helms	Smith (NH)
Brownback	Hutchison	Specter
Domenici	Inhofe	Thomas
Enzi	Johnson	Thompson
Faircloth	Kyl	Thurmond
Gorton	McCain	Warner
Gramm	Murkowski	
Grams	Nickles	

NOT VOTING—1

Rockefeller

The motion to lay on the table the amendment (No. 245) was agreed to.

Mr. BINGAMAN. Mr. President, I would like to take a few moments this morning and talk about this Congress' commitment to education, and special education in particular.

S. 717, the Individuals With Disabilities Education Amendments Act of 1997, is the first piece of major legislation to come out of the Senate Labor Committee since the start of the 105th Congress that directly affects the important issue of education. This piece of legislation before the Senate today is an integral part of providing educational services to over 5 million children across this country. This legislation reminds us of the fundamental importance of the need for strong educational funding at a time when all eyes are focused on budget-balancing.

Mr. President, special education is of critical importance to my home State of New Mexico, in which over 50,000 children receive specialized educational services. In New Mexico over 14 percent of the eligible school age population receive needed educational services from this law. Currently, New Mexico receives over $26 million in Federal funding to assist the educational needs of special education students. This funding is very important to States like New Mexico that have rural and isolated communities and are working to provide specialized educational services at great distances.

Over the past 2 years especially, and throughout my tenure in the Senate, I have heard numerous stories from New Mexico's students, parents, educators, and administrators about the need for added resources and effective programs for special education students.

I have also heard their concerns about the current Federal law, which include: financial incentives to overidentify students as disabled; lack of standards and performance assessments; the difficulty teachers and administrators face in maintaining classroom discipline; and the concerns of parents who are struggling to find the best possible placement for their child and to ensure that educational services are provided.

However, I believe that the legislation before the Senate begins to address these concerns. This bill:

First, includes language that will increase educational accountability and standards for disabled students,

Second, creates new measures to allow parents and Federal agencies to monitor and assure the adequacy of special education programs,

Third, includes language that aims to increase flexibility for State and local school districts and reduces paperwork for school districts,

Fourth, strengthens teachers' and administrators' abilities to control their classrooms, without ceasing educational services to students,

Fifth, includes language that will ensure access to assistive technology for our special education students and provisions to allow blind and visually handicapped students learn Braille,

Sixth, removes past incentives to encourage the overidentification of children with disabilities.

I am especially happy to see statutory language that requires the inclusion of almost all special education students in testing and accountability programs.

Just recently I heard a story from a special education administrator in New Mexico that expressed the importance of integrating standards in special education and how they promote accountability and improved services.

In Kentucky, for many years, some neighborhood schools were sending their special education students to other schools to receive specialized services. However, when Kentucky started to require assessments for special education students and included these scores in school report cards, some of these neighborhood schools started to educate their special education students within their own schools so as to improve the student's academic levels.

Mr. President, the requirement for inclusion of special education students in academic assessments is a key aspect to ensuring that this legislation will be effectively implemented in schools throughout New Mexico and across the United States.

Mr. President, I plan to support this legislation because I believe it strikes a balance between the different views and needs of many of the stakeholders within the special education community. This legislation begins to address many of my concerns and the concerns that I have heard from my constituents in New Mexico. I am especially pleased to see language included in this legislation that allows states and local districts flexibility in the implementation of IDEA.

Just 2 weeks ago, the President and congressional leaders reached a budget agreement that included increased funding for education. It is imperative that Congress remains committed to providing quality education to our Nation's youth.

For these reasons, I urge my colleagues on both sides of the aisle to

take the bipartisan and bicameral commitment to education that has been exemplified in the reauthorization of IDEA and to focus on increased funding and the development of standards that provide educational opportunities to all students. Mr. President, I applaud the efforts of my colleagues both here in the Senate and in the House of Representatives to reauthorize IDEA and I applaud their commitment to education. This is not the time in our Nation's history to waver on our commitment to educate America's students.

Mr. ENZI. Mr. President, first I want to commend the Senators and staff who have committed so much time to the reauthorization of the Individuals With Disabilities Education Act. It is a good bill that incorporates the insights and experiences of the hundreds of groups who have been involved in the development process. I planned to offer my strong support, however, for the amendment that was to have been offered by Senator GREGG because I believe the underlying bill would be better if it contained a strong commitment on Federal funding—for a number of reasons.

I am familiar with education spending at the State level because I come to this process as a former State Legislator. I served the State of Wyoming for 10 years—5 years in the State House and 5 years in the State Senate. During that time, in my tenure as chairman of the Senate Revenue Committee, I felt all of the constraints in the State budget. The most difficult one, however—the one that was always fraught with protestation and controversy—was how we spent money on education, where it came from and where it went. Elementary and secondary education is my State's largest single expenditure.

In the 1995–96 school year, the Wyoming State Government expended $237 million, or 44 percent, of the total amount of money spent on K–12 education in Wyoming. Fifty percent of the funding, or $280 million, came from local sources. I am proud of that commitment. The people in my State invest over $5,800 per student, per year, and that is the second highest amount in the country as a percentage of State income. But let me focus for a minute on the other 6 percent—the Federal contribution.

Federal support for elementary and secondary education is a sensitive issue in Wyoming. Federal dollars always come with Washington strings attached and that is a problem for me and for a great number of my constituents. I believe we should leave more of our tax revenue in the States and let the people who live there make the decisions about education.

Special education is different, however, because the strings are already in place. The distinction is that they don't come with much money. Wyoming's State and local taxpayers spent $58 million for special education last year. That was matched by only $5 million in Federal funds—about 8 percent.

Mr. President, IDEA is a good law. It protects disabled kids from discrimination in public education. It is an issue that needs national attention, coordination, and support. We should recognize why this law exists, why these services are mandated, and understand why there should be an assurance of strong Federal funding. The Gregg amendment would have made that commitment. It would say that we, as a body, believe the Federal Government should pay more for special education.

Why is this amendment so important? Because Congress has failed to support its share of the cost for 20 years. Without this amendment, the States really have no reason to expect that the situation is going to change. To add insult to injury, the bill places a new maintenance of effort requirement on State education agencies. That is a difficult pill to swallow when the Federal maintenance of effort has been so clearly lacking.

I would have objected to the new State maintenance of effort because my State currently pays 85 percent of special education costs. The local relief provided in this bill will do little to offset the State's heavy burden. The bill does, however, allow for a waiver if the State can show it is providing all kids with a free appropriate public education. That is an important consideration and I think it adds enough flexibility to the law to make it acceptable. But it does not solve all the problems.

This legislation will also require States to provide some new services. Without a guarantee of additional Federal funding, the States are going to have to bear that cost. One expense will be the mandate to provide alternative education for kids who are expelled due to disciplinary problems. There is also a requirement to provide State mediation as an alternative to due process. I support these changes. I hope they will actually reduce costs in the long run. But if we cannot even pay the Federal share for current mandates, then we should not be adding new ones. Congress needs to ante up the Federal share. If we are unable to do that, then this bill loses some of its luster.

The Gregg amendment would have made that commitment. I understand the problems a conference might present on this bill. I sympathize with Members who have spent so many hours working to reach consensus, but I believe the Gregg amendment is important enough to deserve conference consideration.

Mr. President, I do support the bill. It makes some sorely-needed improvements to the law—particularly in the areas of discipline, State coordination, and legal fees. We have before us a compromise that will improve current law, but it still lacks a strong funding resolution. That would have been an important part of this legislation that I think members of both parties would have supported.

If we are going to help States live up to their responsibility in providing a free appropriate public education to all kids, then we need to do it. And that means more than just piling on regulations.

Mr. WYDEN. Mr. President, all children should have access to a quality education, regardless of whether they have disabilities. The importance of the Individuals With Disabilities Education Act [IDEA] is that it enables parents to acquire special educational assistance for their children who may be fully capable of becoming productive members of society, but may need some extra help along the way. I am pleased that Members of Congress on a bipartisan, bicameral basis have worked out a compromise that allows us to reauthorize this important piece of legislation.

While I generally support the compromise on the IDEA bill that is before us today, I want to touch briefly on an issue that some school nurses have raised with regard to this legislation.

I have heard from many Oregon school nurses about the importance of including nurses in the individual education program [IEP] development process. Under current IDEA regulations, school nurses are considered qualified health professionals and are considered fully capable of assessing a student's disabilities during the IEP process. The school nurses had asked to be mentioned specifically in the statute as ''related service providers'' in a disabled child's multidisciplinary team. While this could not be worked out, I understand that the committee report addresses this issue, and I want to convey my support for the inclusion of school nurses as part of the IEP process.

In this country we frequently underestimate the excellent quality of care provided by this Nation's nurses. School nurses have the training and provide the supervision to safely deliver specialized health services. For children with chronic or special health care needs, the school nurse is often a crucial member of the multidisciplinary team that enables children with disabilities to participate fully in their educational program. As long as they are fully qualified to make an assessment of a child's disability, there should be no reason that localities should discriminate against nurses.

Again, I complement my colleagues for breaking through the logjam on this important reauthorization, and I want to reemphasize my support for the school nurses who play such an important role in the care of children with disabilities.

PERSONNEL STANDARDS

Mr. HARKIN. Mr. President, there is a new policy with respect to personnel standards in section 612(a)(15)(c) of the bill that sets forth parameters by which a State may deal with a documented shortage of qualified personnel. In that subparagraph, I want to clarify that the reference ''consistent with

state law,'' is intended to be applicable to those State laws governing the profession or discipline. I offer this statement to provide guidance at the U.S. Department of Education to help them in implementing the reauthorization.

Mr. JEFFORDS. I agree with that interpretation and thank the Senator for this clarification.

Mr. GRASSLEY. Mr. President, I rise today in support of S. 717. I support this bill because it has become clear to me that the status quo in special education is not acceptable.

Even though Iowans have done a good job under existing law, it is time to make changes. These changes are necessary in order to keep pace with the challenges facing educators today. Students with a variety of special needs are now in the schools. They have needs we couldn't even imagine when the first special education law was passed.

At this time I will address only two aspects of S. 717 that are sufficient reasons for supporting it. First of all, this bill would give schools and parents additional tools to improve education for all children.

In response to school complaints, clearer guidance is given for actions to assure the safety of all students in the classroom. I believe all of us here today recognize the need to do this.

For parents, the right to participate in decisions about their child's education is given more support. This is done through attendance at evaluation and assessment meetings and at any meeting at which the placement of their child might be decided.

And for students, in this bill we send a clear message that we have high expectations for all students—including students in special education. More accountability for progress on IEP's would be required. Participation in statewide and districtwide measures of school performance would be required. Stronger linkages to the regular education curriculum would be required for these students. We expect success from special education programs under this bill, and we expect that success to be measurable.

The second aspect of S. 717 I want to address is this. This bill clarifies that schools are not the only agencies that should pay for the services special education students need. This proposal does not retreat from the principle that all children have the right to an education, no matter what their needs are. What this bill does is require that Governors work to assure that all sources of funding for services are used to support these students.

This will be of particular importance to schools and families in Iowa.

Last week, I had a visit from a school superintendent in Iowa. His district has about 15,000 students; 2,000 of those students are in special education. Of those students there are about six or seven kids a year who require substantial medical support in order to attend school.

The school district hires nurses and other professionals in order to assure that these students can get an education. But this superintendent has been unable to get other agencies and programs to contribute to the costs of providing health services to these students. And this school year approximately $2 million will be spent by this school system on health services for these few students, some of whom are eligible for Medicaid.

Clearly these costs are beyond what we should be asking schools to pay. And that is one reason why S. 717 is important. It provides clear direction that these costs are not the primary responsibility of educators. They are instead the responsibility of other programs that have been created to support students and families. I am happy to provide such support to that school superintendent in his efforts to secure all the services his students need.

That superintendent represents a strong tradition in Iowa.

Education for students with disabilities in Iowa was mandated 6 years before the predecessor to IDEA was passed by Congress in the 1970's. At that time, when I chaired the Education Committee in the Iowa House, a State mandate for special education was passed. Following that, we developed a system of area education agencies that still serves Iowans today. It took us 2 years to get the area agency legislation passed; we were successful in 1974. That system is still the basis for delivering special education services to students all over Iowa, particularly in rural areas.

Regarding this bill, S. 717, my colleagues have enumerated positive aspects of this compromise proposal other than those I have mentioned. I have followed the progress of the work group closely and now provide my support for this landmark legislation.

Mr. MCCONNELL. Mr. President, since 1966, the Federal Government has supported special education services for America's disabled children. Today, school districts depend on the Individuals with Disabilities Education Act [IDEA] for assistance in assuring that children with special needs receive a comprehensive education in a supportive environment. In Kentucky alone, over 85,000 children benefitted from IDEA during the 1996–97 school year.

Today, the U.S. Senate takes a historic step forward in its consideration of S. 717, a bicameral, bipartisan bill to reauthorize IDEA. Over the last two decades, changes in educational resources and the needs of students have impaired the ability of schools to meet IDEA's goal of a free, appropriate education for disabled students. This measure seeks to ensure that the Federal statute effectively addresses the special education issues of today's classrooms and is prepared for the future needs of educators, parents, and students involved in special education.

This bipartisan, bicameral legislation achieves these objectives by building upon three primary goals: To focus on the successful education of children with disabilities, instead of rote completion of paperwork; to assure increased parental participation; and to give teachers the tools they need in order to teach all children.

S. 717 helps schools improve the delivery of special education services by eliminating unnecessary paperwork, streamlining data collection, and enhancing program flexibility and service integration. Schools also assume greater accountability for the educational progress of special education students through their inclusion in States and district-wide assessments.

S. 717 reduces the financial strain on school districts and parents by including mediation as an option for resolving disputes. The revised funding formula delivers more IDEA dollars directly to local education agencies, and the bill also requires interagency agreements so other responsible agencies pay their fair share of the service delivery costs for disabled students. As a cosponsor of S. 1, I look forward to working with my colleagues in fulfilling its promise of an additional $10 billion for IDEA over the next 7 years.

Further, S. 717 expands the ability of parents to participate in the planning of special education services for their child. The bill seeks to provide parents with the information they need to effectively work with their local school system by improving the preparation and dissemination of school notices and requiring student progress reports.

Teacher preparation for the successful delivery of special education services is also a priority in this legislation. Educators also receive greater freedom to coordinate instruction between special and regular education students. Finally, S. 717 offers a sound compromise solution for managing the disciplinary concerns of educators, parents, and students with disabilities.

I am also pleased that the bicameral, bipartisan working group responded to my request and the request of other committee members that this reauthorization include reforms specifically focused on the braille literacy needs of blind and visually impaired children. Since 1968, the percentage of blind students who lack reading or writing skills grew from 9 to 40 percent. This measure takes a two-pronged approach to this serious educational need by focusing on the importance of including appropriate braille instruction in a qualified student's individual education plan and emphasizing the need to enhance teacher preparation in the use and instruction of braille. I want to thank the Members of the working group for their leadership in addressing this key educational issue for our Nation's blind and visually impaired children.

IDEA's guarantee of a free, appropriate public education for children with disabilities remains one of our Nation's greatest accomplishments in civil rights. After 2½ years of work,

this final legislative proposal demonstrates the firm commitment of America's educators, parents, disability advocates, and this Congress to provide every child with an opportunity for educational success. Mr. President, I am proud to join as an original cosponsor of S. 717, and I encourage my colleagues to vote in favor of this worthwhile education measure.

Mr. HATCH. Mr. President, I am pleased to support the reauthorization of the Individuals With Disabilities Education Act [IDEA]. For over 20 years, IDEA has been assisting children with disabilities overcome obstacles and become successful students who go on to become productive citizens.

I commend the efforts of Chairman JEFFORDS, Senator HARKIN, and Senator FRIST. The Labor and Human Resources Committee has crafted a bill which is the product of hours and hours of consultation and discussion on both a bipartisan and bicameral basis. I also understand that Majority Leader LOTT has taken a special interest in this bill as well, and I appreciate his leadership in the effort to enact this legislation.

I have personally been assisted throughout this process by my Utah Advisory Committee on Disability Policy, and specifically by Dr. Steve Kukic, director of the Utah State Office of Education's Services for Students At Risk. Early on in this process, Dr. Kukic presented testimony to the Senate Labor and Human Resources Committee and identified what I believe is a key factor in this ultimately successful reauthorization which is a balanced system of accountability. Crucial to the success of IDEA is a framework where parents, advocates, school administrators and educators all work together to ensure that children are appropriately served.

I appreciate that parents, advocates, school administrators, and educators may have different and strongly held opinions about how to accomplish the goal of delivering educational services to all children, particularly with regard to disciplinary actions and attorneys fees. I believe that central to the intention of this reauthorization was the attainment of balance between the objective of these interested parties. I also believe that this reauthorization, by and large, achieves this balance.

I concur with several of the points raised by Senator GREGG, particularly the notion that if the Federal Government fulfilled its commitment to funding IDEA at an appropriate amount, then resources would be available on the state level to fund projects deemed necessary by the State.

However, as has often been stated in the Senate, we should not allow the perfect to become the enemy of the good. It is vital that we move ahead with the reauthorization of IDEA. This program makes a tremendous difference in the lives of children with disabilities.

I again want to commend all senators who participated in bringing this legislation to the floor. And, I would also like to single out a couple of staff members for their dedication to this goal. Pat Morrissey with Senator JEFFORDS and Robert Silverstein with Senator HARKIN deserve special kudos for hanging in there for the duration.

I am pleased that both the Senate and House of Representatives have ensured that the services provided under IDEA will continue, and I am pleased to vote in support of final passage. I urge the President to sign it promptly.

Mr. KOHL. Mr. President, I rise in strong support of the Individuals With Disabilities Education Act Amendments.

The bill before us today serves as a shining example of what Congress and the administration can do when working together in a bipartisan basis to address the concerns of diverse interests. In this case, these interests include parents, teachers, disability advocates, and school administrators. Too often these groups have been pitted against one another and have risked losing sight of a goal they all share—providing the best education for children with disabilities. This bill helps clear away problems that have obstructed that goal and reaffirms a child's right to a free appropriate education.

Since the inception of the Education for All Handicapped Children Act in 1975, later changed to the Individuals With Disabilities Education Act [IDEA], our education system has undergone significant changes. Prior to this monumental legislation, children with disabilities were often shunned from traditional schools and relegated to State institutions. Today, special needs children are learning in the classroom side by side with their peers. This would not have been possible without IDEA.

Advances in technology, teaching methods, and understanding of childhood development have changed the way we approach education in general, and special education in particular. But this progress has not been painless. School districts face enormous challenges in meeting the needs of all children. Given the intense resources often required to help keep special needs children in the classroom, schools and states have struggled with rising costs. Along with the financial burden, schools have been faced with growing societal pressures.

I have been troubled by reports from parents, teachers, and administrators in Wisconsin about violence in the classroom. Some of these cases have involved students with disabilities. Although often a reflection of inadequate resources directed to the special needs of the disabled student, disruptions affect the entire classroom. No student should have to learn in a classroom of fear and no teacher should be forced to chose between educating a special needs student and the rest of the class. And Mr. President, no student should be denied an appropriate education.

I am also troubled that despite IDEA, some disabled students are not be getting the education they deserve. Procedures and resources may vary tremendously from State to State and even between school districts within States. Clarification is needed to help schools and States conform with the goals of IDEA. This bill provides that clarification.

The bill makes numerous improvements to the current provisions of IDEA, while maintaining key principles. To address concerns with litigation, the bill encourages use of mediation and parent training centers, which are effective resources that provide low-cost dispute resolution between parents and schools. Paperwork burdens faced by schools and States are also addressed. Although documentation is a necessity, educators should concentrate on teaching, not paperwork. Important, parents rights are maintained and each child is still guaranteed an appropriate education.

I am particularly pleased that this legislation will intensify the focus on early intervention services for infants and toddlers with disabilities. As we know from the growing body of scientific evidence on brain development, the most important time to influence a child's learning capacity is in the zero to 3 age range. This section of IDEA recognizes the need for early intervention and represents one of the very few areas of Federal investment in this critical age group.

Finally, Mr. President, this bill helps resolve two very contentious issues involving special education—discipline and due process. This compromise will ensure that disabled children retain access to special education services while giving school districts greater ability to maintain order and safety in the classroom. If students pose a threat to themselves or others, there is new authority to allow removing the child from the class to an alternative educational setting. But the student cannot be shut out of school doors because of behavioral problems relating to the child's disability. In addition, parents will maintain a key role in their child's education and retain legal rights if a child's education is neglected.

Although these changes may not please everyone, I believe they represent a fair compromise to a very delicate area of law. Overall, this bill is a balanced attempt to enable infants, toddlers, and children with disabilities to receive a high-quality education and helps schools provide that education.

Mr. President, this compromise was a long time coming and will have an impact for a long time to come. I urge my colleagues to support this consensus legislation.

Mr. KEMPTHORNE. Mr. President, I rise today to express my support for S. 717, the Individuals With Disabilities Education Act reauthorization [IDEA].

Over the last 2½ years or so, this body has worked diligently to reauthorize IDEA. I commend Senators JEFFORDS, HARKIN, LOTT, COATS, FRIST, and KENNEDY, and all of the others who

have contributed to the development of this legislation and to the debate here on the Senate floor this week. The education of our children, including those with disabilities, is an important issue, and not one which may be taken lightly. The efforts of the Senators I just mentioned demonstrate the high level of concern which exists on this matter.

I would like to begin by addressing a matter which I have heard discussed several times over the last couple of days. That matter is unfunded mandates. As the author of the Unfunded Mandates Reform Act, I am well aware of this issue. In fact, I have worked on the question of whether or not IDEA, or similar legislation, should fall under the definition of an unfunded mandate since well before my legislation became law.

Early in my work on unfunded mandates legislation, I included specific limitations on the application of such a law. Among those limitations were exceptions for a Federal statute or regulation which establishes or enforces any statutory rights that prohibit discrimination on the basis of race, religion, gender, national origin, handicapped, or disability status. Let me again say, an exception is included to protect the statutory rights of numerous groups, including the handicapped and disabled. Clearly, IDEA is designed to protect the rights of disabled students. Given these two very specific facts, I believe it is inescapably obvious that IDEA is not an unfunded mandate as defined by the Unfunded Mandates Reform Act, Public Law 104–4.

One aspect of the Unfunded Mandates Reform Act which did impact IDEA was the provision which called for the Advisory Commission on Intergovernmental Relations [ACIR] to explore any law which placed an enforceable duty on State or local governments. Among the laws which the ACIR reviewed was IDEA. At the time, many groups contacted me in firm opposition to any consideration of IDEA in ACIR's report. I maintained that we should have no sacred cows, that reviewing IDEA in the report could play an important role in reauthorizing this legislation. While many people expressed numerous concerns about the final ACIR report, I think one aspect of that report was particularly notable. That part mentioned that the Federal Government needed to finally start picking up its fair share of the costs of IDEA, that we should contribute the 40-percent of the costs that were originally promised. I am sure my colleagues would not be surprised to find out that no one expressed any opposition to that specific recommendation.

And I am pleased to note that the ACIR recommendation on funding has not been ignored. From the very beginning of the 105th Congress additional attention has been focused on the need for increased federal funding for IDEA. S. 1, the Safe and Affordable Schools Act of 1997, contained increased authorizations for IDEA to finally reach the 40-percent federal share for which we have aimed. In addition, earlier this year, Senator GREGG took the lead in circulating a letter to President Clinton, later signed by myself and 20 of our colleagues, requesting his cooperation in fully funding special education. Now that the issue of IDEA funding has been raised, I believe the increased consciousness about this issue will result in Congress soon achieving full funding for this important program.

Mr. President, while we may have many different approaches on this issue, I believe we share exactly the same goal—providing our children, regardless of their level of disability, with the best possible education. Does S. 717 reach this goal? Quite honestly, the answer is no. This legislation is not perfect. No bill ever is. But S. 717 gets us closer to our goal. Through untold hours of hard work on the part of Members of Congress and various groups affected by IDEA, a compromise was reached. Because of this effort, we now have before us legislation which will make IDEA better.

I believe S. 717 improves the implementation of IDEA for all affected parties—students, parents, teachers, and school administrators. The bill takes significant steps to reduce the paperwork associated with the current law and to increase the flexibility available to teachers and school administrators, allowing schools to focus on what should be their first priority—educating young people. It improves the ability of schools to discipline disabled students in appropriate circumstances, most notably in any situation involving the possession of a weapon or controlled substance. It requires mediation as an option to taking disputes between parents and schools to the courts. It also enhances the ability of parents to participate in educational decisions which affect their child. All of these things together will help us provide better educational opportunities to students, both the disabled and non-disabled, and will ease some of the burden on schools which exist in the current law.

Mr. President, as I stated before, the bill before us today is the result of a great deal of lengthy and painstaking negotiations. While it is likely that no one would say this is the bill they would choose if the decision was entirely up to them, it is the bill on which often opposing sides were finally able to come to an agreement. After all the work which went in to creating this delicate balance, I believe altering the bill would be detrimental to the fragile agreement which was finally built. With this in mind, I will oppose the amendments which have been offered on this legislation. While I understand the concerns expressed by these amendments, and commend the amendments' sponsors for their concern about the needs of school districts, I cannot support any amendment which could unravel the current consensus which has been forged.

Mr. President, the legislation we have before us today will increase flexibility for schools, improve educational opportunities for students, and encourage parents, teachers and school administrators to work more closely together to address concerns about the education of the disabled. I am pleased to support this bill and urge its passage.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. Under the previous order, the clerk will report the House companion bill.

The legislative clerk read as follows:

A bill (H.R. 5) to amend the Individuals With Disabilities Education Act, to reauthorize and make improvements to that Act, and for other purposes.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. There will now be 4 minutes of debate equally divided between the two managers prior to the vote on passage of the bill.

Mr. JEFFORDS addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, first, I thank my colleagues. I understand the difficulties when we are asked to do things that common sense tells us otherwise. I know how hard it is to vote against amendments that are common sense and also express ourselves on how we feel about some of the problems we have had with the special education legislation.

I deeply appreciate the vote on the last amendment to move this bill forward. As my colleagues know, we are now on the House bill which passed with only three dissenting votes yesterday. I hope the Senate will do likewise.

I yield 30 seconds to the Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, this bill is a clear improvement over present law. Nevertheless, it remains a $35 billion per year almost totally unfunded mandate on the school districts of our country. It takes away control over quality of education that they can provide and, regrettably, in spite of the fact that it is a slight improvement, I am constrained to vote against it.

Mr. JEFFORDS. I yield to Senator KENNEDY.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 30 seconds.

Mr. KENNEDY. Mr. President, I join in paying special tribute to Senator FRIST. As a new Member, he took over the responsibilities in this area and has made an enormous contribution to bringing us where we are; also, Senator COATS, and, in particular, the chairman of the committee, Senator JEFFORDS, who has exercised leadership.

I also thank TOM HARKIN. This act was passed 22 years ago. I remember when 5½ million children were pushed aside and lacked any kind of hope and opportunity. Senator HARKIN has been a giant in the Senate for all those who have been disabled in our country. Today is a victory for children, it is a victory for the parents of these children, and it is a victory for our country. I think, quite frankly, it is the finest moment we have had in this session. I commend those who made it possible to make a difference for disabled children.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I thank Senator KENNEDY for his kind remarks, for his leadership in this area. I thank Senator JEFFORDS and especially Senator FRIST, who had the first hearing on this 2 years ago, May 9, 1995. It has been a long process. We have worked with all groups.

We worked with all groups, and we have a very balanced, fair, and forward looking bill.

To sum it up, Mr. President, what this bill says is that prior to 1974, almost 1 million kids were totally excluded from not receiving education only because they were disabled. Now they are in school, they are learning, they are becoming productive citizens, they are working. They are taxpayers, not tax consumers. They are not in institutions any longer.

Are there problems out there? Yes, but we are meeting those problems, and we are a better and stronger country because of what we did 22 years ago. This bill moves us into the 21st century by saying that we are going to strengthen this law and we are going to provide that this country meets its obligations to all of our children, including children with disabilities.

Again, this is a bill that reaches out and lifts up everyone in this country. I urge its passage.

Mr. LOTT. Mr. President, we are now going to vote on the Individuals with Disabilities Education Act Amendments of 1997. The Individuals with Disabilities Education Act, referred to as IDEA, has been on the books for 22 years.

The obligation to provide children with disabilities a free and appropriate education is grounded in the 14th amendment to the Constitution, title V of the Rehabilitation Act, the Americans with Disabilities Act, and by the laws of every State. IDEA is one additional civil rights tool that guarantees children with disabilities the right to receive a quality education. IDEA is the only Federal civil rights statute that provides funds to assist States in meeting the obligation to educate all children. This bill is about the educational future of 5.4 million children.

From my perspective, IDEA is a voluntary grant-in-aid program. It provides funds to States to assist them in making available a free appropriate public education to 5.4 million children with disabilities from 3 through 21. If a State elects to take its allotment of funds appropriated for IDEA in any year, it must provide a free appropriate public education to these children as prescribed by the law. Today, every State is participating in the IDEA grant-in-aid program, and 49 States have elected to participate in and comply with IDEA since 1975.

The history of these IDEA amendments precedes the 105th Congress. In the last Congress our colleagues on the Labor and Human Resources Committee attempted to move a bipartisan reauthorization of IDEA through the Senate. Their bill, S. 1578, did not make it to the floor before that Congress ended. Those of us involved in the last minutes of the 104th Congress, especially the distinguished Senator from Tennessee, Dr. FRIST, and Mr. HARKIN from Iowa, the authors of S. 1578, Senator JEFFORDS and myself, pledged to make the reauthorization of IDEA one of our top legislative priorities in this Congress. We are here again with a bipartisan approach. And, actions speak louder than words.

Since January of this year, Senate and House staff, as well as representatives from the administration have been meeting daily to craft our bipartisan bill and to bring this legislation to the floor as quickly as possible. Those involved in crafting this legislation included not only Senators and Labor and Human Resources Committee staff, but also our House counterparts, especially Chairman GOODLING, Mr. RIGGS, Mr. GRAY, and Mr. MARTINEZ. Officials from the U.S. Department of Education, particularly Judith Heumann, Assistant Secretary for Special Education and Rehabilitative Services, and White House representative, Lucia Wyman, also participated in the process. The range of expertise and knowledge brought to bear in developing this bill as well as the spirit of bipartisan, bicameral cooperation demonstrated in writing it is unprecedented. I have seen nothing like this in my 24 years in Congress. In fact, the Senate Labor and Human Resources Committee and the House Committee on Education and the Workforce, unanimously reported out identical legislation, S. 717 and H.R. 5 respectfully, on the same day, May 7, 1997. Moreover, the committees collaborated with each other in developing their respective reports.

The frequency, scope, and type of input we sought and received in putting together this final product was extraordinary. Almost every week for 3 months we held public meetings using a town hall format. This permitted those interested in our progress in drafting the IDEA bill to offer feedback and input. Students, educators, advocates, and parents traveled from all over the country to provide comments on our proposals. Often, more than 100 people would speak at an individual meeting. No effort was made to limit the amount of people that testified or limit the time they could speak. Many told personal stories that were oftentimes both heart warming and heart wrenching. Their recommendations came from the real education front lines. Our inclusive process, although unorthodox, has paid off. As of today, we have heard from over 30 groups that support our moving this legislation without amendment. They view our 5-month effort as worthy of their unequivocal support.

Many of you in this Chamber and your constituents, who are involved in this issue, appreciate the delicate balance this bill represents. It is built on principles, it is built on consensus, and it is built on compromise.

I acknowledge that States need additional Federal funding to fully implement IDEA the way it is intended. We have said in S. 1, the Safe and Affordable Schools Act of 1997, that we will increase funding, from the current $3.2 billion to $13.2 billion in 7 years. More Federal dollars for IDEA is an appropriations issue that we will turn to after we pass this important legislation. I am confident that dollars spent today for the education of children with disabilities is money well spent. When all children are provided a quality education, they stand a better chance of becoming productive and contributing adults in our society. IDEA is an important investment in the future of children with disabilities.

Another benefit that IDEA provides is that it offers everyone one set of rules on how to go about providing an education to children with disabilities. Prior to 1975, 35 States, through Federal courts, State courts, and State legislatures, were grappling with how to define the provision of an education to children with disabilities. Individual States and the country as a whole did not need, did not want 35 interpretations of what constituted an education for children with disabilities. Everyone wanted one rule book. That is why IDEA originally passed. That is why today, with States educating 5.4 million children with disabilities, less than one-half of 1 percent of disagreements between parents and school districts, over a disabled child's education, end up in court. Do we want to step backward? Do we want to reset the clock and create a legal free-for-all? I don't believe we do.

I would like to make another observation. I, as much as anyone else in this Chamber, want Federal IDEA dollars to be spent on educating children with disabilities, not on attorneys' fees. I am convinced that this bill makes that happen. Could we have put more limitations on when attorneys could be used or when parents, who prevail against a school district in a legal dispute, could be reimbursed? You bet. Could we have gotten here today having done so? No. Most of the limitations on attorneys' fees were put in the statute by our colleague from Utah, Senator HATCH in 1986. They are in this bill.

The Individuals With Disabilities Education Act Amendments of 1997 is,

in my view, an important legislative accomplishment. The process we implemented to develop this legislation provides us with a new standard for how we can work together. This bill sends a message to the country that we care about education, that we care about children, that we care about families, and that we care about the future. This is a powerful and positive message. Please join me and the rest of my colleagues who have worked long and hard to get here, in supporting this bill. The President is waiting. He is ready to sign the IDEA.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I thank my colleagues for their tolerance. This is an incredibly important piece of legislation that will do so much to straighten out the problems that we have with respect to special education in our schools. It allows much more flexibility in discipline in the schools. It takes care of the numerous problems that we have had.

I will point out that Senator LOTT and Dave Hoppe spent an infinite number of hours bringing these groups together. Senator FRIST did so much last year to prepare us, but it fell apart at the last minute. Senator COATS also worked very hard on this.

I commend all colleagues for their support. I point out that this passed the House yesterday 420 to 3. I hope we can do even better on this side. I thank all the staff who have helped us.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Under the previous order, the bill is considered read three times.

The question is, Shall the bill, H.R. 5, pass? The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from West Virginia [Mr. ROCKEFELLER] is necessarily absent.

The result was announced—yeas 98, nays 1, as follows:

[Rollcall Vote No. 66 Leg.]

YEAS—98

Abraham	Collins	Grassley
Akaka	Conrad	Gregg
Allard	Coverdell	Hagel
Ashcroft	Craig	Harkin
Baucus	D'Amato	Hatch
Bennett	Daschle	Helms
Biden	DeWine	Hollings
Bingaman	Dodd	Hutchinson
Bond	Domenici	Hutchison
Boxer	Dorgan	Inhofe
Breaux	Durbin	Inouye
Brownback	Enzi	Jeffords
Bryan	Faircloth	Johnson
Bumpers	Feingold	Kempthorne
Burns	Feinstein	Kennedy
Byrd	Ford	Kerrey
Campbell	Frist	Kerry
Chafee	Glenn	Kohl
Cleland	Graham	Kyl
Coats	Gramm	Landrieu
Cochran	Grams	Lautenberg
Leahy	Murray	Smith (OR)
Levin	Nickles	Snowe
Lieberman	Reed	Specter
Lott	Reid	Stevens
Lugar	Robb	Thomas
Mack	Roberts	Thompson
McCain	Roth	Thurmond
McConnell	Santorum	Torricelli
Mikulski	Sarbanes	Warner
Moseley-Braun	Sessions	Wellstone
Moynihan	Shelby	Wyden
Murkowski	Smith (NH)	

NAYS—1

Gorton

NOT VOTING—1

Rockefeller

The bill (H.R. 5) was passed.

Mr. JEFFORDS. I move to reconsider the vote.

Mr. HARKIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JEFFORDS. Mr. President, I want to thank my colleagues for the tremendous vote and support for the legislation. This has been an incredible endeavor: So much effort, so much time. The vote that we have is certainly, percentagewise, perhaps at least identical to the House, and certainly with only one dissenting vote is a tremendous tribute to all those who worked to put this bill together.

In particular, I wish to thank Senator FRIST, who brought it almost to this point last year, and it fell apart at the last minute. His efforts were so paramount in bringing this bill to us this year.

I thank the majority leader and Dave Hoppe for their help in getting all the groups together, and thank as well the work of both sides of the aisle, Senator HARKIN, Senator KENNEDY, all on my side, certainly Senator COATS and, as I mentioned, Senator FRIST and Senator LOTT, and all who have worked so hard—Senator GREGG in particular on the funding—this past year. We have had a real joint effort. And I am blessed and thank Pat Morrissey and Jim Downing of my staff who also did tremendous work, and also the staff on the majority side and the minority side.

I yield to Senator HARKIN.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER (Mr. HUTCHINSON). The Senator from Iowa.

Mr. HARKIN. Mr. President, I want to take a couple minutes to thank a lot of people because this has been indeed a long journey and a tough journey.

It started, as I said, 2 years ago, on May 9, 1995, when Senator FRIST had the first hearing on the reauthorization of the bill. And it has taken us 2 long years of working literally, if not every day, every week on this, and lately every day on it for the last several months.

So I want to express my heartfelt appreciation to the people who have made it possible to reach this passage of S. 717. There are many people with a deep commitment to improving educational results for disabled children who stayed the course throughout this very long, tough journey. And today we can now point with satisfaction to a well-balanced, bipartisan bill that makes the kinds of improvements we are seeking in reauthorizing IDEA.

Twenty-two years ago, as we have all said, with the enactment of Public Law 94–142, Congress took steps to ensure children with disabilities would no longer be excluded from school and would be guaranteed access to a free appropriate public education.

Today, we have taken another major step by ensuring that the disabled children will now have the opportunity to enjoy the same expectations in the general curriculum as enjoyed by their nondisabled peers. And that success will be judged by the same high standards applicable to others.

So first I would like to thank Judy Heumann, the Assistant Secretary for the Office of Special Education and Rehabilitative Services. Ms. Heumann, who has polio and herself was excluded from school, has successfully overcome diversity and discrimination. She sued the New York City Board of Education for the right to teach from her wheelchair in that city. She won. And she taught. And she has devoted her adult life to advocating for the rights of disabled persons.

I think it is especially significant to point out in 1975, Judy worked for Senator Harrison Williams, who was one of the sponsors of Public Law 94–142. In her role with the Department of Education, she and Dr. Tom Hehir, Director of the Office of Special Education Programs, together with Secretary Riley, and their respective staffs crafted a reauthorization bill that has served as the framework and foundation for what we have just passed.

So I express my appreciation to Secretary Riley, Ms. Heumann, and Tom Hehir. I want to give special thanks to their respective staffs who continuously provided crucial technical assistance and leadership throughout this entire reauthorization process.

I would especially, Mr. President, like to commend our majority leader, Senator LOTT, for his deep commitment to ensuring passage of the IDEA reauthorization bill as soon as possible in this legislative session. The majority leader demonstrated the extent of his commitment by arranging for his own chief of staff, David Hoppe, to facilitate the bipartisan, bicameral working group that has worked so hard over the last 10 weeks to develop this final bill.

I simply cannot say enough to express my appreciation to Senator LOTT's chief of staff, David Hoppe, for his enormous contribution to this reauthorization process. We would not have had a bill today without his involvement. Mr. Hoppe brought to this process a strong sense of integrity, superb negotiating skills, a sense of humor, and a stick-to-itiveness. It was a continuous exercise of all of these attributes in facilitating the working group that resulted in the bill we passed today.

As I said, Mr. President, it was 2 years ago this week that Senator FRIST, as chairman of the Subcommittee on Disability Policy brought to order the 20th anniversary joint House-Senate informational hearing on IDEA. And following that hearing, Senator FRIST worked diligently to secure passage of the bill before the end of the 104th Congress. Well, although it was not possible to fully meet that goal, the groundwork laid by Senator FRIST, and his unending devotion to making sure we passed it, was of significant help to the working group this year in crafting again the bill we just passed.

It was a pleasure and a privilege for me to work as the ranking minority member on the Disability Policy Subcommittee with Senator FRIST in this effort. I want to thank Senator FRIST for his tireless leadership and contribution to this bill.

Let me pay tribute to a friend of longstanding from House days, and now in the Senate, who now stands across the aisle from me as the chairman of the Committee on Labor and Human Resources, Senator JEFFORDS of Vermont, for his commitment over a lifetime, for developing quality education for all of our children—for all of our children. Senator JEFFORDS has always been in the forefront of the fight. I thank him especially for his leadership in supporting passage of this bill.

Senator JEFFORDS' long commitment, not only to education of all kinds, but especially for kids with disabilities, also played a key role in the enactment of 94–142 in 1975. And I thank him publicly for that lifetime of work and dedication.

I also especially want to thank Senator KENNEDY for the tremendous contribution he made to this. Throughout his tenure with this body, Senator KENNEDY has continually provided the leadership we have needed in championing all civil rights issues. He has consistently worked with me to support various laws ensuring the rights of individuals with disabilities.

Through Senator KENNEDY's diligence, he ensured that stronger enforcement requirements would be added to S. 717 to help ensure that States and local school districts would be in full compliance with IDEA.

Let me pay tribute also to Senator COATS and Senator DODD for their contribution to the successful passage of this bill, and all of my colleagues in the House who worked with us in a very unique arrangement.

I say to my friend from Vermont, it was so successful. We had to spin this off from other bills. We pulled together not only bipartisanship here in the Senate, but it was bicameral. And we worked together with the House Republicans and Democrats, jointly, day after day in developing this bill.

And I would just mention—hopefully without excluding too many people—Representatives GOODLING, of course, and MARTINEZ, Representatives RIGGS and MILLER, CASTLE and SCOTT. So this bill has truly been a bipartisan, bicameral effort. And I am proud to have been a part of that effort.

But now let me also thank all of the staff members of the working group. As I said, they were here every day, all week, weekends, late Fridays, Saturdays. I would get phone calls on Saturday night and Sunday afternoons, and they were still working. I hate to admit it, I was home. They were working.

But I have to first thank Bobby Silverstein for his leadership on this bill, and going back for many, many years, first when he worked for Congressman Williams in the House and then saw the light and came over to the Senate to work on my staff on the Disability Policy Subcommittee in the mid-1980's. And it was through Bobby Silverstein's lifetime, long and deep commitment to ensuring the rights of people with disabilities that we got through the Americans With Disabilities Act in 1990. And it was through his efforts that we were able to finally pull together all of the working people on this bill and the reauthorization of Individuals With Disabilities Education Act. So to Bobby Silverstein, I thank him for many years of service on this committee and for his service for making this country more fair and just for all people. I thank Tom Irvin of my own staff, on detail from the Department of Education. I thank Pat Morrissey, who took over the leadership on the staff in the subcommittee 2 years ago with Senator FRIST. Again, Pat has been a stalwart, always there, always working, no matter what hour, no matter what day. I want to thank Pat again for all of her work in ensuring the passage of this bill. Also, Jim Downing, Senator JEFFORDS' staff, again, Jim, I thank you again for everything you have done. You have always been there. Thank you to Townsend Lang of Senator COATS' staff, Dave Larsen of Senator FRIST's staff, and Kate Powers, Connie Garner, and Danica Petroshius of Senator KENNEDY's staff. I also commend the hard work of the House staff, including Sally Lovejoy and Todd Jones of the House committee majority staff, Alex Nock of the House subcommittee minority staff, Theresa Thompson of Representative SCOTT's staff and Charlie Barone of Representative MILLER's staff.

Finally, Mr. President, most importantly—most importantly —I want to thank all of the members of the disability community and the general education community who stuck with this process through 2 long years. It was up and it was down, up and down, all the time. We thought we had agreements, then it would fall back. We kept bringing them together, bringing them together. It was a deep commitment by those who understand the need for a balance.

I am sympathetic, as I said many times, with teachers who find themselves in a classroom and perhaps they have children there that they do not know how to handle. They are at their wits' end, and principals maybe get to their wits' end. I have a lot of sympathy for them. That is why we have to meet more of our obligations in providing more funds to the States for teacher training and supportive services for those teachers so they can do what is right and proper and meet their obligations.

Well, what those who wanted a bill in the education community did and the disability community did over the last couple of years, they said, ''We will forget all the anecdotes. Everyone has a horror story.'' You can always find a horror story someplace no matter which side you are on. If you are on the disability side, you can find horror stories about teachers or principals who did bad things to kids with disabilities. If you are on the education side, you can find horrible things—maybe somebody claimed they had a disability and they did not. But we cannot legislate by anecdote. We cannot legislate by one, two, or three horror stories. We have to do what is right for the entire Nation. We have to cut through the fog and the haze and the one or two stories that keep cropping up. We have to cut through the misconceptions.

I do not know how many times I keep hearing this is an unfunded mandate when we all know it is not an unfunded mandate. So we have to keep cutting through, cutting through, all the time. That is what some of the leaders in the general education community and the disability community did for the last couple of years.

I thank them, not those who wanted to throw a hand grenade in periodically because they had a horror story, but those who understood that we had to reach a consensus, we had to strike a balance. That is what this bill is.

In closing, I hope and believe the bill we passed today, the Individuals With Disabilities Education Act Amendments of 1997, will clearly enhance equal educational opportunities for all children with disabilities as we enter the 21st century. We promised that in 1975. We have met a lot of those promises—not all of them. We have a lot of promises to keep.

I thank the Senator for yielding me this time.

Mr. JEFFORDS. I will take a moment and thank the Senator from Iowa for his most eloquent statement. I think for those of us who were involved in the original writing of it back in 1975, I think only we, perhaps, had the legal understanding of what has happened over the last 20-odd years now as to improving the lives of individuals with disabilities and to improve the confidence of our educational system in giving an appropriate education to all our students.

I yield to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. FRIST. Mr. President, I rise very briefly to say that this bill is about

education. This bill is about children. Today we have seen a real victory for the over 40 million individuals with disabilities in this country, but especially the 5 million children, individuals with disabilities, who will benefit—who will benefit—from this modernized, updated Individuals With Disabilities Education Act.

The bipartisan vote of 98–1 shows the Republicans and Democrats are working together, have worked together, and will continue to work together to ensure that individuals with disabilities have the same opportunities that every other American has to achieve the utmost potential for themselves. It was a bicameral bill. I am delighted the House passed it, the exact same bill, just 2 days ago.

I want to thank people from my staff, including Sue Swenson, Dave Egnor, Robert Stodden, Dave Larson, Pat Morrissey, Bob Silverstein, and Tom Irvin from the minority staff who helped me so much over the last 2 years, and once again, I thank Dave Hoppe, Senator JEFFORDS, and Senator HARKIN for their leadership, for their experience, and their wisdom in passing this bill today. It is a victory for education, a victory for children, a victory for all Americans.

Mr. JEFFORDS. Thank you, Senator.

Mr. President, last evening the House adopted H.R. 5 by a recorded vote of 420 to 3. Today we have voted 98–1. In the last week Congress has demonstrated once again, its willingness to invest in human capital—the children of today and the taxpayers of tomorrow, children with disabilities and children, who, if not helped, might develop disabilities. We have said in H.R. 5: children with disabilities will continue to receive a free appropriate public education, we do expect them to succeed in the general education curriculum, and we will be accountable for their progress. That is a clear, simple message, a message of power, potential, and promise.

We invested in human capital in another way in H.R. 5. We recognized the range of decisions and obligations that fall to local school districts on a daily basis. We gave them flexible, practical guidelines on how and when they may discipline children with known disabilities. We gave them greater access to Federal dollars and greater discretion in how those dollars may be used. We directed more resources to personnel preparation and to technical assistance. We reshaped procedural requirements so school personnel may concentrate on children and teaching them.

We invested in human capital through incentives for partnership between State educational agencies and local education agencies, and between parents and professionals. These partnerships will not only foster cooperative planning and problem solving, but innovation and expanded opportunities for children, with and without disabilities, to benefit from school.

The process by which we arrived here today, for this vote, may be unprecedented and never be repeated, but it allowed us to achieve a consensus on a fundamental point. All children are entitled to a good education, we reaffirm that, and make it more likely for children with disabilities in H.R. 5.

Although others may characterize our efforts differently, I would say that we were guided by the premise that special education is not a place but an attitude. It is an attitude that says children need not fail in order to be helped; that communication and partnership with parents is a commitment, not an accident; and that solutions to problems do not come from mandates, but from reaching common ground.

I wish to thank my colleagues for their support in the passage of this historic legislation.

IDEA REAUTHORIZATION

Mr. BURNS. Mr. President, I rise to express my gratitude to all the folks who made possible the passage of the Individuals With Disabilities Education Act reauthorization bill. It's been a real struggle over the last 2 years, but a concerted effort led by David Hoppe of Majority Leader LOTT's staff has resulted in a compromise bill that received near unanimous support in both the House and the Senate. I was among those voting for this bill.

Mr. President, Montana's schools are breathing a sigh of relief that they will have more flexibility in dealing with disruptive students who pose a threat to teachers and other students. At the same time, the bill preserves the right of disabled students to a free appropriate public education.

However, as with all compromises, there is something in this bill for everyone to dislike. I don't think the bill goes far enough in giving local educational agencies the ability to remove and expel dangerous students. I supported Senator GORTON's amendment to allow local agencies to develop their own policies on disciplining students. This amendment was defeated.

I also have serious concerns about the costs of implementing this bill, costs which fall directly on the States and the school districts. Make no mistake: at current Federal funding levels, this bill is an unfunded mandate on the States. The Federal Government funds less than 10 percent of the bill's costs, though it has promised to pay 40 percent. This bill does not set funding levels—it is not an appropriations bill. We will have a separate debate on funding later in the year. But I want to point out that we are mandating that our local schools take specific actions which are very expensive and getting even more so every year. We must take more responsibility for our actions, and I hope we will do that when we debate funding later this year.

Mr. JEFFORDS. Mr. President, I ask unanimous consent S. 717 be returned to the calendar.

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

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business.

The Senator from Alaska [Mr. STEVENS], is recognized to speak for up to 45 minutes.

R.S. 2447 RIGHTS OF WAY AND ALASKA

Mr. STEVENS. Mr. President, when I came to the Senate, I brought with me a little sign I used to keep on my desk as a lawyer. It was the four-way test of the Rotary Clubs of America. It says, ''Of the things we think, say, or do, is it the truth? Is it fair to all concerned? Will it build good will and better friendships? Will it be beneficial to all concerned?''

A little over 10 years ago, I stood on this floor and I had in my hand a flier that had been issued by the Wilderness Society. It had a picture of Mount McKinley National Park and Wonder Lake—that is in the park—on the front of it, with the word ''sold'' stamped on it. That indicates somehow or other that logging was going on in Mount McKinley National Park near Wonder Lake.

There is another picture that talked about logging 800-year-old hemlock trees in a rain forest. As a matter of fact, those photographs were of redwood logs on trucks in California, on a California highway, and we identified the highway. To his great credit, the former Senator from Wisconsin, Senator Gaylord Nelson, withdrew that pamphlet and called me and told me he was doing that.

Last week, after the debate on the supplemental appropriations bill, I came to the office in the morning and I found on my desk an AP story written by Jim Abrams, Associated Press writer. It started with this line: ''Legislation making it easier to build roads through Federal parks and wilderness area survived a Senate challenge Wednesday and headed toward a possible showdown with the White House. The measure, pushed by Alaska and Utah Senators, inserted in a crucial bill to provide billions to victims of natural disasters, would give the Federal Government less say in what constitutes a valid right-of-way under a 130-year-old law.''

Another AP story came to my attention later that day by Mr. H. Josef Hebert of the Associated Press. It goes further in asserting that we have presented to the Senate a bill that would intrude upon national parks and wildlife refugees. Interestingly enough, issued out of the AP office in Salt Lake City, was this article: ''White House move opponents claimed could block access to rural byways in Utah and Alaska has been narrowly defeated by the Senate.''

It goes on to state the issue from the point of view of someone who knows what he is talking about.

I ask unanimous consent these three articles be printed in the RECORD following my remarks.

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

(See exhibit 1.)

EXHIBIT 1

Mr. STEVENS. We found later that the information in those articles was based on a statement issued by the National Parks and Conservation Association, which in my day when I was with the Interior Department of the Eisenhower administration was a truthful organization, not just a bunch of flacks for the extreme environmental movement.

It is very interesting to read this because this is the source of the claims made here on the floor that assert that there would be hundreds of thousands of miles across wildlife refuges, national parks, and other areas in Alaska—as a matter of fact, the figure of over 900,000 miles was used several times.

Now, Mr. President, nothing is farther from the truth. I am here to ask the people in the Senate and the people who are addressing this issue to come back and face the four-way test. It is not true. The newspapers began repeating over and over again that the provision I authored in this bill that passed the Senate would create new roads and make Swiss cheese of our national parks and other protected areas. Those are false reports that are based on I do not know what kind of research. I am here today to set the record straight.

Mr. President, it is a very simple proposition. Here is a map of Alaska with hypothetical section lines on it. Our State is one-fifth the size of the United States, 586,000 square miles. We became a State, Mr. President, in 1959. In 1969, the whole State was withdrawn from the creation of any rights—no State rights, no native rights, no private rights could be created on Federal lands. At that time, the Federal Government owned almost 90 percent of Alaska land. These hypothetical lines represent section lines, as I said. If the lands were ever surveyed under Revised Statute 2477 as interpreted by my State, it would be possible—possible—for the State to claim the right to build a highway.

The falsity of the statements that were made concerning my amendment are depicted on this map. We, in 1976, as a Congress, with the President's approval, repealed the old Revised Statute 2477. What that did is give the areas in the West where rights-of-way had been created by use or by surveys, the right to use those rights-of-way across Federal lands and they, in fact, ripened into the highway system of the United States. However, those rights had to be created in most of the United States by 1976. We protected only valid existing rights that were created prior to the repeal of the old Revised Statute 2477. At the time Revised Statute 2477 was enacted, there were a little over 10,000 miles of section line in our State, according to the Bureau of Land Management. They were primarily, Mr. President, represented by the surveys that had been made in the metropolitan areas of our State and the cities, Anchorage, Fairbanks, Juneau, what not. They were not out in the rural areas, unless the Government on some unknown occasion surveyed the area nearby a mining claim.

The reason we protected valid existing rights was that so these rural areas of Alaska would have the right to develop access to airports, to rivers, and to one another. That is the reason we are still battling to protect the rights that were created under Revised Statute 2477. But, Mr. President, there are no surveys of the national parks or the wildlife refuges in Alaska. There were none in 1976, except possibly for the area right near a mining claim. To assert that there are 900,000 miles of section line highway potentials in Alaska across national parks is absolutely a lie. It is time that the people who continue to assert that admit it. I hope that the National Parks Association will have the courtesy and the courage that the Wilderness Society did when it withdrew its false statement about our land.

Section lines are created only by surveys. Surveys of section lines could lead to highways if the State claimed the right when they go across Federal lands. But the basic concept is there are no surveys. There will be no surveys of the lands that remain in Federal ownership. The surveys that are taking place in Alaska are the surveys to take out of Federal ownership the lands that were granted to the State, or to the Native people of Alaska by acts of Congress.

That is what this chart shows. It shows the land ownership of Alaska in 1992. The blue land is patented to the State. The orange land is land that is awaiting patents that have been selected by the State. The green land is all Federal conservation areas set aside by an act of Congress. They will not be surveyed. They are, in fact, the national parks and wildlife refuges. The pink land that is shown is the land that Congress has returned to our Native people based upon the land claims settlement of 1971. But for anyone to assert that it is possible to create 900,000 miles of roads across parks and withdrawn areas on section lines is just absolutely false.

Mr. President, we have, as I said, about 10,000 miles of surveyed section lines in Alaska—in an area one-fifth the size of the United States—in 1976. But, again, for Alaska, the rights that are preserved under Federal law are mostly those that occurred when they were created prior to 1969 when the Secretary of the Interior withdrew the whole State. That was done by the Secretary of Interior, Mr. Udall. And it was, in effect, in order to protect the rights of the Alaska Native people until we passed the Land Claims Settlement Act.

But there is no question about it. None of the lands that these people are talking about—the parks, the wildlife refuges, and the wilderness areas—are surveyed and, therefore, there will be no 900,000 miles of section line rights-of-way.

It is an interesting thing to see. There are assertions coming even now from the Department of the Interior, based upon these claims, I take it, of the National Parks Association, that there are 160,000 miles of section lines and national parks. There are none, Mr. President if they were never surveyed. You can't have a section line until it is surveyed. You can draw hypothetical lines on a map like they did here. This map was issued by the Department of Natural Resources of our State. It is what we call a protraction. But a protraction doesn't create section lines, and section lines are absolutely required to have a section line right-of-way claimed by the State.

Mr. President, we did a little research. This might interest the Senate to know that of all the Federal aid highways in the whole United States there are about 900,000 miles today.

These people in their press releases and in their reports to the American people through the Associated Press claim that this Senator was trying to create in one State in national parks and wildlife refuges and other withdrawn areas the same amount of roads that exist for the whole United States that had Federal aid. By definition, Mr. President, all roads in Alaska are built with Federal aid. They cost a lot of money to build. The roads in Alaska are very expensive. It costs $6 million a mile to build roads in Alaska, and we only build them when we come within the scope of the Federal aid highway system.

We have less than 700,000 people in Alaska. No one I have ever known has ever come to me and said we want almost a million miles in this State; that we want to get more miles of Federal aid roads built in this State on section lines than exist in all the rest of the United States. That is absolutely such a wild claim that I can't find, really, the words to answer it, except that it does disturb me a great deal, as may be obvious and was obvious the other day, I am sure.

We will not have section lines across Federal lands. By definition, Federal lands had to be unreserved at the time of the establishment of the R.S. 2477 claim. As I indicated, in 1969 all of these lands in our State that were Federal lands were withdrawn. No claim could be made against them. The basic law under which claims could be made was repealed in 1976. But because of the withdrawal of our land, none of the claims we can assert—and there can be private rights-of-way, not section lines right-of-way, but rights of way established by public use asserted by interested private citizens—across Federal lands where they were perfected before there was a withdrawal.

Mr. President, the great problem that we have in Alaska is this checkerboard land ownership. I urge the Senate to consider this. In our State, we have State lands, Federal lands, Native lands, and private lands in such a checkerboard pattern that literally in order for some of the State lands to be accessed, it is absolutely necessary to go across Federal lands. But we are not trying to access that land by sections lines to go through withdrawn areas that were withdrawn for national parks. There may be some private citizens asserting R.S. 2466 rights there by use. I think that the Department of the Interior is cataloging those now. I know our State is. And we are going to have some disputes over what extent we can have that access.

But I would ask anyone, look at that map. That is the total road system of Alaska today. There is no access by road to any of those 270 villages. They can only be accessed by air. It is true that in some of these areas we are trying to establish roads between the villages so we can have one airport serving four villages instead of one airport per village. But we are not talking about going through the national parks with section lines. We are not talking about going through areas that were already reserved on section lines, because according to Bureau of Land Management, there are no section lines.

Mr. President, I don't know how to deal with issues like this and represent my State without coming here and once again urging that the people involved do some basic research. We have now a Federal judge, Judge Sedwick, who years ago wrote an article about the issue of rights-of-way. I want to put it in the RECORD today, and will read his conclusions.

Mr. President, this is an issue that is going to perplex our State. Again, Mr. President, we have only been a State since 1959. We were a State only 10 years before the whole thing was withdrawn, and no rights could be created until Congress acted. Congress acted in 1971 in the Alaska Native Claim Settlement Act, and then in 1980 on the Alaska National Interest Conservation Lands Act. After that, the rights of the State and Natives could be perfected. We had to wait until 1980 to proceed to get the lands that were awarded to us by Congress in 1958 and awarded the Native people of our State in 1971. The reason we did was because the withdrawal, as I said, was made by Secretary Udall. All Federal lands were withdrawn. As a consequence, the whole subject of where we can build roads to improve the quality of life of our rural people is a very, very intriguing one, but a difficult one for us.

We want to have the roads that will help us get better health care, that will get better education for people who live in rural areas, that will get better communications, particularly to try to see if we can't find a way to deal with the delivery of mail and other packages by some sort of road connection.

This is an unpublished manuscript, but I want to put it in the RECORD.

This is Mr. Sedwick. He was then an attorney. John Sedwick was an attorney practicing law, and he was chairman of the Alaska Bar Association's environmental law section. He is a recognized environmental lawyer, a very good lawyer, and a very good judge. This is his summary. I want to read it into the RECORD:

> The following summary represents the current state of section line easement law in Alaska in 1983, after the 1976 repeal of RS 2477. As the preceding sections of this paper has shown, there are some areas of uncertainty and some differences of opinion which have not yet been resolved. With that warning in mind, the summary is as follows:
>
> A section line easement is an easement for the construction of a public highway, or other facility such as a power line, water line, or sewer line. The maximum width of a section line easement will be 100 feet on State-owned land, or land acquired from the State, and 66 feet on Federal land, or land acquired from the Federal Government. One making use of the section line easement is not, however, automatically entitled to use its maximum width. The user may only take advantage of so much of the section line easement as is reasonably necessary for the construction and maintenance of the facility. Section line easements cannot exist prior to approval of the official survey which creates the section line.

Let me repeat that:

> Section line easements cannot exist prior to the approval of the official survey which creates the section line.
>
> The section line easement exists on all land in Alaska for which an official survey was approved prior to October 21, 1976, except for the following: Land which went into private ownership prior to April 6, 1923; land which went into private ownership prior to approval of the official survey; lands whose official survey was approved on or after January 18, 1949, which, if territorial lands, went into private ownership before March 26, 1951, and which, if Federal lands, went into private ownership before March 21, 1953; Federal land which was reserved for public use prior to April 6, 1923, which remain reserved at least until October 21, 1976; Federal lands reserved for public use prior to approval of the official survey which remain reserved at least until October 21, 1976; Federal lands whose official survey was approved on or after January 18, 1949, which were reserved for public use prior to March 21, 1953, and which remain reserved until at least October 21, 1976.

And the last category is all university lands.

Mr. President, those few exceptions give us some hope for small connections of roads in rural Alaska.

By what is being done now there are some people who want apparently to destroy those rights which exist. They are very few in number, as Judge Sedwick pointed out, very few. They had to be created before 1969 and in many instances before 1923. But the main purpose of it is to determine how we can do the things which must be done to improve the quality of life in rural Alaska.

I call the Chair's attention to this one green line here that goes from Nome to Teller. That is the only improved road that I know of that type. It goes from the city of Nome, which was the gold rush headquarters at the turn of the century, to Teller, which is a small city up on the coastline. That is one connection that was made years ago, and it was made using an old trail that existed. We have not been able to get approval to move forward with the others, and we want to do so.

My State, as I stated on the floor last week, has gone through a whole series of studies trying to find a way to demonstrate to the Department of Interior that the claims that are asserted based on use now—we are not talking about section lines; section lines automatically can be claimed by the State under State law once they are surveyed. But again the key is those people who assert we are going to have 900,000 miles of section line roads know better. They know they are telling a lie because the conservation system units themselves have not been surveyed.

Now, I hope, Mr. President, that when we get back to this issue again people will not come out on the floor and assert that this Senator is trying to build roads across wilderness areas either. We are not trying to determine any kind of rights-of-way across wilderness areas. There are some areas that are candidates for becoming wilderness areas in which there are private rights and public rights that exist now on these Federal lands. That is the issue we are trying to resolve.

I am indebted to my good friend from Arizona, Senator MCCAIN, who suggested that we have some approach to this to get the issue resolved. It is a very vital issue for rural Alaska. It is not an issue that involves putting 900,000 miles of roads across national parks, wilderness areas, wildlife refuges, wild and scenic rivers, whatever.

It might interest the Senate to know we have over 80 percent of those categories. Most of the park land of the whole United States is in our State. But the lands are exterior, have lines that give us their exterior. The parks and other protected areas were never surveyed as such. They are just lines on a map. The surveys will not be made. It costs too much money to survey those lands. They are reserved permanently for national parks. There will be no development that is not authorized by the park service. They do not need any right to build roads within parks. They have that right. There are not going to be any surveys.

I do say for the Chair, only Congress can create a wilderness area. Every time a wilderness area has come before the Senate we have looked at it to see whether or not there are private rights that need protection, and we have had provisions that said valid existing rights are preserved.

Now, that is all we are trying to say, is in 1976 when Congress repealed R.S. 2477, this was done subject to valid existing rights. I had that chart out here. Three times in that act I insisted that Congess say that validated existing rights were preserved, that everything

the Secretary of Interior did in that law was subject to existing rights, and now we have the situation where the Department continues to believe that it has the right to ignore that law.

Mr. President, last year in the Interior Department appropriations bill we asked for a section to be put in there which said that nothing can be done to change the rights-of-way which exist that are valid existing rights on Federal lands by rule or regulation, and they cannot be changed except by authorization from Congress. The Department of Interior now seeks to change the status of some of these existing rights by a new fiat. They call it a policy statement which changes the basis, historical basis that has been developed through a series of court cases for over 100 years. These precedents have been established by law and interpreted by solicitors, and as I said I was one of those solicitors at one time and I know that we have a series of cases that have been decided both by the Interior Department's land section and by the courts which tell States under what conditions they can assert the right to use the R.S. 2477 rights-of-way for improvements for public access which we now call public highways.

If the Congress looks at this map or this other map, it can only come to the conclusion that the problem we have is the problem of determining whether the Federal Government speaks with a forked tongue. The Federal Government when we became a State gave Alaska the right to 103.5 million acres of Federal land. It was our dowry in order to have land that could be developed to sustain our economy. It then in 1971 passed the Alaska Native Land Claims Settlement Act which transferred to Alaska, or gave the right of transfer to approximately 45 million acres of Alaska land to the Native people. Both of those rights were held up until Congress decided the location of the lands it wanted to withdraw, the National Lands Conservation Act of 1980 perfected those withdrawals and enlarged the whole concept. And if anyone will look at the map you will see it is almost impossible to get to the coastline from the Native lands except up in Nome. Access is denied entirely to our lands that were given to us by an act of Congress unless we can perfect the access routes which were in place prior to their conveyance to Alaska and the Native people, prior to the repeal of Revised Statute 2477 unless we can prove in effect they are valid existing rights.

Mr. President, I am hopeful that the people who really run the National Parks Conservation Association will do some basic research and deal with facts. Particularly what brought me here was the assertion of the 900,000 miles of section line roads that we were going to build across Federal parks and wilderness area. We do not propose to build them. They would not be valid under any interpretation of Federal laws. The lands are withdrawn for national parks. They cannot be subject to rights-of-way under the section line concept until those lands would be surveyed, and even then the survey would take place after the reservation, and, with the possible exception of some unknown, ancient government survey of the area near a mining claim, there are no rights from section lines in areas that have already been reserved.

So I do believe it is time for us to return to the concept that I mentioned in the beginning, and that is the four-way test. As I have said, since I have been a Senator, I have tried to be guided by this test and I would like to see the Senate as a whole guided by it.

There were assertions made right here on this floor about this Senator wanting to build roads across national parks on section lines. I know that those Senators who made those statements were misinformed by such people as the National Parks Conservation Association that issued their statement. But above all, I think it is incumbent upon Members of the Senate to look at the facts before they really accuse a fellow Senator of something of that magnitude. Building 900,000 miles of section line roads through national parks was mentioned right here on this floor, and it was not true. I plead with the Senate to be guided by the truth and be guided by the concept of fairness and whether or not what they say will build good will and friendship among Members of the Senate. This Senator finds it very hard to maintain friendship for people who accuse him of some of the things we were accused of last week, Mr. President.

I yield the floor.

EXHIBIT 1

WESTERN SENATORS WIN FIRST ROUND IN ROAD RIGHT-OF-WAY DISPUTES

(By Jim Abrams)

WASHINGTON (AP).—Legislation making it easier to build roads through federal parks and wilderness areas survived a Senate challenge Wednesday and headed toward a possible showdown with the White House.

The measure, pushed by Alaska and Utah senators and inserted into a crucial bill to provide billions of dollars for victims of natural disasters, would give the federal government less say in what constitutes a valid right of way under a 130-year-old law.

Sen. Dale Bumpers, D–Ark., proposed that the road issue be taken out of the disaster relief bill, but lost, 51–49.

Sen. Max Baucus, D–Mont., voted to take the issue out of the bill while Sen. Conrad Burns, R–Mont., was among the 51 that voted for it to remain in the bill.

''It is wrong as a matter of principle to tie controversial issues to flood disaster relief,'' Baucus said. ''We simply should not play politics when people's lives are in the balance.''

The Senate also voted, 89–11, to provide $240 million in the emergency relief bill to extend welfare payments to legal immigrants until the start of the new fiscal year on Oct. 1. Under the new welfare law, legal immigrants were to lose their benefits in August.

The amendment, offered by Sens. Alfonse D'Amato, R–N.Y., and John Chafee, R–R.I, replaced a provision in the bill that set aside $125 million for block grants to the states for immigrants, an idea opposed by the administration.

Lawmakers resolved another sticking point in the bill when they agreed to allow the Census Bureau, with congressional oversight, to go ahead with plans for the use of sampling methods in the 2000 census. Republicans from rural states in particular had sought to ban sampling, which could record greater urban and minority populations and lead to district reapportioning.

Resolution of that issue left two outstanding disputes efforts by Republicans to prevent future government shutdowns and to weaken the Endangered Species Act. The administration has indicated that President Clinton would veto any bill with those provisions.

Sen. Ted Stevens, R–Alaska, used his position as chairman of the Appropriations Committee, which is responsible for the disaster relief bill, to promote the right-of-way measure. He accused opponents of using scare tactics in claiming that it would ''result in roads across our national parks and wilderness. That is simply not true,'' he said.

''What is at stake here for those of us in the West is the preservation of what really amounts to the primary transportation system and infrastructure of many rural cities and towns,'' said Sen. Orrin Hatch, R–Utah.

Interior Secretary Bruce Babbit said the measure would render the federal government powerless to stop the conversion of footpaths, four-wheel-drive tracks and other primitive roads on federal lands into paved highways. He has urged the president to veto the disaster relief bill if the road issue is included.

Baucus said the provision ''could allow roads to be built through spectacular wilderness in Montana.

''Equally disturbing, this section could prevent Montana roadless areas from being designated as wilderness in the future,'' Baucus said.

But Senate Democratic Leader Tom Daschle of South Dakota said he doubted the Senate would sustain a presidential veto and slow action on the disaster relief bill over the road issue.

''I don't know if we've got enough of a strength of conviction to hold up the bill,'' he said.

The bill provides $8.4 billion in new spending, including $5.5 billion for disaster victims and $1.8 billion for U.S. troops in Bosnia and the Mideast.

The Senate, in a voice vote, agreed that no money from this bill should support U.S. troop presence in Bosnia after June 1998, the date the administration has set for the end of the mission there.

Stevens left open the possibility for compromise, saying that when the House and Senate get together to work out differences in their bills he might ask Babbitt for a proposal ''that might set the policy for future realization of these rights of way throughout the West.''

The controversy involves and 1866 law that was repealed in 1976 but then resurrected in part during President Reagan's administration as it began aggressively processing thousands of right-of-way claims it considered still valid.

The Clinton administration has recognized the validity of claims, but has fought with state officials, particularly from Alaska and Utah, about who has final say on their validity.

Babbitt announced a new policy in January that requires states to examine more closely whether a right of way actually once was a significant corridor, which make it a valid site for road building.

Stevens' measure would override Babbitt's new directive and again swing the pendulum to the states.

RIDER TO FLOOD-RELIEF BILL ENRAGES ENVIRONMENTALISTS—ALASKA SENATOR SEEKS TO PAVE WAY FOR U.S. PARK ROADS

(By H. Josef Hebert)

As his Senate Appropriations Committee grappled with how to help victims of floods, chairman Ted Stevens saw an opportunity he couldn't pass up.

Alaska's senior senator tacked onto the must-pass emergency bill a pet piece of legislation to make it easier to build roads through federal parks, refuges and wilderness areas.

Environmental activists were outraged, and Interior Secretary Bruce Babbitt is urging a presidential veto if the provision added last week stays in the bill. It goes before the full Senate today.

The measure, also pushed by fellow Republican Sen. Bob Bennett of Utah, would give the government less say in what constitutes a valid right-of-way for roads built under a 130-year-old law.

''Such a requirement could effectively render the federal government powerless to prevent the conversion of foot paths, dogsled trails, jeep tracks, ice roads and other primitive transportation routes into paved highways,'' Babbitt complained in a letter to Stevens.

Bennett and Stevens have accused Babbitt of overstepping his authority by putting too many restrictions on such right-of-way claims and usurping the states' authority. They contend state law should determine validity of claims.

Road construction in federally protected parks, refuges and wilderness areas has been a growing worry among conservationists, especially in the West. Nowhere has it been an issue more than in Alaska and Utah, where hundreds of claims are pending for rights-of-way over federally protected land.

The controversy involves a law enacted in 1866, repealed by Congress 110 years later, then resurrected in part during President Reagan's administration as it began aggressively processing thousands of right-of-way claims it considered still valid under the defunct Civil War-era statute.

No one disputes valid claims exist, but the Clinton administration has waged a running battle with some state officials-particularly those of Alaska and Utah-over who should have the final say on their validity.

Babbitt announced a new policy in January that requires states to examine more closely whether a right-of-way actually once was a significant corridor, which would make it a valid site for road building.

The measure Stevens inserted into the $5.5 billion emergency relief legislation for victims of floods and other disasters would override Babbitt's new directive and again swing the pendulum to the states.

Stevens defended the measure. In 1976, he argued, Congress ''absolutely stated, without any question,'' that prior claims must be accepted.

''The provision is aimed at preserving historic rights-of-way established at least 20 years ago and creates no new rights-of-way across federal land,'' Stevens insisted.

Many environmentalists see it differently.

''It grants rights-of-way across millions of acres of federal land to virtually any person who asserts a claim,'' asserted William Watson of the National Parks and Conservation Association, a private watchdog group. ''It threatens to carve up our national parks.''

Most claims under the 1866 law are in Alaska and Utah because those states have been the most lenient in considering what constituted a historic pathway. Conservationists say the Stevens legislation may bring old claims boiling to the surface in other states. Rumblings already have been heard in Oklahoma, Nebraska, New Mexico and the Dakotas, said Phil Vorhees of the park association.

Adam Kolton of the Alaska Wilderness League said hundreds of rights-of-way claims are pending in Alaska, including some through the Denali National Park and seven in the coastal plain of the Arctic National Wildlife Refuge.

''Sen. Stevens wants to make Swiss cheese of the Arctic refuge and other wilderness areas by building roads through them,'' Kolton complained.

In Utah, where much of the land also is federal, an estimated 5,000 rights-of-way claims are pending. Many are in federal parks and refuges, as well as in the recently declared 1.7 million-acre Grand Staircase-Escalante National Monument.

WESTERNERS EKE OUT SENATE WIN ON RURAL ROADS

SALT LAKE CITY.—A White House move opponents claimed could block access to rural byways in Utah and Alaska has been narrowly defeated by the U.S. Senate.

Western senators led the revolt, even though Interior Secretary Bruce Babbitt said he would recommend that President Clinton veto the entire emergency flood and disaster relief bill to which the byways measure is attached.

''This is not an issue where the senators from the Western states are trying to do something improper,'' said Sen. Bob Bennett, R-Utah. ''The real issue is that there are a number of roads in rural Utah that the federal government wants closed.''

The vote Wednesday was 51–49.

At issue are rights-of-way created under an 1866 law that allowed counties to put roads on unreserved federal lands. It was repealed in 1976, but existing byways were allowed to continue. But no inventory of them was made.

Congress and the administration have fought for years over proposals by Babbitt to force counties now to prove the byways existed before 1976 and were used for vehicular traffic, not just livestock or horses.

Congress had blocked that move, but in January Babbitt issued administrative rules outlining how until a final compromise is reached counties could gain emergency, permanent recognition on some claims. The status would be granted only for those byways where vehicular traffic and upgrades for them occurred.

Senators from Utah and Alaska, where most of the byways claims are pending, charged the White House was trying to take the first step toward federalizing local roads.

''What is at stake here for those of us in the West is the preservation of what amounts to the primary transportation system and infrastructure of many cities and towns,'' said Sen. Orrin Hatch, R-Utah.

''In many cases, these roads are the only routes to farms and ranches; they provide necessary access for school buses, emergency vehicles and mail delivery.''

Sen. Dale Bumpers, D-Ark., countered that Westerners were really pushing the issue to block wilderness designations by claiming roads in the areas.

He also charged Westerners want to put roads in sensitive areas to foster development.

''Can you imagine anything so insane as allowing states to build roads across public lands, no matter where they may be?'' he said. ''You cut the weeds, it becomes a 'highway.' You move a few rocks, it becomes a 'highway'''

Senate Appropriations Committee Chairman Ted Stevens, R-Alaska, reacted angrily to those claims. He pounded his desk so hard he tipped over this water glass into his documents. He also trembled as he declared the byways ''are our lifeblood.''

Bennett recalled that when Garfield County bulldozed in Capitol Reef National Park to widen the Burr Trail by four feet on a blind curve but still within its right of way the federal government sued.

''It has little or nothing to do with the county maintaining this kind of right of way. What it had to do with is who's going to make the decision and the federal government is determined it will make the decision.'' Bennett said.

Mr. STEVENS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UNANIMOUS-CONSENT AGREEMENT—FLANK DOCUMENT AGREEMENT TO THE CFE TREATY

Mr. STEVENS. Mr. President, for the majority leader I ask as in executive session for unanimous consent that the majority leader, after consultation with the Democratic leader, may proceed to consideration of the Flank Document Agreement, No. 105–5, to the CFE Treaty which was ordered reported by the Foreign Relations Committee on Thursday, May 8, and, further, the treaty be considered having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification, that all committee reservations, understandings, declarations, statements, conditions and definitions be considered and agreed to, with the exception of condition No. 5. I further ask consent that no other amendments be in order to the resolution, other than a modification to condition No. 5 offered on behalf of Senators KERRY of Massachusetts, SARBANES, and ABRAHAM. I further ask consent that overall debate on the resolution be limited to 1½ hours between chairman and ranking member, and an additional 30 minutes under the control of Senator BYRD; and, further, after the expiration or yielding back of that time the Senate proceed to a vote on the resolution of ratification. I finally ask that immediately following that vote, the President be notified of the Senate's action and Senate then return to legislative session.

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

Mr. STEVENS. Mr. President, I want to clarify the unanimous-consent agreement that was just entered into. The amendment is an amendment being offered on behalf of Senators KERRY, SARBANES, and ABRAHAM. The consent agreement could be interpreted otherwise but it is their amendment that is being offered as a managers' amendment.

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

AUTHORIZING USE OF CAPITOL GROUNDS FOR THE SIXTEENTH ANNUAL PEACE OFFICERS' MEMORIAL SERVICE

Mr. STEVENS. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of House Concurrent Resolution 66, which is at the desk.

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

The clerk will report.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 66) authorizing the use of the Capitol Grounds for the sixteenth annual national peace officers' memorial service.

The Senate proceeded to consider the concurrent resolution.

Mr. STEVENS. Mr. President, I ask unanimous consent the resolution be agreed to, the motion to reconsider be laid on the table, and any statements relating to the resolution be printed at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered. The concurrent resolution, House Concurrent Resolution 66, was considered and agreed to.

Mr. STEVENS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator from Vermont is recognized to speak for up to 45 minutes.

JUDICIAL VACANCIES

Mr. LEAHY. Mr. President, I have spoken on the floor many times about the judicial vacancies in our Federal courts. It concerns me. In fact, I believe other than the subject of antipersonnel landmines, I have probably spoken on this subject more than any other. I am concerned that some in the Republican Party are engaging in a court-bashing situation that does not reflect the proud heritage of either the Republican Party or the Democratic Party.

I have spoken about the crisis that has been created by the almost 100 vacancies that are being perpetuated in the Federal courts around the country. We have recently seen a constitutional amendment proposed to remove the life tenure that has been the bedrock of judicial independence from the political branches since the ratification of our Constitution. It is just one of, I think, over 100 constitutional amendments proposed this year alone. It ignores the fact that our independent judiciary is the envy of the rest of the world. We have heard calls for impeachment when a judge rendered a decision with which a Republican House Member disagreed. I have read the Constitution. It speaks of very specific grounds for impeachment. Among those grounds is not that a Republican House Member disagrees with a judge. We would probably have a very difficult time if every judge could be impeached because any Member of the House or Senate disagreed with him.

We have heard demands that the Congress act as a supercourt of appeals and legislatively review and approve or disapprove cases on a case-by-case basis. That is for the same Congress that has not yet even taken up a budget bill, even though the law requires us to do it by April 15.

We are seeing exemplary nominees unnecessarily delayed for months, and vacancies persist into judicial emergencies. We are seeing outstanding nominees nitpicked, probed, and delayed to the point where one wonders why any man or woman would subject themselves to such a process or even allow themselves to be nominated for a Federal judgeship.

Instead of reforming the confirmation process to make it more respectful of the privacy of the nominee, something that we all claim we want to do, the Republican majority in the Senate is moving decidedly in the other direction. They are approaching the imposition of political litmus tests, which some have openly advocated under the guise of opposing judicial activism, even though some of these same Members were the ones who said that nobody should impose a litmus test on judges.

Even conservatives like Bruce Fein, in his recent opinion column in the New York Times, reject this effort. Actually, so do the American people. We have not had a time when any President or any Senate should be asked to impose litmus tests on an independent judiciary.

I recommend my colleagues read the excellent commentary by Nat Hentoff on this new political correctness that appeared in the April 19, 1997, edition of the Washington Post. I have spoken in broad generalities, although each are backed up by dozens of cases. But let me be specific on one. The nomination of Margaret Morrow to be a Federal judge for the Central District of California is an example of the very shabby treatment accorded judicial nominees. The vacancy in this Federal court has existed for more than 15 months, and the people in central California—Republican, Democrat, Independent—are being denied a most needed, and in this case a most qualified, judge.

Ms. Morrow's nomination is stuck in the Senate Judiciary Committee again. I am appalled by the treatment that Margaret Morrow has received before the Judiciary Committee. Ms. Morrow first came before the Judiciary Committee for a hearing and she was favorably and unanimously reported by the committee in June of 1996, almost exactly a year ago—a year ago less a couple of weeks. Then her nomination just got caught in last year's confirmation shutdown and she was not allowed to go through. So she has to start the process all over again this year.

Let me tell you about Margaret Morrow. She is an exceptionally well qualified nominee.

She was the first woman president of the California Bar Association, no small feat for anybody, man or woman. She is the past president of the Los Angeles County Bar Association. She is currently a partner at the well-known firm of Arnold & Porter, and she has practiced law for 23 years. She is supported by the Los Angeles Mayor Richard Riordan, who, incidentally, is Republican, and Robert Bonner the former head of the Drug Enforcement Administration under a Republican administration. Representative JAMES ROGAN from the House joined us during her second confirmation hearing and, of course, she is backed and endorsed by both Senators from California.

Margaret Morrow has devoted her career to the law, to getting women involved in the practice and to making lawyers more responsive and responsible as a profession. The Senate ought to be ashamed for holding up this outstanding nominee, and I question whether the Senate would give this kind of treatment to a man. It sure as heck has been doing it to a woman.

Despite her qualifications, she is being made an example, I am not quite sure of what, but this woman who has dared to come forward to be a Federal judge is being made an example before the Senate Judiciary Committee.

At her second hearing before the committee on March 18, even though she already has gone through a committee hearing and even though the committee last year unanimously voted to confirm her with every single Republican and every single Democrat supporting her, even though she had gone through it once before, she was made to sit and wait until all the other nominees were questioned, as though she were being punished. ''We have these men who want to be heard, and even though you had to do this before, you, woman nominee, sit in the back and the corner.'' She was then subjected to round after round of repetitive questioning.

Then came a series of written questions from several members, and they were all Republican members of the committee. Then came the ''when did you start beating your husband'' type questions to Ms. Morrow, based on her previous questions. I objected when Ms. Morrow was asked about her private views on all voter initiatives on the ballots in California for the last decade. Basically, she was being asked how did she vote in a secret ballot in the privacy of a voting booth on 160 initiatives on the ballot in California over the last 10 years.

I defy any Member of the Senate, if they were given a list of 160 items in their local elections, State elections, that have been on the ballot over the last 10 years, to be able to honestly say how they voted on every single one of those. But even before they got to the question of could they say how they voted, I would stand up and say, ''What has the Senate stooped to when we ask people how they voted in a secret ballot?''

Mr. President, we fought—successfully fought—a Revolutionary War, among other reasons, to maintain the sanctity of the ballot box. We fought a Civil War, among other reasons, to maintain the sanctity of the ballot box. We stood up to fascism, Nazism, World Wars because we were protecting our democracy and way of life. Some of the most remarkable and respected Republicans and Democrats of this country's history, and some of the most responsible and respected Republicans and Democrats in my lifetime, and some of the most responsible and respected Republicans and Democrats of my 22 years in the Senate have stood and fought to maintain the privacy of the ballot box. I, Mr. President, am not going to be a Senator on the Senate Judiciary Committee that allows that sanctity to be destroyed.

When I challenged the question, it was revised so as to demand only her private views on 10 voter initiatives on issues ranging from carjacking to drive-by shootings to medical use of marijuana and the retention election of Rose Bird as chief justice of the California Supreme Court.

Ms. Morrow previously stated she did not take public positions on these voter initiatives, so asking for her private views necessarily asked how she voted on them. We are, thus, quizzing nominees on how they voted in their home State ballot initiatives. Why we need this information, even if we were allowed to follow someone into the ballot box and see how they voted—something none of us would allow anybody to do to us—even if we are allowed, to say while we would not do it to any of us, we would do it to this woman.

Why do we need this information to determine if she is qualified? In fact, she explained to the committee that she is not anti-initiative, and in response to written questions, she discussed an article she wrote in 1988 and explained:

> My goal was not to eliminate the need for initiatives. Rather, I was proposing ways to strengthen the initiative process by making it more efficient and less costly, so it could better serve the purpose for which it was originally intended. At the same time, I was suggesting measures to increase the Legislature's willingness to address issues of concern to ordinary citizens regardless of the views of special interests or campaign contributors. I don't believe these goals are inconsistent.
>
> The initiative process was a reform championed by California Governor Hiram Johnson in 1911 to ensure that the electorate had a means of circumventing the Legislature when it could or would not pass legislation desired by the people because of the influence of special interests. As envisioned by Governor Johnson and others, the initiative was designed to complement the legislative process, not to substitute for it. This is my understanding of the role of the initiative process, and this is what I had in mind when I wrote the 1988 article. The reasons that led Governor Johnson to create the initiative process in 1911 are still valid today, and it remains an important aspect of our democratic form of Government.

I ask, Mr. President, does that response sound like somebody who is antidemocratic? Yet, she has been forced to answer questions about how she views the initiative process in written questions and, again, in revised follow-up written questions over the period of the last month.

Again, I remind everybody, this is a woman who was voted out unanimously last year by the committee. No objective evaluation of the record can yield the conclusion that she is anti-initiative. No fair reading of her 1988 article even suggests that. I might add, parenthetically, and what should be the only really important question, there is nothing in her record that suggests she would not follow the precedents of the court of appeals for her district or the U.S. Supreme Court. There is nothing to suggest that she does not believe in stare decisis or that she would not follow it.

Recently, I received a letter from a distinguished California attorney, and a lifelong Republican, who wrote to protest the unfair treatment being accorded Margaret Morrow. He wrote that he was ''ashamed of [his] party affiliation when [he sees] the people's elected representatives who are Republicans engaging in or condoning the kind of childish, punitive conduct to which Ms. Morrow is being subjected.'' He asks us to stop permitting the harassment of this nominee. I join with this distinguished Republican, and I ask the same thing: Stop harassing this nominee. I don't care if the harassment is because she is a woman, I don't care if the harassment is based on some philosophical difference, the fact of the matter is, she is one of the most qualified people I have seen before the committee in 22 years, Republican or Democrat, and she ought to be voted on and confirmed with pride—with pride—by the U.S. Senate.

We have heard nothing but praise for Ms. Morrow from those who know her and those who worked with her and litigated against her. In fact, the legal community in and around Los Angeles is, frankly, shocked that Margaret Morrow is being put through this ordeal and has yet to be confirmed. The Los Angeles Times has already published one editorial against the manner in which the Senate is proceeding with the Morrow nomination. I ask, to what undefined standard is she being held? What is this new standard —it is kind of hidden—which has never shown up before? It has not shown up for any male nominee that I know of.

In that regard, I ask unanimous consent that a letter signed by a number of distinguished women in support of her nomination be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

WOMEN LAWYERS ASSOCIATION OF LOS ANGELES,
Los Angeles, CA, May 13, 1997.

Hon. PATRICK LEAHY,
Russell Senate Office Building, Washington, DC.

DEAR SENATOR LEAHY: We write to you to protest the treatment which one of President Clinton's nominees for the Federal District Court is receiving. We refer to Margaret Morrow, who has been nominated for the United States District court in the Central District of California. As of today we have been waiting a full year for her confirmation.

Margaret Morrow has qualifications which set her apart as one uniquely qualified to be a federal judge. She is a magna cum laude graduate of Bryn Mawr College and a cum laude graduate of Harvard Law School. She has a 23-year career in private practice with an emphasis in complicated commercial and corporate litigation with extensive experience in federal courts. She has received a long list of awards and recognition as a top lawyer in her field, her community and her state.

Margaret Morrow is widely respected by attorneys, judges and community leaders of both parties. Many have written to you. Because of her outstanding qualifications and broad support, it is difficult to understand why she has not moved expeditiously through the confirmation process.

Margaret Morrow is a leader and role model among women lawyers in California. She was the second woman President of 25,000 member Los Angeles Bar Association and the first woman President of the largest mandatory bar association in the country, the 150,000 member State Bar of California.

Margaret Morrow is exactly the kind of person who should be appointed to such a position and held up as an example to young women across our country. Instead she is subjected to multiple hearings and seemingly endless rounds of questions, apparently without good reason.

We urge you to send a message that exceptionally well qualified women who are community leaders should apply to the U.S. Senate for federal judgeships. We urge you to move her nomination to the Senate floor and to act quickly to confirm it.

NANCY HOFFMEIER ZAMORA, Esq.,
President, Women Lawyers Association of Los Angeles.
JUDITH LICHTMAN, Esq.,
President, Women's Legal Defense Fund.
KAREN NOBUMOTO, Esq.,
President, John M. Langston Bar Association.
STEVEN NISSEN, Esq.,
Executive Director & General Counsel, Public Counsel.*
SHELDON H. SLOAN, Esq.,
President, Los Angeles County Bar Association.
ABBY LEIBMAN, Esq.,
Executive Director, California Women's Law Center.*

*Title and organization for identification purposes only.

JULIET GEE, Esq.,
President, National Conference of Women's Bar Associations.

(Mr. ROBERTS assumed the chair.)

Mr. LEAHY. Mr. President, that is from the Women's Lawyer Association of Los Angeles.

Last week, at a Judiciary Committee executive business session, I asked her name be added to the agenda and that the committee report her nomination to the Senate for confirmation. All questions have been answered. The Republican Senator who propounded the questions on initiatives said he would not filibuster her nomination and agreed not to hold her up any longer. I thank him publicly and appreciate his forthrightness.

But even though we looked around that room and said, ''Does anybody have any objection to her,'' and I had gotten absolute confirmation from every single Democratic Senator that they were ready to vote positively for her and would vote for her on the floor immediately, her nomination was not called up. My requests that she be called up for a vote before the committee was rejected, and she remains in limbo almost 2 months after her second confirmation hearing and one full year after she was first nominated.

There is now what amounts to a secret hold on this nomination in the Judiciary Committee. Some Senator is holding her up. Some Senator doesn't have the courage to come on the floor of the U.S. Senate and say why this woman is objectionable to him. Some Senator will hold her up secretly because he doesn't want to vote on her publicly, even though I guarantee you, if we had a rollcall vote on her, it would be overwhelmingly positive. We should proceed with the nomination of Margaret Morrow without further delay.

Mrs. BOXER. Mr. President, will my friend yield for about 2 minutes?

Mr. LEAHY. Of course. I am happy to yield to the Senator from California.

Mrs. BOXER. I am appreciative of the Senator taking to the floor today to discuss this entire issue. We all learned growing up that justice delayed is justice denied.

We have these openings. Look, I was told very clearly by the chairman of the Judiciary Committee, ''Senator, you have to come in with nominations that will pass by Republicans and Democrats. You need to bring forward nominees who are supported by Republicans and Democrats.''

Mr. President, I have done just that. I think Senator LEAHY has outlined this magnificently—I have never seen a nominee with such bipartisan support as this woman. This is what is so extraordinary about the kind of treatment she is receiving: a secret hold that has been placed on her.

Mr. President, this is not the way to run the U.S. Senate. Let's allow this woman's name to be placed on the floor and then those who have any objection can express their objections and vote no. But I am so confident that the vast majority of our colleagues will vote for Margaret Morrow.

I say that not only because of her extraordinary bipartisan support, but because of her incredible qualifications. I say to my friend from Vermont how much I appreciate his leadership on this. Sometimes we forget these nominees have private lives. This is a woman who is a law partner in a law firm making preparations for a new career. She is a 45-year-old wife and mother. She has a very loving family. They are very proud of her. They are completely mystified about these questions that keep coming. I have talked to several members of the Judiciary Committee, both Democrats and Republicans, and when I speak with them, I say to you, Mr. President, one on one, I am very confident that Margaret Morrow will get a vote and a fair vote.

I want to quote from one letter that is so important.

H. Walter Croskey, associate justice in the Court of Appeals for the State of California, Second Appellate District, describes himself, Mr. President, as a conservative Republican. He has written to Senator HATCH, and he wrote to Senator HATCH about an article he read that suggested that ''concerns have been raised in the [Judiciary] Committee about judicial activism and noted that there were questions as to whether Margaret would be a judge who would follow the Constitution and the laws as they are written.'' He says, ''Such concerns are not shared by anyone who knows Margaret.'' And he goes on to say, ''Her well known and often expressed reverence for our system of government and justice and her great intellectual integrity provides full assurance that she would be the kind of judge who would follow and apply the laws as written * * *.''

He goes on.

Mr. President, we have Republican after Republican from my State. This particular judge was appointed by George Deukmejian, Republican Governor of the State of California.

Mayor Richard Riordan, Sheriff Sherman Block, a Republican-elected sheriff, supports her nomination.

So it is so difficult, frankly, for this Senator to understand why we would play with the life of a woman like this and not give her her fair chance.

I understand that women's organizations have written to Senator LEAHY and Senator HATCH. They have been very patient. But when you see a panel of people, as Senator LEAHY has described, three men and one woman, and the three men get reported out of the committee—and I venture to say, I know they are all extremely qualified—I would put Margaret's qualifications right up against any of those.

So I am very pleased that my colleague, the ranking member on the Judiciary Committee, has raised this issue. I am hopeful, I say to my friend and the Presiding Officer today, that because Senator GRASSLEY has lifted his objection to bringing the nomination to the floor and others on the committee have done the same, that they will prevail upon that secret hold, they will find who that particular Senator is who has put a hold here. If we start putting holds on each other's nominations and on each other's bills and on each other's amendments, I say to my friend, we are only going to deteriorate in this U.S. Senate. The people expect more.

To reiterate Mr. President, I come to the floor today to urge that Margaret M. Morrow be voted out of the Judiciary Committee and confirmed to sit on the U.S. District Court for the Central District of California.

Margaret Morrow is an outstanding candidate for the Federal bench, who enjoys broad bipartisan support. She has over a dozen support letters from prominent, widely respected Republicans, including judges, elected officials, and others. It has been my honor to recommend such a fine candidate to the President. Her name was submitted to me by my judicial advisory committee for the Central District of California. My committee enthusiastically found her to be a superior judicial candidate.

However, despite her strong bipartisan support and strong credentials, her nomination remains indefinitely stalled in committee. She has had two hearings, and has had several rounds of questions with no end in sight. No Member has come forward to explain why she should not be confirmed.

MARGARET MORROW'S HISTORY

Margaret Morrow was first nominated by the administration on May 9, 1996. She received the first of her nomination hearings before the Senate Judiciary Committee on June 25, 1996, and was reported out of committee just 2 days later without any opposition from the committee.

For several months, Margaret Morrow's nomination sat on the Executive Calendar waiting to be moved, and finally died on the floor of the Senate when we adjourned at the end of the session.

Margaret was then renominated on January 7 of this year because of her impeccable credentials. Her nomination languished for over 2 more months until further action on March 18, when she had yet another hearing.

Twice, now, the Judiciary Committee has reviewed stacks of information she provided to the committee, a full FBI background investigation, and her testimony before the committee. Yet, Margaret still sits in committee, facing repeated rounds of questions with no end in sight.

JUDICIAL VACANCIES

Margaret Morrow's confirmation should not be held hostage for political reasons, Mr. President. According to the U.S. Constitution, the President nominates, and the Senate shall provide advice and consent. It is not the role of the Senate to obstruct the process and prevent numbers of highly

qualified nominees from even being given the opportunity for a vote on the Senate floor.

Today, we have 26 nominations from the President to consider. Every one of these nominations should be voted out of committee and placed on the calendar for consideration on the Senate floor.

MARGARET MORROW'S LIFE IS ON HOLD

The vacancy Ms. Morrow would be filling has been vacant since January 24, 1996. In 2 short months, this vacancy will become a judicial emergency. That will make three judicial emergencies in the ninth circuit courts, and four judicial emergencies in the California district courts. Two of those judicial emergencies will be in the Central District of California. I don't think I need to remind this body that the Central District of California in Los Angeles is one of the busiest courts in the Nation.

To provide some historical context, in 1992, every one of the 66 nominees approved by the Senate Judiciary Committee were approved by the full Senate. Every single person nominated, Mr. President, was under a Republican administration and a Democratic-controlled Senate. Included in those 66 judges were 11 circuit court nominees. In 1992, the Democratic Senate confirmed the highest number of judges of any year of President Bush's term. And the confirmations did not slow as the election approached. During the 4-month period between June and September, the Senate Judiciary Committee favorably reported 32 nominees, including 7 appeals court nominees.

Former Majority Leader Bob Dole spoke of this process himself. In June of last year, he said ''We should not be holding people up. If we need a vote, vote them down or vote them up * * * because [the nominees] probably have plans to make and there are families involved.'' Even then-Majority Leader Dole recognized the necessity to provide resolution for nominees out of fairness to these individuals and their families.

Before I speak about Ms. Morrow's credentials or historical precedent for judicial confirmations, I wanted to make the point that there is also a personal side to the judicial confirmation process. For nominees who are awaiting confirmation, their personal and professional lives hang in the balance.

Margaret Morrow—a 45-year-old mother and law partner—has put her life and her professional practice on hold while she waits for the Senate to approve her nomination. The Senate's delay has affected her ability to assume certain responsibilities at her law practice. Her whole family—particularly her husband and young son—have waited patiently for her confirmation to proceed. Many of us here in the Senate have no idea what kind of strain and stress awaiting confirmation means for these nominees. We owe to her prompt Senate consideration.

Mr. President, I am unaware of any substantive reason why Ms. Morrow's nomination has not been before the full Senate long before today. If another Member of this body has a reason for opposing her confirmation, I want the opportunity to discuss those objections, as does Ms. Morrow, and to move on to Senate consideration.

THREE POINTS

There are three aspects of Margaret Morrow's qualifications, in particular, I want to emphasize:

First, Ms. Morrow's long history and background in the legal profession. Her credentials are impeccable.

Second, Ms. Morrow has the confidence of a broad spectrum of supporters.

Third, Ms. Morrow's qualifications and the broad support she enjoys would make her an exceptionally distinguished addition to the Federal bench.

MS. MORROW'S LONG HISTORY AND BACKGROUND IN THE LEGAL PROFESSION, HER CREDENTIALS ARE IMPECCABLE

Ms. Morrow graduated magna cum laude from Bryn Mawr College, and received her law degree from Harvard University, graduating cum laude. Ms. Morrow has enjoyed 23 years in private practice in commercial and civil litigation, and is now a partner at the prestigious law firm of Arnold & Porter. She is married to Judge Paul Boland of the Los Angeles Superior Court and they have a son, Patrick Morrow Boland.

From 1988 to 1989, Ms. Morrow served as president of the 25,000-member Los Angeles County Bar Association, the second largest voluntary bar association in the country, and created an innovative program in California called Pro Bono Council which calls on members of the association to do pro bono work for the poor. From 1993, she served a 1-year term as president of the largest mandatory bar association in the country, the 150,000-member State Bar of California. Ms. Morrow was the first woman to ever hold this office in that organization.

Ms. Morrow has been recognized several times during her tenure in the legal profession. A few of these include a listing in 1994 as one of the top twenty lawyers in Los Angeles by California Law Business, a weekly publication of the Los Angeles Daily Journal. In 1995 and again in 1996, Ms. Morrow was included in the Los Angeles Business Journal's ''Law Who's Who,'' a list of 100 outstanding Los Angeles business lawyers.

Just this February, Ms. Morrow received the Shattuck-Price Award, the highest honor given by the Los Angeles County Bar Association for individuals with outstanding dedication to the high principles of the legal profession, the administration of justice and the progress of the county bar. Others who have received such distinction include Warren Christopher and Shirley Hufstedler, former U.S. circuit court judge and U.S. Secretary of Education.

MS. MORROW HAS THE CONFIDENCE OF A BROAD SPECTRUM OF SUPPORTERS

I'm not the only one who believes Ms. Morrow has an excellent legal mind and is a credit to the legal profession. Ms. Morrow enjoys the broad support of accomplished persons. Many of California's prominent and conservative Republican lawmakers and elected officials support her confirmation:

H. Walter Croskey, associate justice in the Court of Appeals for the State of California, Second Appellate District, and self-described conservative Republican writes to Senator HATCH about an article he read that:

> . . . suggested that concerns have been raised in the [Judiciary] Committee about judicial activism and noted that there were questions as to whether Margaret would be a judge who would follow the Constitution and the laws as they are written. Such concerns are not shared by anyone who knows Margaret. Her well known and often expressed reverence for our system of government and justice and her great intellectual integrity provides full assurance that she would be the kind of judge who would follow and apply the laws as written with her only agenda to make that system work better and more efficiently. . . . The reservations expressed about her are simply without foundation and should not deter the Judiciary Committee from taking prompt and favorable action on what we here in California regard as a truly inspired choice.

The district attorney of Orange County, Mike Capizzi, writes to Senator LOTT:

> I have absolutely no hesitation in commending her nomination to you as being among the very best ever likely to come before you. * * * Of particular interest to crime victims, law enforcement and public prosecutors are her initiatives and achievement in the fields of juvenile justice and domestic violence, where her efforts have helped focus national attention.

He ends his letter by stating:

> The record of scholarship, citizenship, and dedication to improving the legal system that Margaret will bring with her to the federal bench reveals great promise for a truly exceptional jurist of whom we will all be proud. I sincerely, wholeheartedly and enthusiastically entreat you to confirm Margaret's nomination for appointment to the district court, without delay. We need her.

Los Angeles Mayor Richard Riordan writes in strong support of Ms. Morrow's nomination. He adds that Morrow, ''would be an excellent addition to the Federal bench. She is dedicated to following the law, and applying it in a rational and objective fashion.''

Representative JAMES ROGAN, former Republican assembly leader in the California Legislature, now Member of Congress, who gave a supporting introduction for Margaret Morrow at her second hearing, wrote to Senator TRENT LOTT urging his support of Ms. Morrow's nomination because he believes she would be ''conscientious in applying the law.''

Republican Los Angeles County Sheriff Sherman Block also supports Ms. Morrow's nomination, stating she is an extremely hard worker with impeccable character and integrity.

Republican Robert Bonner, appointed by President Reagan as U.S. attorney for the Central District, later appointed to the U.S. District Court in

the Central District, and former head of the Drug Enforcement Administration under President Bush has also lent his support, stating she is a ''brilliant person with a first-rate legal mind * * * nominated based upon merit, not political affiliation.''

Lod Cook, chairman emeritus of ARCO, and a prominent Republican in the State of California wrote of Ms. Morrow:

I am convinced she is the type of person who would serve us well on the federal bench. I believe she will bring no personal or political agenda to her work as a judicial officer. Rather, her commitment will be to ensuring fairness and openness in the judicial process and to deciding cases on the facts and the law as they present themselves.

Mr. President, I ask unanimous consent that these and additional letters of support be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATE OF CALIFORNIA,
COURT OF APPEAL,
Los Angeles, CA, April 17, 1997.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary, U.S. Senate, Russell Senate Office Building, Washington, DC.

Re Nomination of Margaret Mary Morrow.

DEAR SENATOR HATCH: I am pleased to write in support of the nomination of Margaret Morrow to the United States District Court for the Central District of California. I have known Margaret for over 15 years, both professionally and socially. During that period, I have worked with her on many local and state bar activities and committees; I have had repeated opportunities to discuss legal issues with her; and she has appeared before me in both the trial and appellate courts on a number of occasions. Finally, I am very familiar with her reputation in the legal community, both in Southern California and statewide. Based on all of that, I believe that she is the most outstanding candidate for appointment to the federal trial court who has been put forward in my memory.

Yesterday, I read an article in our local legal newspaper about Margaret's second hearing before the Judiciary Committee on March 18, 1997. That article suggested that concerns have been raised in the Committee about judicial activism and noted that there were questions as to whether Margaret would be a judge who would follow the Constitution and the laws as they are written. Such concerns are not shared by anyone who knows Margaret. Her well known and often expressed reverence for our system of government and justice and her great intellectual integrity provides full assurance that she would be the kind of judge who would follow and apply the laws as written with her only agenda to make that system work better and more efficiently. She will be a judge of whom all Americans, Republican or Democrat, can be very proud.

Every now and then we have the opportunity to bring into government service a truly outstanding person, a person whose knowledge, intelligence, integrity and industry are such as to command universal respect and admiration. We have that opportunity with Margaret's nomination. As the second woman to head the Los Angeles County Bar Association, (the second largest voluntary bar association, after the ABA, in the nation), the first woman to be elected president of the California State Bar Association, an attorney who has won every award and accolade which can be bestowed by the California legal community and a practicing lawyer with superlative skills and reputation, she can truly be characterized as an exceptional choice for appointment to the District Court. Indeed, as I mentioned, I can recall none better in my professional experience. The reservations expressed about her are simply without foundation and should not deter the Judiciary Committee from taking prompt and favorable action on what we here in California regard as a truly inspired choice.

As a lifelong conservative Republican, I would be very disappointed to see members of the Committee, whose views I share and admire on so many issues, fail to embrace this exceptionally well qualified nominee. Margaret's nomination should be promptly approved and sent to the Senate floor with a favorable recommendation.

My best to you and your staff. Keep up the good work.

Yours truly,

H. WALTER CROSKEY.

P.S. As a matter of information and convenience, I am enclosing a copy of my resume. My appointment to California's general trial court and subsequent elevation to the Court of Appeal were made by Republican Governor George Deukmejian.

OFFICE OF THE DISTRICT ATTORNEY,
Orange County, CA, August 15, 1996.

Hon. TRENT LOTT
Office of the Majority Leader,
U.S. Capitol, Washington, DC.

DEAR SENATOR LOTT: I am writing to urge you not to lose the opportunity to add someone of Margaret Morrow's stature to the district court bench in Los Angeles.

As the district attorney of one of the nation's most populous counties, I know how important it is that the very best nominees possible be confirmed for judicial office. And knowing Margaret as I do, both on the basis of our professional relationship and association, and by virtue of her outstanding reputation within California's legal community, I have absolutely no hesitation in commending her nomination to you as being among the very best ever likely to come before you.

Margaret's impressive credentials, from *cum laude* graduate of Harvard Law School to President of the State Bar of California, speak for themselves, of course. Of particular interest to crime victims, law enforcement and public prosecutors are her initiatives and achievements in the fields of juvenile justice and domestic violence, where her efforts have helped focus national attention.

The record of scholarship, citizenship, and dedication to improving the legal system that Margaret will bring with her to the federal bench reveals great promise for a truly exceptional jurist of whom we will all be proud. I sincerely, wholeheartedly and enthusiastically entreat you to confirm Margaret's nomination for appointment to the district court, without delay. We need her.

Sincerely,

MICHAEL R. CAPIZZI,
District Attorney.

OFFICE OF THE MAYOR,
Los Angeles, CA, June 17, 1996.

Re Margaret M. Morrow.

Hon. ORRIN G. HATCH.
Chairman, Judiciary Committee,
U.S. Senate, Washington, DC.

DEAR CHAIRMAN HATCH: I write to strongly support the nomination of Margaret M. Morrow for a judgeship on the United States District Court for the Central District of California.

Ms. Morrow has been a particularly active and contributing member of the Los Angeles Legal community for most of the twenty-two years she has practiced in our city. She has worked tirelessly to improve the quality, efficiency and accessibility of the courts proposing and advocating such measures as the consolidation of our two-tier trial court in California, working on efforts to improve our jury system, and promoting greater use of alternative dispute resolution by both the courts and the public.

She has also worked actively to improve life in our community, addressing such problems as domestic violence, child abuse, and juvenile delinquency with specific programs designed to increase public awareness and improve both private sector and governmental responses to these problems.

As the first woman President of the State Bar of California in its 67-year history, Ms. Morrow commissioned a comprehensive review of the attorney discipline systems in California. The study was designed to investigate criticisms from legal consumers that the system unfairly favored lawyers, and criticisms from lawyers that attorneys in certain practice areas were being targeted for selective prosecution. Finally, the study was to evaluate the structure and efficiency of the discipline operation, which at that time cost between $15 and $20 million each year.

The final report found that the system operated fairly for both clients and lawyers. Nonetheless, it recommended important changes to increase responsiveness—streamlined reorganization of the prosecutorial office, stiffer penalties for serious violations, greater public access to information concerning pending complaints, and reduced staffing and better personnel utilization by the State Bar Court. These improvements significantly strengthened what is generally considered to be the best lawyer discipline system in the country. To complement this effort, Ms. Morrow spearheaded the creation of a lawyer-client mediation program to provide a remedy for client complaints outside the scope of the discipline system.

In her earlier tenure as President of the Los Angeles County Bar Association, Ms. Morrow was responsible for the Association's promulgation of a Pro Bono Policy which established an annual goal for pro bono legal service by its members, and ultimately generated an additional 150,000 hours of pro bono time. Her efforts in this regard were designed to ensure that low-income people could access the courts to resolve problems and secure needed services, and thus feel less need to take matters into their own hands. During this period also, Ms. Morrow served as a member of the six-person Commission to Draft an Ethics Code for Los Angeles City Government. It was this body that proposed our city's current ethics law, and helped to increase public trust in our government.

As a lawyer, Ms. Morrow has had extensive federal and state litigation experience at both the trial and appellate levels. She is recognized within the profession as someone who can analyze complex legal problems thoroughly and litigate successfully. Ms. Morrow is perhaps best described as a ''lawyer's lawyer''—someone to whom other practitioners turn for advice and assistance at both the trial and appellate level. Because of her frequent appearances in court, she is also well respected by the state and federal judiciary, who value her intelligence and integrity as well as the quality of her written and oral advocacy.

I believe Ms. Morrow would be an excellent addition to the federal bench. She is dedicated to following the law, and applying it in

a rational and objective fashion. The residents of our community would be extraordinarily well served by her appointment as a Central District Judge.

Sincerely,

RICHARD J. RIORDAN,
Mayor.

ASSEMBLY MAJORITY LEADER,
CALIFORNIA LEGISLATURE,
Sacramento, CA, August 30, 1996.

Hon. TRENT LOTT,
Senate Majority Leader, U.S. Capitol, Washington, DC.

DEAR SENATOR LOTT: I am writing to urge your support of Margaret Marrow's nomination for a United States District Court judgeship in Los Angeles.

Margaret is a former president of the Los Angeles County Bar Association and the State Bar of California. In 1994, we worked together to secure passage of the trial court consolidation measure, and I found her to be tough, thoughtful and fair. She currently is a civil litigation partner with the Los Angeles law firm of Quinn, Kully and Morrow.

A judicial evaluation conducted by the American Bar Association's Judiciary Committee last year gave Margaret its highest rating, ''very well qualified.'' I have every confidence that, as a judge, Margaret would be conscientious in applying the law.

Please give the matter of her nomination every due consideration.

Sincerely,

JAMES E. ROGAN,
Assembly Majority Leader.

COUNTY OF LOS ANGELES,
SHERIFF'S DEPARTMENT HEADQUARTERS,
Monterey Park, CA, June 12, 1996.

Hon. ORRIN G. HATCH,
Chairman, Judiciary Committee, U.S. Senate, Washington, DC.

DEAR CHAIRMAN HATCH: I would like to take this opportunity to endorse Margaret Morrow, who has been nominated by President Clinton to a United States District Court Judge position in Los Angeles.

Ms. Morrow is currently a partner in the law firm of Quinn, Kully & Morrow. She has established herself as a highly skilled attorney and has served as past president for the State Bar of California, the Los Angeles Bar Association and the Barristers' Section of the Los Angeles County Bar Association. As a Barristers' Committee Chair, she worked closely with the juvenile delinquency and dependency court system, helping administrators at a local detention facility improve the educational program and she published a handbook to help lawyers and the public to better understand the two systems.

She also established the Domestic Violence Counseling Program and held training sessions for lawyers. She involved law enforcement officials in planning and teaching the sessions to ensure focus on the law enforcement perspective on this type of case. Ms. Morrow's extensive professional activities indicates her willingness to be a positive aspect in the jurisprudence field.

Margaret Morrow is an extremely hard working individual of impeccable character and integrity. Her list of credits, both professionally and within the community is extensive.

I would like to recommend that you favorably consider her appointment. I have no doubt that she would be a distinguished addition to the United States District Court.

Sincerely,

SHERMAN BLOCK,
Sheriff.

STATE OF CALIFORNIA,
COURT OF APPEAL,
Los Angeles, CA, June 11, 1996.

Re Judicial Candidacy of Margaret M. Morrow.

Hon. ORRIN G. HATCH,
Chairman, Judiciary Committee, U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: I write to endorse President Clinton's nomination of Margaret Morrow for the United States District Court in Los Angeles. I also recommend that you give priority to her confirmation.

I am a lifelong Republican, some would call me a conservative one. I was born in Utah, am an active member of the LDS Church, and have sent my children to Provo, Utah, for their post-high school education. The Los Angeles Chapter of the J. Reuben Clark Law Society recently named me as ''Outstanding Lawyer 1996.'' As a California Deputy Attorney General in 1981–1984, I successfully prosecuted Angelo Buono for the 1977–78 ''Hillside Strangler'' serial murders in Los Angeles. Since then, Governor George Deukmejian has appointed me to successive judicial positions (municipal and superior courts, and California Court of Appeal). In 1993 Governor Pete Wilson appointed me to my present position as Presiding Justice of my division of the California Court of Appeal. I provide you this background information to give some perspective to my recommendation.

I have known Margaret Morrow for over ten years. I am convinced that she will be a most dedicated and competent United States District Court judge. She presently enjoys the greatest respect from a very broad spectrum of the California judiciary and bar. Her service as President of the California Bar Association was widely applauded, and her professional work as an attorney is considered of the highest caliber. She is representative of the mainstream of California legal and judicial culture.

I have also known her husband, Los Angeles superior court judge Paul Boland, for many years as a colleague and friend. He and Margaret are among the most decent people I know. They are energetic, yet kind and considerate to everyone with whom they come in contact. I also believe they embrace high moral principles and values. This is the one nomination recommended by our California senators that you should readily promote. I am confident that prompt and full consideration of Margaret Morrow's nomination will convince you that any President or Senate would do well to select her as a federal judge. Please feel free to call on me should you desire further information.

Very truly yours,

ROGER W. BOREN,
Presiding Justice.

U.S. COURT OF APPEALS,
Pasadena, CA, June 4, 1996.

Hon. ORRIN G. HATCH,
Chair, Senate Judiciary Committee, Washington, DC

DEAR SENATOR HATCH: At the risk of being an ''officious intermeddler,'' I thought I should formally let you know that I have known Margaret M. Morrow, one of the President's nominees for the Central District of California, for twenty years or so and believe that she will be an outstanding United States District Judge.

Apart from serving the bar in ways too numerous to mention, she is among the ablest advocates in the country. As former Chief Judge Wallace and I remarked after hearing her argue a difficult matter before our panel a few years ago, hers was one of the finest, most thoroughly professional, arguments we had heard.

Ms. Morrow is an intelligent, extremely competent lawyer who has specialized in complex litigation and has the kind of experience and judgment necessary to manage the complicated case load of the federal trial court. I have no doubt that my view of her potential for bringing distinction to the court is shared by my colleagues on the Central District and the Ninth Circuit, as well as by the bar in Los Angeles.

If there is anything further I can add to your Committee's consideration of Ms. Morrow's nomination, I would be happy to talk to any member of your staff.

With best regards,

PAMELA RYMER.

U.S. COURT OF APPEALS,
Boise, ID, August 13, 1996.

Hon. TRENT LOTT,
U.S. Senate, Washington, DC.

Re Margaret Morrow, Judicial Candidate—District Court, Central District of California.

DEAR SENATOR LOTT: Although I am aware of the difficult dynamics of Senate confirmation of judicial nominees during an election year, nevertheless I would hope you would act favorably on the candidacy of Margaret Morrow who is currently on the floor waiting for a vote. She is without a question a superior candidate with bipartisan support whose confirmation would be received favorably by everyone in my old district. We need her in the Circuit to attend to the heavy case load generated in large measure by important legislation enacted by Congress.

Thank you for your consideration.

Sincerely,

STEPHEN S. TROTT,
Circuit Judge.

JUNE 7, 1996.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: I understand that President Clinton has nominated Margaret M. Morrow to serve on the United States District Court for the Central District of California.

I have known Ms. Morrow as a lawyer of great distinction in the Los Angeles Bar. In fact, it is more unusual to find a lawyer who is held in such high esteem by his or her peers as to have been, as has been Margaret, elected President of both the Los Angeles County Bar Association (the largest voluntary bar in the United States) and the State Bar of California.

As a former Judge, and President-Elect of the Los Angeles County Bar Association, I have been in a position to observe Ms. Morrow's ability and demeanor over an extended period of time. As former Chairman of Senators (now Governor) Wilson's and Seymour's Committee on Selection of Federal Judges, U.S. Attorneys, and Marshals for the Central District of California, I certainly believe I have gained an appreciation for what kind of a combination of character, work ethic, demeanor and intelligence is required to fulfill the demanding position of a United States District Court Judge.

As an individual who has had the privilege of helping select so many District Court Judges, I can say without fear of contradiction that to a man and women, I believe the entire Court of this District would welcome her with open arms. She will be a great credit to the bench, and deserve your serious consideration and acceptance.

I recommend Margaret Morrow without reservation.

Sincerely,

SHELDON H. SLOAN.

Mrs. BOXER. Ms. Morrow's qualifications and the broad support she enjoys

would make her an exceptionally distinguished addition to the Federal bench.

Finally, her qualifications and the broad support she enjoys makes her an exceptionally distinguished addition to the Federal bench. Mr. President, the Judiciary Committee has already reviewed Ms. Morrow's background, which is outstanding. To echo the recent words of Republican Judge Pamela Rymer, appointed in 1989 to the Ninth Circuit Court of Appeals by President Bush, I too am looking forward to the day Margaret Morrow sits on the bench of the U.S. Federal District Court in the Central District of California. I am in agreement with Judge Rymer that Ms. Morrow will bring distinction to the district court.

In sum, Mr. President, I continue to strongly support Ms. Morrow's renomination by President Clinton.

I am fully confident that the Members of the Senate when fully informed will agree with me that Margaret Morrow's qualifications are outstanding and she is deserving of expeditious Senate confirmation. Her exceptional experience as an attorney, her professional service, and her deep commitment to justice qualify her to serve our Nation and the people of California with great distinction. And as evidenced by the letters I have read from, she has strong bipartisan support from some of the most prominent and conservative Republicans in my State.

Again, my deep thanks to my friend for yielding.

Mr. LEAHY. I might say to my friend from California, we talk about the secret hold. I mean, if there is a Senator who has some objection to her, let him vote against her.

Mrs. BOXER. Right.

Mr. LEAHY. Let us bring the nomination up.

The irony is, you know and I know, with her qualifications, anybody would be embarrassed to vote against her because there would be no way they could explain back home how a woman, one of the most qualified nominees to come before the Senate for a Federal court nominated by any President, Republican or Democrat, is held up.

I say to my friend from California, who has worked so hard and so diligently, one-on-one with Members to get this moving, it is, unfortunately, part of a picture. I have this chart which shows now we have 99 vacancies. We will have more. The number of judges who have been confirmed in the 105th Congress—when we first put this chart together, we wanted to show the vacancies on this side.

I see my friend from Maryland, too. I will show him, too.

We wanted to show the vacancies confirmed on the other side. We could not see the number that have been confirmed, so we put in this magnifying glass. I feel like Sherlock Holmes with my little magnifying glass going down.

There are 99 vacancies, and down here, two being confirmed. We have had more vacancies this year than we have had judicial confirmations in the U.S. Senate. Maybe we can shave a day off each one of these recesses and confirm some judges during that time. We have not had time to do much else. We ought to at least confirm those.

In fact—and I will share one of these with my friend from Maryland. The distinguished senior Senator from Maryland is on the floor. I thought he might be interested in noting where we stand on this.

You might want to take a look at that, I say to my good friend from Maryland. We came at the beginning of the year with actually 78 vacancies. And then, as often happens, people realize that they have grown older or they're taking senior status, whatever, they start retiring. We go from 78 to 89, to 92, to 94, to 96, to 99.

We go in January, zero confirmed; in February, zero confirmed; in March, two confirmed; and those are the same two listed here. We have not gone above two. So while this list goes up, that stays even. People are used to talking about zero population growth. This is zero population growth in the judiciary.

I understand that Speaker GINGRICH and others felt there was some political gain to shutting down the Federal Government about a year and a half ago. The American people did not think there was, but for some reason they did. It appears to me what they are trying to do is shut down the Federal courts. This is an unprecedented, unprecedented situation.

In the 102d Congress we had a Republican President and a Democratic-controlled Senate. We confirmed 124 judges.

In the 103d Congress we confirmed 129.

Even in the last Congress 75.

Now we confirmed 2 with 99 vacancies.

Chief Justice Rehnquist says:

> The number of judicial vacancies can have a profound impact on a court's ability to manage its caseload effectively.

He says:

> It's hoped that the administration and Congress will continue to recognize that filling judicial vacancies is crucial to the fair and effective administration of justice.

That is what it comes to.

The American taxpayers, Republicans and Democrats alike, pay taxes to have their courts run. The courts do not run if the vacancies are there. You do not have criminal cases handled the way they should. People are forced to plea bargain because they cannot get through. You do not have civil cases that you may want to hear if you are a litigant; you have a case you want heard, you cannot have it heard. This is wrong.

I was in another State the other day, Monday, and somebody was telling me how they have to go out and hire private judges to hear their cases. Now, these are people who are already paying the taxes. They are already paying for courts that are sitting there. But there are no judges to hear the cases. The vacancies cannot be filled so they go out and hire private judges.

I mean, this is sort of like saying I will pay my taxes to have a police officer and a police department, and I paid for it. The money is there. We pay the money for the police department and the police officers, but some person in the community says, ''Well, we're not going to hire any police officers. We're not going to have anybody there. So even though you paid your taxes for that, if you want your property protected, you have got to go out and hire a private police officer.'' Well, we are doing the same thing with the judges.

Mr. President, I think this is an outrageous situation. Let us see what we have here.

In 1980, we did nine appeals courts—these were Presidential election years during the second Senate session, Presidential election years, and we did 9 appeals court judges and 55 district court judges. All the way down through here you can see many times with Republican Presidents and a Democratic Congress we cooperated.

Nothing has happened here.

Mr. SARBANES. Would the Senator yield on that point?

Mr. LEAHY. Of course I will.

Mr. SARBANES. I think the chart the Senator has just put up is a very dramatic chart in demonstrating what has happened here. As I understand it, this chart shows the number of judges confirmed during a second Senate session in Presidential election years. We all know that what happens in a Presidential election year is that there is a slowdown because the party that does not have the White House thinks it may get the White House and then it will be able to effect the appointment of judges.

I ask the Senator from Vermont, as I understand his chart, this shows that in 1996, last year, with a Democratic President and a Republican-controlled Senate, there was this incredible slowdown in the number of judges confirmed, which has continued into 1997.

But in 1996, no court of appeals judges were confirmed and only 17 district judges. Is that correct?

Mr. LEAHY. The Senator is not only correct, but I would ask him to contrast that with the last year of the Bush administration with a Democratic-controlled Senate and the difference in the cooperation of the Democrats with a Republican President than they show the Republicans with a Democratic President.

Mr. SARBANES. The able Senator from Vermont is very perceptive because he anticipated the next point I want to go to, which is to contrast what happened last year with what happened in the last year of the Bush Presidency, 1992, an election year.

The Senate majority was then in Democratic hands, and yet we confirmed 11 judges for the court of appeals nominated—nominated—by

President Bush and 55 judges for the district court nominated by President Bush, for a total of 66 judges.

Last year, a comparable situation, except it was reversed. We had a Democratic President making the nominations; the Republicans controlled the Senate; 17 judges, a total of 17 judges. No court of appeals judges, 17 district judges compared with 66 judges in the last year of President Bush's term.

In fact, the last year of President Reagan's term, again with a Democratic Senate, we confirmed 7 court of appeals judges and 35 district court judges.

Mr. LEAHY. We actually did better with district court judges with the Democrats in charge than President Reagan did at the end of his first term with the Republicans in charge.

Mr. SARBANES. In 1984. The Senator is absolutely correct.

Mr. President, this is an extraordinary slowdown in the confirmation of judges. Then, of course, what happens is none—only two have been confirmed this year thus far.

So in the last virtually year and a half, 19 judges.

I just submit to you this game ought to stop. We ought not to be playing with the Federal courts in this way. If people have a legitimate objection to a particular nominee, they ought to voice that objection and vote against them and try to persuade their colleagues to vote against them. But this is crippling the courts. The Chief Justice of the United States has been driven to the unusual posture of registering his complaint about it.

I am frank to say to you, I think that Members of this body, Democrats and Republicans alike, have a responsibility to ensure that the Federal court system can work in a reasonable fashion. It is not going to work in a reasonable fashion if you slow up the confirmation of judges to this extent.

It has not been done before. I mean, this breaks with all previous patterns and previous precedents. I just submit that we are not going to maintain public confidence in the judicial system, and we ought not to politicize the judicial process the way it is being done.

So I want to commend strongly the senior Senator from Vermont, the ranking member of the Judiciary Committee, for bringing this issue once again to our attention. It is beginning to cripple the Federal courts. There is no question about it.

As my colleague from California pointed out, it is terribly unfair to some very able and dedicated people who have been nominated and then their life simply placed on hold in terms of their normal activities. It is a marked departure from any sense of comity that has heretofore prevailed in this body and a marked departure from the respect that has traditionally been shown to the Federal court system.

I very much hope that we can begin to address this situation, begin to hold hearings, report the people out, confirm them when they come before the Senate. I thank the Senator from Vermont for his forceful leadership on this issue.

Mr. LEAHY. I thank my friend and colleague from Maryland and my friend and colleague from California for their statements.

I ask the Chair how much time remains.

The PRESIDING OFFICER. The Senator from Vermont has approximately 9 minutes and 50 seconds remaining.

Mrs. FEINSTEIN. Mr. President, I rise to join my colleagues in decrying the stranglehold that has been placed on Federal judicial nominations by the Senate, including the Judiciary Committee, of which I am a member.

The numbers bear repeating, because they are simply appalling. Last year, the Republican Senate confirmed an abysmally low number of judges—only 17. And none of these was for the courts of appeals.

Compare this to when the roles were reversed in 1992, the year a Republican President was running for reelection and the Democrats controlled the Senate. That year, the Democratic Senate confirmed 66 Federal judges, including 11 court of appeals judges.

It was thought that, after the election was over, the Senate would return to the normal course of fulfilling its constitutionally-mandated role in the judicial nomination process.

Unfortunately, however, that has not proven to be the case. It is now midway through May, and the Senate has confirmed just two Federal judges. The Judiciary Committee has only held two nominations hearings.

California has been especially hardhit by this slowdown on Federal judges. More than one-fourth of the judges whose nominations are languishing in the Senate are from California—7 out of 26.

Five of these seven judges were nominated in the last Congress. Let me tell you a little bit about each of them, to put some faces on the nominees whose lives have been disrupted by the Senate's extended failure to act on their nominations:

Richard Paez is already a respected Federal judge on the district court in Los Angeles. He was nominated by the President to the Ninth Circuit Court of Appeals on January 25, 1996. The Judiciary Committee gave him a hearing on July 31, 1996. However, the committee has never taken any further action on his nomination.

Tomorrow, Christina Snyder will have been before the Committee for 1 full year, as she was first nominated by the President to Federal district court in Los Angeles on May 15, 1996. Ms. Snyder is a graduate of one of the top law schools in the country, Stanford Law School, for which she has since gone on to serve on the board of visitors. She is a member of the prestigious American Law Institute, and her nomination has received bipartisan support, including endorsements from the Republican mayor of Los Angeles, Richard Riordan, and the Republican Sheriff of Los Angeles County, Sherman Block. I am not aware of one whit of substantive opposition to her nomination.

And yet, Ms. Snyder has been unable to get even a hearing before the Judiciary Committee. Already this year, the committee has held hearings on the nominations of four men who were nominated after Ms. Snyder, including one who was only nominated for the first time this year, in 1997. I am optimistic that the chairman of the Judiciary Committee will agree to place Ms. Snyder on the agenda for the committee's next nomination hearing, and again urge him to do so.

Margaret Morrow actually was favorably reported by the committee last year, unanimously, but her nomination died on the floor. She was nominated over a year ago, on May 9, 1996. Morrow is a graduate of Harvard Law School, was the first woman president of the State Bar of California, and has received numerous awards for her work as a lawyer and her commitment to public service.

The committee held a second hearing on her nomination this year. But while the three men who were heard along with her have all been favorably reported out of the committee, she has not even been brought up for a vote. Her nomination has been slowed while members of the committee from the other side of the aisle pose round after round of follow-up questions to her, including asking for her view on some of the most controversial issues that have been considered by Californians on the ballot over the last 10 years. This level of scrutiny previously has been reserved for Supreme Court nominees, who shape constitutional interpretation, rather than merely following precedent a district court judge does. In my time on the committee, I have never seen this level of scrutiny applied to a male district court nominee.

Jeffrey Miller is a superior court judge in San Diego, who was appointed to that post by Republican Governor Deukmejian. An accomplished jurist and a veteran of the State attorney general's office, he has been complimented by numerous fellow judges. First nominated last July, his nomination is now on the floor of the Senate. I hope that the majority leader will call up his nomination for action by the Senate.

William Fletcher's nomination to the Ninth Circuit Court of Appeals has been languishing for more than 2 years, having first been made on April 25, 1995. Fletcher is a professor at the Boalt Hall School of Law at the University of California at Berkeley, where he has won the Distinguished Teacher Award. He is a magna cum laude graduate of Harvard; he earned his law degree from Yale Law School; he is a Navy veteran, a Rhodes Scholar, and a former clerk on the U.S. Supreme Court. He was favorably reported by the committee almost a year

ago, on May 16, 1996. However, the committee has taken no action on his nomination this year.

This outstanding group of holdover nominees from the last Congress has been joined this year by two more nominees, Anthony Ishii and Lynn Lasry, who have been nominated to the Federal district courts for the Eastern District and Southern District of California, respectively.

Mr. President, the time has come to act on these nominations. I'm not asking for a rubber stamp; let's hold hearings on those nominees who haven't had them, and vote on all of them, up or down, yes or no.

California needs these judges. The chief judge of the ninth circuit, Procter Hug, Jr., has said,

> our federal courts here in the 9th Circuit, and particularly our court of appeals, are facing a vacancy crisis of serious proportions. We simply do not have enough active district and appellate judges to hear and decide cases in a prompt and timely manner.

While filings in the Ninth Circuit Court of Appeals have increased by over 60 percent since 1985, the court currently has 8 vacancies, more than any other circuit in the Nation.

In the last 5 years, case filings in the Eastern District of California have skyrocketed by 49.7 percent.

In the Southern District of California, case filings have increased by 94.7 percent since 1991—a pace that more than triples the national rate of increase of 27.5 percent.

In an editorial last month, the Los Angeles Times put it well:

> [The Margaret Morrow] case is only one of many in a deplorable situation that has gone on far too long. Justice is not served by an empty bench. Nor is society. Whichever party holds the Congress and the White House, gamesmanship over judicial appointments produces no winners. It only leaves a void . . .
>
> [The Senate's] record of delay, attempts to kill funding for some appellate seats and its harassment of Morrow and other qualified nominees reveals a deeply troubling partisanship.

Last we looked, the U.S. Constitution grants the President the power to nominate and directs the Senate to ''advise and consent,'' not stonewall. The 26 nominations now pending would be a good place to start.

I urge my colleagues, let's end the gridlock on judges. Let's not hold the third branch of government hostage to partisan politics.

Mr. KENNEDY. Mr. President, the Federal courts today suffer from far too many unfilled judgeships. There are at least 99 vacancies for judges in the appeals courts and district courts. Twenty-four of these vacancies—in the appellate courts and in the trial courts—are judicial emergencies according to the definition of the Judicial Conference of the United States. That is, the positions have been vacant for at least 18 months.

As a result, caseloads are backlogged throughout the country, and the victims of this situation are the American people. Justice delayed is justice denied. Thousands of Americans with legitimate grievances cannot get their day in court, because there are few Federal judges to hear their cases. Citizens must wait excessive lengths of time to resolve disputes, answer constitutional questions, and obtain justice.

We need strong courts to combat crime, to put criminals behind bars and make sure they serve their time. We need strong courts to protect families, jobs, and businesses. Where else can Americans go when they are treated unfairly on the job or when their small businesses are run over by larger corporations?

Just this week, I received a letter from a lawyer in San Diego who is concerned that the Federal court serving the city has had two vacancies unfilled for over 2 years.

He writes,

> Our federal court in San Diego is at the breaking point. For more than two years, the Court has valiantly struggled with a burgeoning case load and managed barely to keep its head above water by dedicated and innovative work on the part of our senior and active judges and our magistrate judges. But the system has been stretched as far as it can go. It desperately needs its two judges.

In fact, President Clinton has submitted two qualified nominees to fill these vacancies, but the Senate has yet to take action on them. Jeffrey Miller was nominated last July. In March, he finally had a hearing and was approved unanimously by the Judiciary Committee in April. But his nomination has been languishing ever since, waiting for the Senate to act. The Republican leadership won't let the nomination come up for a vote.

The problems in San Diego are being repeated in communities throughout the United States, and a major cause is the intentional stall by Congress in processing new judges.

So far this year, the Republican-controlled Senate has approved only two judicial nominees. Three more have been approved by the Judiciary Committee, but the Republican leadership has made no effort to put them before the Senate for confirmation.

Last year, in the Republican-controlled Senate, only 17 district court judges were approved, and no appeals court judges were approved—none—zero.

Since 1980, the Senate confirmed an average of 51 judges per year. When measured against this standard of performance, today's Republican Senate gets a failing grade.

Republicans shut down the Federal Government in 1995 and were rightly criticized for that unwise action. They say they will never do it again, and are even trying to pass a law that would put the Government on automatic pilot if a budget agreement is not reached. But at the same time, behind the scenes, there is a Republican scheme to shut down our Nation's courts.

The issue is far more than a numbers game. What we are witnessing today is a direct assault on the President's constitutional power to nominate and appoint judges.

Our Republican friends claim they want to move ahead on nominees. They say the current stall on judicial nominations is not an effort to force President Clinton to apply Republican litmus tests to nominees. We hear that the unwise plans proposed by Senator GRAMM of Texas and Senator GORTON of Washington were defeated in the Republican caucus 2 weeks ago.

But the facts speak for themselves. Republicans have shut down the courts and the American people are suffering the consequences.

Republicans say they want to make sure that no activist judges are appointed to the courts. They've also begun to attack sitting judges. Judge Martha Daughtry of Tennessee is a case in point. She was nominated by President Clinton to the Sixth Circuit Court of Appeals and confirmed by the Senate in 1993 with broad bipartisan support.

Later, a prominent State judge in her circuit was convicted of Federal civil rights offenses involving sexual assaults on court employees, job applicants, and female attorneys. A three-judge panel of the sixth circuit affirmed the conviction. But the en banc court, dominated by Reagan and Bush appointees overturned it. They ruled that the U.S. Constitution does not give Congress the power to protect women from sexual assaults by State officials.

Judge Daughtry dissented. She said that the right of citizens to be free from physical harm by public officials who abuse their authority has been recognized ''since the sealing of the Magna Carta.''

But Presidential candidate Bob Dole attacked Judge Daughtry and placed her in his ''Hall of Shame.'' He cited her as an example of the liberal activist judges that President Clinton appointed to the bench.

Judge Daughtry had the last laugh. Two months ago, the Justices of the U.S. Supreme Court not only reversed the sixth circuit decision, they reversed it unanimously, and cited Judge Daughtry's dissent in their opinion.

Another case in point is Margaret Morrow, whose nomination is pending in the Judiciary Committee. There should be no doubt about her competence and judicial temperament. Her nomination received the American Bar Association's highest rating. She has numerous endorsements from her peers in California—both Democrats and Republicans. She is a corporate lawyer, hardly an activist by anyone's definition. She was the first woman president of the State Bar of California. She is a past president of the Los Angeles County Bar Association. She has received numerous awards from the Los Angeles Bar Association, the California Judicial Council, and other legal associations. In 1994, she was listed as one of the top 20 lawyers in Los Angeles in

California Law Business. The Los Angeles Business Journal named her one of the top 100 business lawyers in Los Angeles in 1995 and 1996.

Probably the greatest test of her temperament for the job is the manner in which she has responded to the Senate Judiciary Committee. Despite the fact that she was held over for a second hearing in the committee and the many questions addressed to her, she has responded thoroughly, professionally, efficiently, and appropriately to each one. That is exactly what we want in a Federal judge.

An extremely well-qualified woman is being held up arbitrarily. There is no justification whatsoever for this unfair delay.

I hope that our Republican friends will reconsider their stall on judicial nominations. The rule of law in America depends on a healthy judiciary.

And if the Republican majority in the Senate does not move ahead to respond to the crisis in the courts, I hope that President Clinton will consider the only alternative he has left. In their wisdom, the Founding Fathers gave the President a useful additional power, the power of recess appointments. If the log jam doesn't break soon—very soon, the President should start using that power. The Memorial Day recess offers the next opportunity to make recess appointments, and the President should not hesitate to use it.

Mr. LEAHY. Mr. President, I ask unanimous consent a letter from the National Women's Law Center be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL WOMEN'S LAW CENTER,
Washington, DC, May 14, 1997.

Hon. ORRIN G. HATCH,
Senate Russell Office Building,
Washington, DC.

DEAR SENATOR HATCH: We are writing to express our grave concerns regarding the process being followed with respect to the nomination of Margaret Morrow to the district court in the Central District of California. Her original nomination was made one year ago. Yet, her nomination has not been moved through the process.

Ample information has been presented regarding her qualifications. She is a magna cum laude graduate of Bryn Mawr College and a cum laude graduate of Harvard Law School. She has a 23-year career in private practice with an emphasis in complicated commercial and corporate litigation with extensive experience in federal courts. She has received a long list of awards and recognition as a top lawyer in her field, her community and her state. She is a leader and path blazer among women lawyers, as the second woman President of 25,000 member Los Angeles Bar Association and the first woman President of the largest mandatory bar association in the country, the 150,000 member State Bar of California. She has consistently been a voice within the legal community for women and for the disadvantaged. She has received broad support from attorneys, judges and community leaders.

You questioned four nominees on March 18, 1997. The other three, all men, have moved forward toward a Senate vote. Margaret Morrow has not.

No explanation has been provided which in any way justifies this extraordinary and harmful delay. Superb women lawyers should not be given the message that we fear is being sent by the handling of Margaret Morrow's nomination—that no woman need apply unless she is prepared to be singled out for particularly harsh treatment.

We urge you to send her nomination to the Senate floor immediately.

Sincerely,

NANCY DUFF CAMPBELL,
Co-President.
MARCIA D. GREENBERGER,
Co-President.

Mr. LEAHY. Mr. President, I note that over the past 2 weeks I have twice corrected a misstatement with respect to the three nominations pending on the Senate executive calendar. Twice, Republicans have said that some unknown Democrat had a hold on these judicial nominations. This is not so. Every single Democrat in the Senate is ready to vote, and vote today, on all the judicial nominees, the three judicial nominees is all it is, that have been voted out of committee so far. Every Democrat on the Senate Judiciary Committee is prepared to vote at the next Judiciary Committee meeting on all the nominees that are pending there. There is no, no Democrat with a hold on any judicial nominee—I want that very, very clear—neither in the committee nor in the Senate. If we have to have rollcall votes, we are glad to do that. But we should have these people come up.

We received Jeffrey Miller's nomination in July 1996, last Congress. The President renominated him on the first day of this Congress for the same vacancy, a vacancy that has existed since December 1994. We are in 1997 now. This is one of the judicial emergency vacancies we should have filled. He has the support of both Senators. He finally had a confirmation hearing 2½ years, almost, after the vacancy occurred. His nomination was considered. It has been reported to the Senate. We should vote on it.

We first received Donald Middlebrooks' nomination in September of 1996, last year. He was not accorded a hearing last Congress. This is for a vacancy that has been there since 1992, 5 years ago. That is a judicial emergency vacancy, and he has the support of both Senators from his State, one a Democrat, senior Senator, Senator GRAHAM, one a Republican, Senator MACK. This was reported by the Judiciary Committee to the Senate April 17.

Now, here is a vacancy that has existed for 5 years. We have a judge who has gone through the Senate Judiciary Committee, reported to the Senate, supported by the two Senators from his State, one a Democrat, one a Republican. For God's sake, if we cannot vote on it, what in Heaven's name can we vote on? This should be about as noncontroversial as voting to commend the Fourth of July.

We first received Robert Pratt's nomination in August of 1996. We did not get a hearing last Congress. The President renominated him on the first day of this Congress for the same vacancy in the district court for the southern district of Iowa. He had a confirmation hearing on March 18. He was supported by the two Senators from Iowa, Senator HARKIN and Senator GRASSLEY, and was reported to the Senate by the Judiciary Committee on April 17.

Well, why can we not go forward with him? You look at what we have, a distinguished woman who is being shunted aside by somebody who does not have the guts to come forth on the Senate floor and say why that Senator is holding her up. We have distinguished other judges that have gone through the confirmation process, supported by the two Senators, a Republican and a Democrat from their State, they cannot come forward.

I take our advise-and-consent function very seriously, especially when it comes to confirmation of Federal judges who have a lifetime appointment. Our system of government with coordinate branches and separation of powers, that is our responsibility. I voted to confirm some judges who ended up rendering decisions which I strongly disagreed. I voted for some judges to move from one Federal court to another, even though they had also had decisions with which I disagreed. I voted against some who turned out to be better than I predicted. But we voted on them.

If a judge decides a case incorrectly, well, then you have appeal. I remember when I used to prosecute cases, I remember somebody saying, as the juror went out to defense counsel, ''Well, let justice be done,'' and they said, ''Well, if that happens, we will appeal.'' If you lose a case, appeal it. If you think you have bad law, have a legislative change. In fact, the reason the founders included the protection of lifetime appointments for Federal judges was to insulate them from politics and political influence.

Merrick Garland had an 18-month wait for confirmation—a judge virtually everybody in the country that ruled on this, from the right to the left, on the judicial selection, said he was one of the most qualified persons ever to be up for the U.S. Court of Appeals for the District of Columbia. Mr. President, 23 Members of this body, all on the other side of the aisle, voted against Merrick Garland for that judgeship. Not one of them spoke against the nominee. Not one of them spoke against his impeccable credentials. In fact, some who voted against him praised his qualifications. They say they voted against filling an unneeded seat on the court of appeals, in the face of a letter from Chief Judge Silberman, who said they did need the seat, and a statement from Senator HATCH, who said it was needed.

In his concluding remarks, Senator HATCH said, ''Playing politics with judges is unfair, and I am sick of it.'' I agree with the distinguished chairman

of the Senate Judiciary Committee. Let the Senate quit playing partisan politics with judicial nominations. Let us do our constitutionally mandated job and proceed to confirm the judges we need for the Federal system.

EXHIBIT 1

In 1987 I heard from Tom Jipping, a student at the University of Buffalo Law School. The faculty had imposed a speech code that was more contemptuous of the First Amendment than even most of the politically correct gag rules proliferating on campuses around the country.

''Remarks,'' said the code, ''directed at another's race, sex, religion, national origin, sexual preference'' et al. would be severely punished. There was no further definition of ''remarks.'' Also prohibited were ''other remarks''—not defined—''based on prejudice and group stereotype.'' Any prejudice?

Unique to this law school code—unanimously passed by the administration and faculty—was a provision that the administration would provide the rap sheets of any guilty student to the character and fitness committees of any bar association to which the pariah might apply.

Tom Jipping, though vilified by a prominent faculty member and other speech police, fought the code, sending news of it to the outside world. (I wrote about it in The Post, and William Bennett spoke about it.) Eventually, after Jipping was graduated, this embarrassment to the law school faded away.

Jipping is now in Washington, where he directs the Judicial Selection Monitoring Project, an offspring of the Free Congress Foundation.

In his official role, Jipping sent a letter to all 100 senators, demanding they act to purge those ''activist'' federal judges who do not agree with Jipping's interpretations of the Constitution. On Feb. 4 a follow-up letter went to Sen Partick Leahy (D-Vt.).

In the letter, Jipping reminded Leahy that the senator had previously received ''a letter from the largest coalition in history to oppose judicial activism. . . . Please find enclosed an opportunity to express your position on this critical issue.''

He then quoted a resounding call for purges by Orrin Hatch, chairman of the Senate Judiciary Committee: ''Those nominees who are or would be judicial activists should not be nominated by the President or confirmed by the Senate, and I will do my best to see to it that they are not.''

Jipping went on to warn Sen. Leahy that if he did not sign the ''Hatch Pledge''—which Sen. Hatch will not sign because he doesn't sign pledges—the forces of judicial correctness will be unleashed. They will let Leahy's perfidy be known ''to the more than 260 national and state organizations and dozens of talk show hosts in our growing coalition.'' The talk show hosts can surely be depended on the assess Leahy's character and fitness.

Leahy must have enjoyed writing his answer to Jipping: ''I do not take pledges demanded by special interest groups on either the right or the left. Nor do I appreciate your thinly veiled threat that you will employ talk show hosts and national organizations to pressure me into making such a pledge.

''These tactics to force others to adopt your narrow view of political correctness are wrong, and reminiscent of a dark period from our history.''

The ever-vigilant Judicial Selection Monitoring Project should alert the dozens of talk show hosts that a relentless judicial activist, Chief Justice William Rehnquist, insists that ''the idea of an independent judiciary, with authority to finally interpret a written constitution . . . is one of the crown jewels of our system of government.'' Then there was a Founder, Alexander Hamilton, who wrote in the Federalist Papers that ''the complete independence of the courts of justice is peculiarly essential'' because the duty of the courts ''must be to declare void all acts contrary to the manifest tenor of the Constitution. Without this, all the reservations of particular rights or privileges would amount to nothing.''

Copies of the Federalist Papers might well be distributed to members of the Senate, particularly those hunting ''judicial activists'' and demanding their impeachment.

When Gerald Ford (R–Mich.) was in the House, he anticipated the current jihad with a rousing speech calling for the impeachment of Justice William O. Douglas. Ford, not a noted constitutional scholar, said that ''an impeachable offense is whatever a majority of the House of Representatives considers it to be at a given moment in history.''

That was spoken like the stunningly overbroad University of Buffalo Law School speech code. Majority Whip Rep. Tom DeLay (R–Tex.), a leader of the judge-baiters, recently quoted Ford's definition of impeachment approvingly in a letter to the New York Times.

It is a wonder that the Constitution, however battered from time to time, survives the U.S. Congress.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mrs. HUTCHISON. I ask unanimous consent I be able to speak for 10 minutes as in morning business.

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

Mrs. HUTCHISON. Mr. President, I rise today to talk about Amtrak. I realize we have gone now from judges and we are going into other types of debate, but I want to introduce the Amtrak reauthorization and reform bill.

(The remarks of Mrs. Hutchison pertaining to the introduction of S. 738 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Tuesday, May 13, 1997, the Federal debt stood at $5,337,494,540,137.51. (Five trillion, three hundred thirty-seven billion, four hundred ninety-four million, five hundred forty thousand, one hundred thirty-seven dollars and fifty-one cents)

One year ago, May 13, 1996, the Federal debt stood at $5,094,151,000,000. (Five trillion, ninety-four billion, one hundred fifty-one million)

Five years ago, May 13, 1992, the Federal debt stood at $3,889,146,000,000. (Three trillion, eight hundred eighty-nine billion, one hundred forty-six million)

Ten years ago, May 13, 1987, the Federal debt stood at $2,272,432,000,000. (Two trillion, two hundred seventy-two billion, four hundred thirty-two million)

Fifteen years ago, May 13, 1982, the Federal debt stood at $1,061,721,000,000 (One trillion, sixty-one billion, seven hundred twenty-one million) which reflects a debt increase of more than $4 trillion—$4,275,773,540,137.51 (Four trillion, two hundred seventy-five billion, seven hundred seventy-three million, five hundred forty thousand, one hundred thirty-seven dollars and fifty-one cents) during the past 15 years.

Mr. BENNETT addressed the Chair.

The PRESIDING OFFICER (Mr. GREGG). The Senator from Utah is recognized.

EXTENSION OF MORNING BUSINESS

Mr. BENNETT. Mr. President, I ask unanimous consent that the time for morning business be extended by 10 minutes.

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

Mr. BENNETT. Mr. President, I ask that I be allowed to speak for up to 10 minutes as if in morning business.

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

NOMINATION OF LT. GEN. GEORGE T. BABBITT, JR.

Mr. BENNETT. Mr. President, I rise today to discuss the nomination that is before the Senate of Lt. Gen. George T. Babbitt, Jr. to be promoted and receive an additional star to become general in the U.S. Air Force.

When this nomination came to the Senate at an earlier time several months ago, I notified the majority leader that I would like to be informed prior to its coming to a vote. In Senate parlance, that is called putting a hold on this nomination. It was never my intention to hold up General Babbitt from receiving his additional star. But it was my intention to focus seriously on the policy of the Air Force which General Babbitt will be called upon to implement. Accordingly, I told the majority leader that I do not want this nomination to go forward until we have had an opportunity to discuss that policy in some length. The majority leader responded appropriately to my request, and we have had a series of events that I think satisfy my requirement for full discussion. I would like to outline those for the Senate today before I make it clear that I will have no further objection to proceeding with the nomination of General Babbitt. I speak entirely for myself. There are a number of other Senators who have also put holds on this nomination. What they will do with their holds is something that they will, of course, speak to on their own. I am speaking entirely, as I say, for myself on this matter.

I have been criticized by some Members of this body for putting a hold on a nomination for a member of the uniformed services, and was told, ''No. This should apply only to civilian personnel in the Department of Defense. You are using the uniformed services for a political purpose.''

Mr. President, if anyone has been using the uniformed services for political purposes and political gain it has been the Department of Defense, not the Senator from Utah. The Department of Defense, under instructions from the Base Realignment and Closure Commission—or BRCC—was told to close two of its five air logistics centers. That would be the best result for the uniformed services; in this case the Air Force.

A Member of this body, the then senior Senator from Maine, Senator Cohen, stood on this floor and berated the Department of Defense for its failure to abide by BRCC recommendations. He said very clearly that the Department of Defense was in violation of the BRCC recommendation by their attempts to keep two of those air logistic centers operating under the guise of privatization for competition. They invented a new term of art. They call it privatization in place. ''We will privatize the facility right where it is, which means we will not, as BRCC ordered us to, send the work that is currently going on in those facilities to the other facilities that can handle the work.'' That was what BRCC intended. That is what Senator Cohen attacked. And, yet, that is the policy that Secretary Cohen is now carrying out. That is the policy that I protested when I said that I do not want the nomination of General Babbitt to go forward until we can have a full airing of this issue.

I am happy to report to the Senate that the full airing for which I called has, indeed, taken place. We had a hearing before the Armed Services Committee, particularly before the Readiness Subcommittee, chaired by the Senator from Oklahoma [Mr. INHOFE].

In addition, we had a hearing before the Appropriations Committee, and in those hearings we found that, according to the General Accounting Office, the GAO, that the Air Force proposal for privatization in place will cost this country an additional $500 to $700 million—maybe even $800 million. At a time of tight defense budgets, at a time when we are talking about balancing the budget, it seems perverse for the Defense Department to say that we are going to waste that much money.

The Air Force in those hearings said, ''No. We will not waste that much money.'' But to the question of how much money will you save with your proposal of privatization in place, the Air Force has been basically silent. And their response has been overwhelmingly ''Trust us. We will not tell you how much money we will save, but trust us. We will save some, and the General Accounting Office figure is wrong.''

''How wrong?''

''Well, we do not know.''

''Why wrong?''

''Well, they don't understand our business.''

Mr. President, the General Accounting Office is the arm of the Congress created by law to be the fiscal watchdog of the executive branch. There can be no better example of the value of the General Accounting Office than this one, as they have gone behind the'trust me facade created by the Air Force and come up with numbers—lowest level $500 million, highest level $800 million, with $700 million being the guess about where it will finally come out.

So, by virtue of the hold that I put on General Babbitt's nomination, we have had those two hearings and have gotten that information into the public and on the record for the Senate.

In addition to those hearings, in response to my request to the majority leader, the Secretary of the Air Force last week met with me and two other Senators, Senator NICKLES and Senator INHOFE. And we had a full and frank discussion about this issue. To be honest with you, Mr. President, there was not much encouragement to come out of that discussion. Essentially, Secretary Widnall said, ''There is no problem. Therefore, we will not discuss with you any solution.'' She said to me, ''Please remove your hold on General Babbitt because it is having a corrosive effect on the personnel of the Air Force to have them continue without a commander.'' I said to her, and I repeat here today, there is a corrosive effect in this area certainly. But it is not caused by the fact that there is no confirmed commander. The corrosive effect is being caused by the Air Force's callous disregard for the needs of their personnel in the surviving air logistics centers, and for their refusal to abide by the BRCC process.

Following the meeting with Secretary Widnall today, I had a meeting again with Senator NICKLES, Senator INHOFE, and with General Babbitt. Where the Air Force said there was no problem relating to overcapacity in the air logistics centers, General Babbitt acknowledged that there is a big problem, and pledged himself to do the best he could to try to resolve it. He made it very clear, as he appropriately should, that he was not going to violate Air Force policy; that, as a uniformed officer, he would carry out his orders in this regard. And we would expect nothing less from him. But he did acknowledge, as the Air Force has not, to my satisfaction, that there is a serious problem of overcapacity, and that it calls for serious management solutions. And he pledged himself to provide those solutions to the degree he could within the policy dictated by his civilian superiors.

The Air Force has refused, as I have indicated, to give us any numbers. They have taken basically a trust me stance on this issue. General Babbitt, on the contrary, agreed, when I told him that we would want to see numbers, that he would make numbers available to the Congress. I said, ''General, as you proceed down this program of privatization in place, surely you are going to get some financial information that will tell you whether you are or are not saving money.'' And the financial information out of the Air Force should be available to us in Congress to compare with the analysis of the General Accounting Office. The Air Force, as I have said, Mr. President, has always refused to give us those numbers in the past. General Babbitt pledged that those numbers would be made available to Congress.

I consider this a significant act of good faith on the part of the general, because, once we have those numbers in front of us in the Congress, we can appropriately deal with this issue. And, if we find that the Air Force is correct, and they are saving the taxpayers hundreds of millions of dollars of privatization in place, and the General Accounting Office is wrong, I will be the first to come to the floor and congratulate the Air Force, because certainly I, like every other Senator, want to see to it that we save the taxpayers' money. But, if we find that, once we have the real numbers, the Air Force is wrong and the General Accounting Office is right, then I will be the first to come to the floor and once again demand that the Air Force try to solve this problem more intelligently.

The Air Force told us essentially there will be no change in policy regardless of whatever Congress does, regardless of your interpretation of the BRCC rules, and regardless of Senator Cohen's analysis, Secretary Cohen will insist that there be no change.

Mr. President, I ask unanimous consent that I be allowed to continue for another 3 minutes.

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

Mr. BENNETT. General Babbitt agreed that he would do whatever he could within the constraints of the policy laid down by the Air Force to give us intelligent management of this problem. That is the first sign of cooperation that I have seen out of this administration since this issue first arose.

So, Mr. President, because General Babbitt has made it clear, now that we have had our hearings in the Armed Services Committee, we have had our hearings in the Appropriations Committee, we have had our meeting with the Secretary of the Air Force, and we have had our meeting with him, that he will do what he can to address the issue within the constraints placed upon him by his civilian superiors to try to solve the problem, I am announcing my willingness to no longer insist that his nomination be held up. The purposes for which I made that insistence in the first place have been fulfilled. I will allow him to go forward to his additional star and his command, and I look forward to staying in touch with him in the spirit of the pledges he made to me and the other Senators this morning to see that this issue is properly resolved once and for all in the long term.

In sum, Mr. President, I am in no way backing down from my conviction

that this administration is shamelessly playing politics on this issue and has involved the uniformed services in a way that is totally inappropriate. I do not wish to be accused of doing the same thing in response because my desire is to solve the problem. I am hoping the administration will address it in the same spirit.

Mr. President, I ask unanimous consent that following my remarks the additional views of Senator WILLIAM S. COHEN on S. 1673 be printed in the RECORD.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

[Excerpt From a Senate Report]

ADDITIONAL VIEWS OF SENATOR WILLIAM S. COHEN ON S. 1673

The FY97 National Defense Authorization Senate Armed Services Committee report includes a provision that changes the allocation of maintenance workloads between the public depots and the private sector from a 60/40 to a 50/50 split. Like most compromises, it will probably not satisfy everyone with an interest in this issue. I do not believe that the depot maintenance issue should be addressed this year as a result of the inability of the Department of Defense (DOD) to articulate its depot policy and its failure to adequately answer depot-related questions Congress requested in last year's National Defense Authorization Act. It appears that DOD is not interested in providing Congress with the data it needs to make an informed decision.

There is a need to reform how the Pentagon operates. Finding more efficient ways to support our war-fighters could result in billions of dollars in savings that can be transferred to support the modernization of our forces. DOD has proposed three methods of savings to fund modernization—procurement reform, base closings, and privatization. I am highly skeptical about significant savings accruing from any of these. The Congress has given DOD three revolutionary procurement reform acts in the last two years which could generate savings but I am fearful these may fail to achieve the desired effects due to management inertia. Likewise, the savings from BRAC may prove illusionary if the Administration continues to come up with proposals which are designed not for cost savings but to avoid the pain doled out in BRAC to politically important communities.

With regard to privatization, I believe the Pentagon has a misplaced sense of priorities. In the private sector, which DOD claims to emulate, organizations most frequently contract out for building management, fleet management, and information technology to better focus on their ''core competencies''. DOD has decided to turn this on its head by first outsourcing core competencies—for example, maintaining advanced weapon systems—while keeping most commercial business processes in-house.

If we are truly going to maximize the benefits of the commercial marketplace, I believe we should instead focus on those areas where the private sector has chosen to outsource, such as data processing, accounting, audit, transportation, and inventory. But the Pentagon wants to continue to operate its own data processing centers, develop its own software for financial systems when it can buy them off-the-shelf, like most private companies do, and manage its own inventory so the taxpayer ends up spending $36 billion more on goods that DOD does not need. And yet, the Pentagon wants to move quickly to privatize depots that were slated for closure by BRAC and further contribute to the excess capacity problem at public depots that have served our country so well since 1799.

On the point of privatizing closing facilities, there also seems to be a misunderstanding about the intent of the BRAC and the closure of the Air Logistics Centers at Kelly AFB and McClellan AFB. First, let there be no misunderstanding about the fact that the BRAC decisions were made under the assumption that 60 percent of the workload would go to public depots. The need to change this ratio to accommodate the Administration's plans to shift work to Kelly and McClellan illustrates that what we are doing in this bill is a clear circumvention of the BRAC process. To change the 60/40 criteria as the Armed Service Committee has agreed to will deteriorate critical warfighting capabilities, impede investment in the public domain, and most likely require further closures beyond what has been accomplished in BRAC.

The BRAC did not recommend or authorize ''privatization-in-place'' at Kelly or McClellan. Indeed for those facilities where the BRAC thought there was a unique capability that could lend itself to privatization-in-place (such as those at the Naval Air Warfare Center in Indianapolis or the Naval Surface Warfare Center in Louisville), a recommendation was made to that effect. The BRAC made no such identification or recommendation for facilities at the Kelly or McClellan Air Logistics Centers. Perhaps, it can be argued that the BRAC made a mistake and that it did not adequately recognize the unique potential of these two facilities. I would then argue that the BRAC did not adequately recognize the unique capabilities of Loring AFB in Presque Isle, Maine and I am sure some of my colleagues could argue the same for facilities in their states. The fact of the matter is that the BRAC made a recommendation and the Congress and the Administration accepted that recommendation with all of its consequences for national security and the economic impact on these communities.

Because of the implications of any change to 60/40 on excess capacity and concerns over DOD's direction on the privatization of defense depots, Congress asked the DOD to prepare a depot policy report. If Congress agreed with this policy, it would repeal the 60/40 rule. DOD ignored their deadline and sent up a policy just four weeks ago. The report did not meet the requirements that were outlined in last year's National Defense Authorization Act and was rejected by the Senate Armed Services Committee.

The Department of Defense's depot policy report was non-responsive and it was clear from DOD's April 17th testimony before the Senate Armed Services Readiness Subcommittee that DOD's policy was not well developed or supported. DOD's definition of core capability is so general that it is virtually meaningless. The report did not address how new weapons systems would be introduced in depots, or how public depots would be kept cost-efficient. There was a complete lack of detailed statistical data supporting the Pentagon's policy decisions and no data on past depot maintenance performance in which to support privatization decisions. In addition, there were neither plans to assure effective competition in a market where 76 percent of contracts are now let on a sole-source basis, nor a risk assessment on how plans for privatization-in-place would affect existing excess capacity and overall maintenance costs.

With the move to 50/50, the Senate Armed Services Committee is now saying DOD does not have a depot policy and Congress does not have the data to adequately develop its own policy, but we are going to repeal 60/40 anyway because it meets the short-sighted political agenda of the day. By repealing 60/40 at this time, we are rewarding DOD for not adequately responding to a congressionally mandated requirement. DOD's policy and the repeal of 60/40 were inextricably linked. to reject DOD's policy as the Armed Services Committee has done, is to reject DOD's call for a repeal of 60/40.

I do not believe we should give DOD any more flexibility in this area until DOD establishes a coherent policy on depot maintenance. It was apparent that this position was not universally accepted by my colleague on the Senate Armed Services Committee. When a compromise was offered to change the mix to 50/50, I reluctantly accepted it as I felt this was the best way to continue to maintain our nation's investment in the unique capabilities the public depots provide our armed forces in war and peace.

The committee report does provide some direction to require DOD to develop a rational depot policy. The final Committee agreement again asks DOD to report in detail on the provisions where it has failed to adequately respond. The committee directs DOD to provide answers to crucial questions needed by Congress in order to support an informed decision about maintaining a core logistics capability in the public sector. Some of the questions include:

What workloads should be ''core'' in each service?

What procedures will be used to conduct public-private and public-public competitions?

What is DOD's maintenance plan for new weapon system?

What level of organic work is necessary to provide efficient capacity utilization of the public depots that remain?

How does DOD plan to improve the productivity of the remaining public depots?

What are the estimated savings that will result from increased privatization?

This last question is crucial as DOD is proclaiming savings from consolidating depots, but then plans to keep more excess capacity with its policy of privatization-in-place. While DOD risks future modernization on savings supposedly generated by privatization of depot maintenance, these savings are unproven. DOD's estimated savings of 20–30% from depot privatization rely on past studies of the privatization of commercial type functions in the government where there is significant competition for contacts. This is in stark contrast to the marketplace for depot maintenance activities. In fact, the General Accounting Office found the Air Force is implementing a privatization plan at facilities at the Newark AFB that will most likely increase maintenance costs and not save the taxpayer any money as promised.

I would have preferred to delay any decision on depot maintenance until we secured all of the facts from DOD. However, the Senate Armed Services Committee has agreed to a compromise that I fully supported. Given the fact that the committee report allows DOD to shift to 50/50 while not obligating DOD to provide an adequate response to Congress, my continued support is dependent on the degree to which DOD satisfies the Committee's request for information on DOD's depot policy between now and the conference with the House of Representatives over the Fiscal Year '97 National Defense Authorization bill. I look forward to the Chairman and Ranking Member's letter directing DOD to provide this information. The Senate Armed Services Committee rejected DOD's proposed policy this year and is offering DOD another opportunity to get it right. DOD does not plan to meet the 60/40 ceiling for several years, so I believe we have the time to ensure that a coherent depot maintenance plan

that will truly save taxpayer dollars and effectively meet wartime surge requirements and readiness needs can be properly developed and implemented.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mrs. BOXER. I thank the Chair. I wonder if the Presiding Officer could tell me what the order of business is before the Senate?

The PRESIDING OFFICER. We are in morning business. The order was to close morning business and go to H.R. 1122, but that has not been laid down yet so we are still in morning business.

Mrs. BOXER. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

PARTIAL-BIRTH ABORTION BAN ACT of 1997

The PRESIDING OFFICER. The clerk will report H.R. 1122.

The assistant legislative clerk read as follows.

A bill (H.R. 1122) to amend title 18, United States Code, to ban partial-birth abortions.

The Senate proceeded to consider the bill.

Mr. SANTORUM. Mr. President, as I spoke last night, we are now moving to consideration of the partial-birth abortion ban that has passed the House of Representatives with a constitutional majority, more than two-thirds I should say, more than two-thirds majority in the House, which means, if there is a Presidential veto, we would be able to override it in the House. It now comes to the Senate where we have an assured majority of the votes to be able to pass this legislation. The question really is whether we are going to have 67 votes necessary to do it. So we commence the debate today. I am hopeful, now that this bill has 42 cosponsors, we will have a spirited debate with many people participating, adding their thoughts on this subject.

I have a unanimous-consent request first. I ask unanimous consent that Donna Joy Watts be allowed access to the Senate gallery. This is an exception to the Senate regulations governing access to the gallery because Ms. Watts is not yet 6 years of age.

Mrs. BOXER. Reserving the right to object, I would like to ask my colleague for what purpose does he wish—how old is the child?

Mr. SANTORUM. Five and a half.

Mrs. BOXER. A 5½-year-old child to be in the gallery during this debate?

Mr. SANTORUM. She is very interested in this subject. I will discuss her case, and she would like to hear the debate.

Mrs. BOXER. I am going to object on the basis of my being a grandmother, and I think that it is rather exploitive to have a child present in the gallery at this time.

The PRESIDING OFFICER. Objection is heard.

Mr. SANTORUM. Mr. President, I do not think we are off to a very good start on this debate. I was hopeful that the Senator from California would continue to try to assure the comity that is usually accorded Members when it comes to these kinds of situations. I know that that unfortunate incident occurred a few weeks ago with a unanimous-consent request. I would hate to see that this kind of occurrence becomes a normal course.

Mrs. BOXER. Will the Senator yield?

Mr. SANTORUM. We have coarsened the comity of this place to the point where someone sitting in the gallery, who is literally months away from the age that has been set by the Senate rules, who has a particular interest in this piece of legislation would not be accorded the decency of being able to at least observe. But I respect the Senator's right to do what she wants to do, and she certainly is within her rights to do it. I think it is unfortunate that a young girl who has had as close to a personal encounter with this issue as possible and still be here to talk about it is not able to listen to a procedure to protect others from what she was threatened with. And that is certainly within the discretion of the Senator from California.

I will proceed with my opening statement.

Mrs. BOXER. Will the Senator yield?

Mr. SANTORUM. I will yield for a question.

Mrs. BOXER. Thank you so much. I just want the Senator to understand that this is nothing to do with a lack of comity. It is my deep belief, in my heart, that this is a very emotional debate. People can watch it here. They can watch it on television. I just, really, in my heart believe this—and I would not do it otherwise. It has nothing to do with comity—that given the fact that you have expressed here, I think I am acting in the best interests of that child.

That is my opinion. You have a different one. It is just some colleagues, some moms and dads, and in my case a grandmother, who has a different view of it. I ask the Senator to respect that, just as I respect his view.

Mr. SANTORUM. If I can, I find myself almost incredulous, to believe that you are—in arguing, as I know you have in the past, and other Members have, that we have no right here in the U.S. Senate to dictate what other parents should be able to do with their children with respect to whether they should be able to abort them or not. But when a mother seeks to share with her daughter, mother and father, share with her daughter some information that is important to her in a very profound way and that you are going to stand up, as a Member of the U.S. Senate, and suggest that you know what is better for her daughter than she does, I think is rather troubling. But again, it is your right as a Senator to object to these things. I respect that right. I just don't happen to agree with the characterization that allowing their daughter the opportunity to witness something that is very important to all of their lives is in any way exploiting her. But that is—your objection is so noted.

Mr. President, I think it is important as we start this debate that we understand what we are debating, that is partial-birth abortion. So I am going to explain what a partial-birth abortion is, when it is used, who it is used on, and why it is used.

There has been a lot of talk about this procedure and the facts around the procedure. We have seen in recent months how some of the facts in fact did not turn out to be facts, particularly things that were used and said by Members here on this Senate floor as to what partial-birth abortion was all about, when it was used, who it was used on, why it was used. So this debate unfortunately a year ago was shrouded in a cloak of inaccuracies. In this debate, as much as many of us tried to articulate what we knew to be the facts, we were countered with arguments that in fact have turned out not to be true. So I am hopeful that with this new information having been brought to light, that the facts as we now know them—and I cannot attest, because some of the facts have been provided by the abortion industry themselves, who are opposed to this bill, so I cannot verify the information we have been given is in fact accurate. All I can verify is that they have admitted to at least this. But what we do know is that those set of facts that they now admit to are different than what they were saying before, and different in a material enough way that Members who relied on that information last time, if they rely on the different set of facts this time, can come to a different conclusion.

That happened in the House of Representatives. Several Members who voted against the partial-birth abortion ban based on a set of facts as they knew them provided by the abortion industry, when those facts were shown to be inaccurate, changed their position in light of those, that new information, and supported the legislation and supported it to such a degree that it passed with over 290 votes, which is the necessary vote to override the Presidential veto.

So, let us look at what partial-birth abortion is. By the way, the drawings that I am going to use are drawings that were copied—derived from drawings that Dr. Haskell, who was the inventor of this procedure, had. Dr. Haskell, by the way, is not an obstetrician and gynecologist—people whose business it is to deliver babies. Dr. Haskell is a family practitioner who does abortions, and he invented this procedure. This procedure is not in any medical textbook. This procedure is not taught in any medical school. This procedure has not been peer reviewed. In other words, no other doctors have looked at this to see whether this is safe and healthy and a proper procedure. It has not been recognized as a legitimate procedure. But he has invented this thing, this monstrosity, and he wrote a paper on it. From the description and from the pictures in that paper we reproduced this, these drawings.

Dr. Haskell, when asked about these particular drawings, the ones you are going to see, said they were accurate, from a technical point of view. So any comments that these drawings are somewhat of a fabrication or whatever does not hold water.

I also suggest when you see the drawings of the baby in these pictures, the drawing of the baby in these pictures is a drawing of a 20–24 week gestation baby. It is not a big baby or has not been blown up to look like it is more life size than it is. It is the exact size. If you look at the size of the baby relative to the size of the doctors' hands, which is the way you can judge size, you can see a baby at that gestation which is when most of the partial-birth abortions are performed. In fact, it is at the low end of when they are performed because they are performed in the fifth and sixth month, and this is fifth month. So, it is the small end of when these abortions are performed.

This is a 3-day procedure. You are going to hear about life of the mother, health of the mother, we need to do some things to protect the life and health of the mother. This is a 3-day procedure. The mother is given drugs the first 2 days to dilate her cervix, to open her womb so the doctor can then reach in as you see here to grab the baby. I would just ask this question, and you don't have to be a doctor to answer it. If a woman presents herself to a physician in a life-threatening situation, would anyone do a 3-day procedure? Second, if the woman presented herself in a health-threatening situation, would any doctor do a procedure that says: Take these pills, come back tomorrow; take these pills that are going to dilate your cervix, open your womb up to infection, which is in fact a risk, and call back?

So, when you hear these, ''we have to keep this legal because there may be some circumstance,'' let me assure you—and I will have a quote that I will share with you—there is never a case, there is never a case where this procedure has to be performed to protect the life or health of the mother. Period. Having said that, the bill still provides for a life-of-the-mother exception. So I would just want Members to understand that this procedure is a 3-day procedure. It is done on an outpatient basis. When the mother presents herself in the third day—and this was the reason Dr. Haskell developed this, was so he could bring her in, the dilation of the cervix would be done, and simply he would perform the procedure. He wouldn't have to wait and have her in the clinic and do these other procedures which are done in 1 day. So this is done for the convenience of the doctor, the abortionist, not for the health of the mother, not for the safety of the baby or anybody else, because you are going to kill the baby. Now you understand why it is done.

Guided by an ultrasound, the abortionist grabs the baby with forceps by the feet or leg. Babies at this time, generally they move around, but they are generally in a head-down position. So the doctor has to reach around, grab the baby by the foot, turn the baby around inside the womb, inside the amniotic sack.

Second, they then grab the baby's leg and pull it breach. For those of you who are not physicians—I think there is only one physician in the Senate, the Senator from Tennessee—a breach birth, as any mother or parents know, is a very dangerous occurrence, when a child is delivered breach. To deliberately turn a baby and deliver the baby breach is a risk unto itself. But they deliberately turn this baby and then they pull the baby by the leg out of the uterus, out through the cervix to where the baby is delivered, the entire body except for the head. So you have a baby, now, that is outside the uterus with the exception of the head and, as nurse Brenda Shafer said when she witnessed this procedure, the baby's arms and legs were moving.

You might ask, why are they doing this? Why are they delivering this baby in this fashion? Why do they not just take the baby that is head down and just deliver the baby head first and then do what I am going to describe next to the baby? Why don't they do that?

The reason they don't deliver the baby out and kill the baby is because once the head exits the mother, it is considered a live birth and has protection. So, if you delivered it in a normal fashion and the baby's head were out and the rest of the body were in, you couldn't kill the baby. The only reason you do this is so it is easier to kill the baby and it is then legal to kill the baby—at least it is if we do not pass this law.

So just understand the difference here is a matter of which end comes out first. If the head came out first you can't touch that baby. It is a live birth, protected under the Constitution. Unfortunately, its feet are not protected by the Constitution nor its leg nor its trunk—just its head. At least that is what the courts have said.

So now we have this little baby that is outside the mother and a doctor takes some scissors and jams it right here, right in the back of the base of the skull, that soft baby's skull. You know, those of you who have children, how soft that skill is. And they thrust the scissors into the base of the skull.

Nurse Brenda Shafer described what the baby did in the partial-birth abortion that she saw. She said the baby's arms and legs flew out, like when you are holding a baby and you drop it and it goes like this. It just doesn't know what to do, it just sort of shoots its legs out, that nervous—nerve reaction. She said it shot its legs out, its arms and leg—for those who believe that the baby doesn't feel anything. And then they went limp.

To finish the procedure the doctor takes a suction tube, a high-pressure suction catheter, inserts it in the baby's skull, and suctions the brains out of the baby. That causes the head to collapse, and then the baby is delivered.

This is what we are trying to ban. Nothing else; nothing else. This is what we are trying to ban. I cannot help but think, as I look around and see the statues of the Vice Presidents of the United States that ring the Senate Chamber, that if we had been on the Senate floor 30 years ago, 50 years ago, 100 years ago and talked about this as something that was legal in America, we would have had 100 percent of the U.S. Senate saying, ''Why is this bill even here? This is obviously something that is so barbaric that we cannot allow to have happen.''

But, unfortunately, we have reached the point in our country where this is defensible. This is defensible, treating a little baby like this, a fully formed little baby, not a blob of protoplasm, not a tissue that many would like to believe, this is a baby fully formed, and in many cases viable, that we treat like this, that we murder like this. Let's call it what it is. And we are saying in this country, it's OK.

Now, if we did this procedure, if you would take these graphics out and leave some of the definitions out there, if we did this procedure of jamming scissors in the base of the skull and suctioning out the brains on someone who had raped and murdered 30 people, the Supreme Court and every Member of this Senate would say, ''You can't do that, you can't do that, that's cruel and inhumane punishment.'' Oh, but if you are a little baby, if you haven't hurt anybody, if you are nestled up in your mother's womb, warm and safe—supposedly safe—we can do that to you. In fact, it is our right, it is my right that I can do that.

The thing about this debate that is probably the most important thing—and you will hear rights, you will hear rights, my right to do this, my right to do that, it's my body, I can do whatever I want, I can kill this baby, it's my baby. Rights. Well, in this case, we are having an abortion debate on the

floor of the U.S. Senate where you cannot miss the other side of this debate. You cannot miss the baby in a partial-birth abortion. It is not hidden from view anymore. It is not the dirty little secret we tell ourselves to survive, to live with ourselves that we allow this kind of murder to occur in this country.

We cannot hide anymore from the truth of what is happening out there. We cannot lie to ourselves that this is not what we are doing. In fact, Ron Fitzsimmons said, the person who blew the whistle on the abortion industry, we have to face up to the fact that abortion is killing a living being. Let's face up to it. If you want to defend it, defend it, but defend it on what it is: It is killing a little baby who hasn't hurt anybody, who just wants a chance like all of us to live.

One of the great ironies that struck me as I walked on the floor today—I walked on the floor and I passed the Senator from Vermont, the Senator from Tennessee, and the Senator from Iowa, who had been so instrumental in the bill that we just passed on the Senate floor. Do you know what bill we just passed on the Senate floor? The Individuals With Disabilities Education Act. Individuals with disabilities.

The principal reason that the people who oppose this ban use for defending this procedure is, You know, a lot of these children have deformities. They might have Down's syndrome or they might not have any arms or legs or they might not even live long, they might have hydrocephaly, they might have all these maladies. And that, of course, is a good reason to kill them. That is the argument. That was the argument that was made over and over and over again, that fetal abnormality is a good reason —in fact, the courts, unfortunately, have legitimized this reason saying it is a legitimate reason to do a third-trimester abortion.

I just found it absolutely chilling that a Member could stand up here and rightfully, passionately argue that children are all God's children and perfect in his eyes, and while they may not be perfect, they deserve the dignity of being given the opportunity to maximize their human potential. That is what IDEA is all about, the ability to protect their civil rights to maximize their human potential—except to be born in the first place. Because some of the most passionate defenders of IDEA, some of the most passionate defenders of ADA, the Americans with Disabilities Act, say it is OK to kill a baby because it is not perfect, any time in a pregnancy—any time in a pregnancy—by using this, the most barbaric of measures.

We are going to educate you if you make it, if you survive this. If you survive, if you are lucky enough that your mother loves you enough to give you a chance at life, then we will protect you, but you are on your own until then; you are on your own; we're not going to protect you. You don't deserve protection.

Abraham Lincoln, quoting Scripture, said that a house divided against itself cannot stand. I just ask every Member who proudly stands and supports the disabled among us how you can then stand and allow this to happen to those very same children and say that you care? The ultimate compassion here is at least giving them a chance to live. I guarantee you that if you gave a lot of disabled people the choice of whether they would rather be educated or live, it is a pretty easy call. But somehow or another, that is lost here. Well, it is not lost on me, and I don't think it is lost on the American public. You cannot legitimately argue both ways. So this is the debate.

You will hear a lot about health exceptions—and I want to address that issue right up front—that we need this procedure to be legal because there might be instances in which the life and health of a mother are in danger and this procedure would have to be done. I am going to put a quote up from a group of close to 500 physicians, almost all of whom are obstetricians, people in the field:

While it may become necessary—

This is a quote from a letter—

While it may become necessary, in the second or third trimester, to end a pregnancy in order to protect the mother's life or health, abortion is never required.

I want to repeat that:

. . . abortion is never required—i.e., it is never medically necessary, in order to preserve a woman's life, health or future fertility, to deliberately kill an unborn child in the second or third trimester, and certainly not by mostly delivering the child before putting him or her to death. What is required—

And this is important—

What is required in the circumstances specified by Senator Daschle is separation of the child from the mother, not the death of the child.

What do they mean by that? Sometimes you might have to induce and deliver the baby. Sometimes you may have to do a cesarean section to deliver the baby. But you never have to kill the baby in order to protect the mother's life. You can at least give the baby a chance. Give him or her a chance. If it is not viable, then he will not live or she will not live very long, but you have at least dignified one of our human beings, one of us, your son, your daughter.

I just suggest to any mother or father that if you found out that your child was going to die, had a particular virulent form of cancer and the child was 5 years old and the child, according to the doctors, would almost certainly not live more than a few weeks, would you, would any parent in America say, ''Well, my child's going to die, I might as well kill them now''? Would any parent deliberately kill their child because they may not live long? Or, worse yet, would they kill their child because they were in a car accident and lost a leg? Or were in a car accident and are going to be in a wheelchair the rest of their lives and maybe has brain damage and does not have a whole lot of mental capacity, but some, or even none, would you deliberately kill your child? And in doing so, would you do the procedure that I suggested? Would you puncture their skull and suck their brains out? Would you do that?

Well, if you would not do that for a 5-year-old son or daughter, why would you do it to a 5-month-old son or daughter? Why? You don't have to.

If there is any message, whether this bill passes or not—I say passes, becomes law—that is so important, but it is so important for people to understand that you don't have to kill the baby. You don't have to do that. I know. There is always a more dignified way to treat another human being than to deliberately kill them.

So the debate will rage on this afternoon, but just remember these facts—facts: Partial-birth abortion is never necessary to protect the life or health of the mother. Fact: It is never medically indicated. It is not an accepted procedure.

It is rare, according to the abortion industry. It is only 3,000 to 5,000 a year, as if that's OK, only killing 3,000 to 5,000 children a year and that is not very many. I guess against 1.4 million or so, it is not many, but can you imagine what we would do in the U.S. Senate if we knew 3,000 children were going to die this year and we could stop it? What lengths would we go? What lengths would we go for 1,000? What lengths would we go for one? I don't know anymore. I wonder whether we can muster up the moral courage to stand up to the powerful lobbies out there and do the right thing.

This procedure does not have to be there for any reason—no reason other than for the convenience of the doctor doing the abortion. This procedure is not done at major medical facilities. This procedure is done at abortion clinics, period, and, in most cases, not even by—at least the people who developed it were not even obstetricians.

So I hope that we can have a debate on the facts. Because on the facts, if you look at the facts, there is no reason for this procedure to be legal—none. And if you look at the heart, what kind of message are we sending out to the young people all over the country?

You know, we have debates here on the floor, and we have committee meetings even to talk about juvenile crime, talk about generation X and how they have no respect for our institutions or even each other, that they think everybody is in it for themselves. The cynicism is so rampant.

If you want to know why that occurs, tune in to this debate. Children are not oblivious to what is going on in this country when it comes to the issue of abortion. Ask why a child should be any more concerned about shooting their neighbor if Members of the U.S. Senate and the President of the United States says we can kill a little baby.

What is the difference? There is no difference. We are going to have all sorts of problems with this future generation. I hear all the time, ''Oh, they have no values. They don't have any direction. They don't have any purpose. They are so self-centered.'' Gee, I wonder why.

What is more self-centered than what I have just described? We are sending a message. A message is being received. And 1.5 million abortions is a very loud message to everybody in our country, particularly the young, the impressionable. And we wonder why, we wonder what the problem is.

We can begin to send a positive message today. We can begin to say, you know, there are rights and wrongs—not just rights—rights and wrongs. And this is wrong.

I yield the floor.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER (Mr. HUTCHINSON). The Senator from California.

Mrs. BOXER. Thank you very much, Mr. President.

When my colleague from Pennsylvania started this debate, he asked that a 5½-year-old be allowed in the gallery, that the Senate rules be waived. And then he went on—and I am quoting very much from his text—he went on to talk about what he believes that a medical procedure, which he has called a barbaric act, a procedure that doctors tell us is used to save the life of the woman, to spare her irreparable harm—and he calls that a ''murderous act''—his words. He used the term over and over about ''killing a baby.'' He ascribed it to the President of the United States. He wanted a 5½-year-old to hear that.

He said, you will hear words like ''rights,'' and then he quoted women, and he said, ''I can kill this baby.'' Is that what he thinks women want to do? And he wants a 5½-year-old to hear that?

Talk about messages that we are sending out, this is the greatest country in the world. We ought to approach these issues as a family, not turn one group against another, one gender against another.

Mr. President, this is the third time we are having this debate. And every time it is more painful than the one before. And the reason it is so painful is because the basic assumption of the Santorum bill is that women do not deserve the full range of medical options available to them in order to have a safe and legal abortion.

I know that every Senator in this U.S. Senate who calls himself or herself pro-choice believes, as the President of the United States believes, that abortion must be safe, legal, and rare.

Mr. President, I truly believe—and I will explain it in the body of my statement—that what the Santorum bill is really about is outlawing one procedure, and then they will go after the next procedure, and then they will go after the next and the next. And that will be the way abortion is made illegal in this country at any stage.

Mr. President, that is not the view of the American people. They believe very strongly that Government does not belong in this debate.

Mr. President, the Santorum bill prohibits the use of a specific abortion procedure, the intact dilation and extraction regardless of the medical needs of the woman. But some doctors consider that procedure the safest for the women. I am not saying that every doctor says that; I am saying many, many doctors believe that. And yet, the Santorum bill would outlaw this procedure.

The American College of Obstetricians and Gynecologists, an organization representing more than 37,000 physicians stated that an intact dilation and extraction ''may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman, and only the doctor, in consultation with the patient, based upon the woman's particular circumstances, can make this decision.''

That is 37,000 doctors who are trained in obstetrics and gynecology.

Doctor Charles Bradley, medical director of Planned Parenthood in Santa Barbara, CA, wrote to me and said:

> The intact dilation and extraction procedure presents several advantages over the other techniques available for late-term abortion. Foremost among these, the procedure is short and the risk of damage to the mother's tissues and, therefore, the risk to her life and health is considerably reduced.

Dr. Seymour Romney, chair of the Society for Physicians for Reproductive Choice and Health sent me a letter. And he wrote:

> In complicated and some potentially tragic obstetrical situations, intact dilation and extraction can be the safest therapeutic procedure. In competent hands, it carries the least risk of bleeding, perforation, infection or trauma to the birth canal.

So this is a procedure that many doctors say is the safest, and yet the Santorum bill would outlaw it.

Mr. President, this is not a perfect world. If we could make it so, every child would be planned, every child would be wanted, every pregnancy would be uncomplicated, every fetus would be viable, would be healthy, every father would be proud to take responsibility, every mother would be physically and mentally healthy, there would be no rape or no incest. That is the world we should strive for. That is the world we want.

But, Mr. President, we are not there. This is not a perfect world. Families must make tough choices, and sometimes must decide, of course, to take, when things go tragically wrong—we must not pass reckless legislation which moves politicians into the hospital rooms where we do not belong. Mr. President, we do not belong in a hospital room.

We have laws in this land. We have court decisions in this land. And the laws relating to pregnancies are set. And they say, as follows: Before viability in the early stages of a pregnancy, a woman gets to decide, with her family and her doctor and with her God, what her options are. It is her choice. It is not Senator BOXER's choice. It is not Senator SANTORUM's choice. It is not Senator HELMS' choice. It is not Senator FEINSTEIN's choice. It is her choice. She will make this decision with her family, with her loving family, with her doctor. She decides. And that is it. And that is what the law says. And it was decided in 1973, in a previability situation, a woman has the right to choose.

There are those in this Chamber who want Government to enter this debate and stop that constitutionally protected right. And to do that they need a constitutional amendment. And for many years now they have not tried that because the American people do not support it. So they will go to procedures one at a time. They will do what it takes so in essence this constitutionally protected right will become meaningless to the women of this country.

How does the Santorum bill, endorsed by the antichoice groups in this country, treat a woman in the early stages of her pregnancy where, under law, it is her constitutional right to decide?

The Santorum bill says to the doctor that a particular procedure called intact dilation and extraction—and as Senator SANTORUM has given it a name of his own, partial-birth abortion, which is in no medical dictionary—that procedure is banned at any time. Any time in the pregnancy, before viability or after viability, it would be banned. And we know right off the bat that outlawing procedures in the previability stage of pregnancy before the fetus can live outside the womb, with or without life support, is a clear violation of Roe versus Wade, on which the constitutional right to choose is based.

So let us be clear. The Santorum bill infringes on a woman's right to choose in the earliest stages of her pregnancy and is clearly unconstitutional and against the law of the land.

In the late term what do the laws say? Postviability, the court decisions say that the Government does have a legitimate interest and can legislate, can legislate postviability, but with a caveat. And that is, that always the health of the woman and the life of the woman must be considered.

Let me repeat. Postviability, the Government can act to regulate abortion, but always the health of the woman and her life must always be protected.

What does the Santorum bill do in the late term? It outlaws the procedure and fails to give a health exception. My colleagues, this is dangerous. There is no health exception in the Santorum bill. And that is callous toward the women of this country.

Court cases have always ruled that any laws passed regarding abortion—

and there are many of these in the States; and my colleague, Senator FEINSTEIN, has become a real expert on studying what the States have done—they always make an exception for the health of the woman. And this U.S. Senate, under this bill, would be so radical as to not address the health of a woman.

This is very troubling to me, Mr. President. And I believe it shows a lack of concern for the women of this country, many of whom want their stories told.

In the interest of time, I am not going to go into all the stories that I have, but I am going to talk about one. And perhaps in the debate later on I will give you the other stories, because we must put a face on this issue.

This is Coreen Costello with her family. She happens to be a registered Republican. She describes herself as very conservative. And she is very clear that she and her family do not believe in abortion.

In March 1995, when she was 7 months pregnant—actually this is a photograph of her when she was pregnant—she was 7 months pregnant with her third child, and she had premature contractions and was rushed to the emergency room.

She discovered through an ultrasound that there was something seriously wrong with her baby. The baby, named Katherine Grace—she named her baby Katherine Grace while she was carrying her baby—had a lethal neurological disorder and had been unable to move inside Coreen's womb for almost 2 full months. The movements Coreen had been feeling were not that of a healthy, kicking baby. They were nothing more than fluid which had puddled in Coreen's uterus. The baby had not moved for a long time—not her eyelids, not her tongue. The baby's chest cavity was unable to rise or fall. As a result of this, her lungs were never stretched to prepare them for air. Her lungs and chest were left severely underdeveloped to the point of almost nonexistence. Her vital organs were atrophied.

The doctors told Coreen and her husband the baby was not going to survive, and they recommended termination of the pregnancy. To Coreen and Jim Costello, termination of the pregnancy was not an option. Coreen wanted to go into labor naturally. She wanted the baby born on God's time and did not want to interfere.

The Costello's spent 2 weeks going from expert to expert. They considered many options, but every option brought severe risks. They considered inducing labor, but they would be told it would be impossible due to the baby's position and the fact that the baby's head was so swollen with fluid it was already larger than that of a full-term baby. They considered a cesarean section, but the doctors were adamant that the risk to her health and her life were too great. Coreen said, ''There was no reason to risk leaving my two children motherless if there was no hope of saving Katherine Grace.''

These are the women my colleague stands and talks about as wanting to kill their babies? I am ashamed of that. It is unnecessary to talk about the mothers of America, the women of America in such a fashion.

Coreen and her husband faced a tragedy that most people, thank God, never have to face. In the end, they made a decision which saved Coreen's life. She underwent a late-term abortion.

In December of last year, I showed you this picture of Coreen and her family, and I reminded you at the time of this photo, Coreen was pregnant with Katherine Grace. Now I want to show another picture of the Costello family. Here is Coreen and her family with their newest addition, her son, Tucker.

Coreen writes that she is against abortion. She is a registered Republican. She says she is a conservative. She writes to us, ''This would not have been possible without this procedure. Please give other women and their families a chance. Let us deal with our tragedies without any unnecessary interference from our Government.'' She writes, ''Leave us with our God, our families and our trusted medical experts.''

Now, that is one story. To me, it just says it all, that this Santorum bill, if it became the law of the land, could have resulted in this woman dying or being impaired or losing her fertility. We stand here and talk as if the mothers of this country, the women of this country, want to end these pregnancies, when, in fact, these women—again, I have many of these stories which I will tell tomorrow, story after story—the last thing they wanted was to end the pregnancy. They wanted these babies.

Mr. President, I want to put the face of these women into the debate. I know those who wish to ban this procedure want the face of the woman gone. I want to show you what the New York Times quotes Ralph Reed, the head of the Christian Coalition, as saying in a March 23, 1997 article. This appeared:

> ''Mr. Reed said that by focusing on the grizzly procedure itself—and on the potential viability of a fetus—abortion foes undercut the primacy of the woman and made her secondary to the fetus.''

In other words, what Mr. Reed is quoted as saying, in what I consider to be an unguarded moment, is the reason he was so excited about this debate is that for the first time, the woman was made secondary to the fetus.

Those who are pushing this bill want us to forget about the women. As Ralph Reed is quoted as having said, to forget about our daughters, our sisters, our nieces. They want us to forget about them.

Why, the Senator from Pennsylvania, in his opening remarks, portrayed women as killers. His words: ''I have a right to kill this baby,'' as if that is what a woman wants to do.

If they succeed in outlawing this procedure, they will go to the next and the next, as I have said. With all due respect to my colleagues on the other side of this debate, they are very good at getting votes and they are very good at winning elections. But I do not think they are worth a whit in the gynecological operating room. I do not want them in that operating room telling a doctor what procedure to use for my daughter or my niece or, frankly, even for their daughter or their niece.

If a loved one—and I ask all Americans to think about this. Think about it, think of a woman in your life of child-bearing age. Think of that woman, be it your wife, be it your aunt, be it your sister, be it your niece, be it your daughter, be it your granddaughter, think of that woman, have that woman in front of your face, and think if that woman was in trouble with a pregnancy gone tragically wrong like Coreen's pregnancy. I will put her and her family's picture back up. Suppose you found out that she was carrying a fetus whose brain was growing outside the head, where the doctor has said to you the baby would live but a few moments, maybe, and in torture, and that your loved one, if this particular procedure were not used, because many have said it is, in fact, the safest, might suffer irreparable harm, irreparable harm, never to be able to have a child again, maybe could be blinded, maybe could be paralyzed. In your heart of hearts, you would not want Senators making that decision. You would want the decision to be made by the medical experts, the best in the world.

I do not want that doctor afraid at that moment that he or she might be hauled off to jail if he acted to help a family to spare a woman's life or health. I do not want that loved one in despair, pain, and grief to be told that her openings were narrowed because her doctor was afraid to do what he or she really thought had to be done to save her fertility or to save her life or to save her health.

Who decides? Senator SANTORUM? I hope not. Who decides? Senator BOXER? I hope not. I know politicians have big egos, but we are not doctors. We can show drawings done by a doctor, but that does not qualify us. Where is the humility around here? Why do we not just do our job? I think every woman in this country deserves a free range of options when she is in deep, deep trouble.

Mr. President, Senators FEINSTEIN, MOSELEY-BRAUN, and I have a bill that I believe is the most humane and the most sensible and the most constitutional of those that will be before the Senate. It zeros in on the timeframe that concerns most Americans, and that is the late term of a pregnancy, after viability, and is consistent with Roe versus Wade, which says the Government has an interest after viability. Our bill outlaws all post-viability abortions—all procedures, not just one. The Santorum bill does not do that. It zeros in on one procedure. We say after the

fetus is viable, no abortion, no procedure except to protect the woman's life or to spare her serious adverse health consequences.

Life and health are constitutional requirements, and it is the right thing to do for the women of this country. Mr. President, if we abandon the principle that a woman's health and life must always be considered when an abortion is considered, we are harming women, plain and simple, women like Coreen Costello and the other women that I will talk about.

Mr. President, the day we start passing laws that harm half of our population—women are more than half of our population—the day we start passing laws that harm more than half of our population is the day I will worry about the future of this, the greatest country in the world.

Mr. President, I just celebrated my second Mother's Day as a grandmother, and my daughter celebrated her second Mother's Day as a mom. This is the greatest thing for our family. And everyone who always said to me, ''When you are a grandmother, you will see how great it is,'' including Senator FEINSTEIN, who told me that years ago, I thought, well, maybe they are exaggerating. You know what? They are not. To see your baby have a baby, to get the continuity of life is an extraordinary feeling.

I happen to believe as I watch my daughter be a great mother that America's moms deserve to be honored every day. We just celebrated Mother's Day. They deserve to be honored every day.

Senator BYRD came down right before Mother's Day and talked about the incredible job that our moms are doing, working moms, supermoms, working hard so that families have the resources to educate their children, to give their children the American dream. It is hard for me to imagine why we would want to pass legislation that will harm women.

Now, it is interesting to me, in the Santorum bill, this procedure is outlawed. As a matter of fact, the Senator from Pennsylvania called it a barbaric act, and yet in his own bill he says, ''The procedure can be used when it is necessary to save the life of the mother'' if you can't find another medical procedure.

So, first, he says it is barbaric. And then he admits in his legislation that it may be necessary to save the life of the mother.

So what is this really all about? It is about banning one procedure and then the next and then the next. Women as moms and future moms should not be put at risk because the big arm of Government wants to reach further into their private medical and family physician.

We can pass a bill that respects women and their families, that is caring and trusting toward American moms and future moms while protecting a baby in the post-viability stage of pregnancy. We can pass a bill that is consistent with Roe.

That is what the Feinstein-Boxer-Moseley-Braun bill is about. This bill should not be about what the New York Times article quotes Ralph Reed as saying, which reveals, I think, a real malice toward the women of this country—that a woman should be secondary to a fetus. This should not be about mothers versus fetuses. This should be about all of us together as a society passing laws that help our families cope with tragedy and urgency in a way that is moral and in a way that is respectful of everyone involved.

So this is a painful debate, Mr. President, but my intent is clear. I will not allow the fate of the woman to be lost in this debate. I will tell story after story after story about the Coreen Costellos of our Nation who are loving, caring moms, many of whom would never have an abortion at any stage unless they were told they had to have one to spare their life or to preserve their fertility so they can be alive for their families, for their other children.

I will do all I can to spare families long-lasting, horrible pain that I think would come about as a result of the Santorum bill putting Senators into a hospital room and making decisions they are not qualified to make. I think this bill will cause pain to innocent, caring, and loving families in the name of sparing pain. It is a first step toward making all abortions illegal.

If you ask those who are on the floor and if you study their record, you will see they are on record as wanting to ban all abortions from the first second.

So, Mr. President, although this is a very painful debate for all of us, I will be here throughout this debate. I will work with my colleagues to put the fate of the woman on this debate, to never let anyone forget what we are doing if we pass this bill, which is to hurt American families. That is my deep belief.

If you are really about making sure that there is no abortion post-viability in the late term, you have the Daschle proposal that deals with it, and you have the Feinstein-Boxer-Moseley-Braun proposal. If you really want to do something about what Americans care about, that is what you should do. But don't go to a procedure which you say is barbaric, but then you allow it in the case of a woman's life, ban that and tell the American people you are doing something about the late term which, in fact, you are not when, in fact, what you are doing is interfering with medical treatment of women who—all of these women—are put in tragic circumstances where they could have lost their life or their health.

Thank you very much.

Mr. President, I yield the floor.

Mr. DEWINE addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I rise once again to support the ban on the procedure known as partial-birth abortions.

Mr. President, we have heard a lot in the last year or two about this procedure. We have heard the graphic details, the details which are certainly not very pleasant. But we know that they are true. They are indisputable. We know exactly what this ''procedure'' consists of. Senator SANTORUM earlier this afternoon very graphically described it. It is unconscionable.

Mr President, the public reaction to disclosure about this ''procedure''—the disclosure of what partial-birth abortion really is—has been loud and convincing. There is a good reason for this. Yes, this procedure is barbaric. There is simply no other way to describe it.

Many people have asked the question. Why? Why does it take place? Why is it done? Why do they do this procedure? Is it really necessary?'' Then the question is, ''Why do we as a people allow this to happen?''

The opponents of this measure argue that it is medically necessary. Mr. President, this is simply not true. This is not a valid argument, when you have probably the single most respected physician in this country, Dr. C. Everett Koop, who says exactly the opposite. Dr. Koop in an interview with the American Medical News on March 3 of this year says: ''In no way can I twist my mind to see that the late-term abortion as described . . . partial birth, and then destruction of an unborn child before the head is born—is a medical necessity for the mother.''

Mr. President, America's most respected physician is not alone in this view.

Dr. Nancy Romer, chairman of OB–GYN and professor at Wright State University Medical School in Ohio says: ''This procedure is currently not an accepted medical procedure. A search of medical literature reveals no mention of this procedure, and there is no critically evaluated or peer review journal that describes this procedure. There is currently no peer review or accountability of this procedure. It is currently being performed by a physician with no obstetric training in an outpatient facility behind closed doors and no peer review.''

Dr. Romer also says, Mr. President: ''There is no medical evidence that a partial-birth abortion procedure is safer or necessary to provide comprehensive health care to women.''

Let me stress, Mr. President, what the doctor said, ''no medical evidence''; none.

Just this week the American Medical Association also endorsed this view. This is what they say. They said there were no situations in which partial-birth abortion ''is the only appropriate procedure''; no circumstances, Mr. President, where partial-birth abortion ''is the only appropriate procedure.''

I think it is often instructive to look at what those who perform the abortions have to say. One of the most famous or infamous abortionists is Martin Haskell. He has admitted—this is uncontroverted; no one disputes this—Dr. Haskell, who has performed hundreds of thousands of these probably,

admits that at least 80 percent of the partial-birth abortions he performed are elective. And the late Dr. James McMahon, a person who performed many abortions, says he performed nine of these partial-birth abortions because the baby had a cleft lip.

Let me repeat that. Nine were performed, according to Dr. James McMahon, for no other reason than the baby had a cleft lip.

Medical necessity, Mr. President? Medical necessity? So much for medical necessity.

Why then is this procedure performed? Is it because some of these fetuses are deformed?

Betty Friedan, in a televised debate, called such little babies ''monsters''; ''monsters.'' She said it not once but twice.

Are we now in the business of killing people for being defective, Mr. President? My colleague from Pennsylvania has pointed out very eloquently the irony of this argument, the fact that today—we tried earlier this week to protect people with handicaps, protect them in school to make sure they had a full education, but at the same time abortions are being performed, partial-birth abortions are being performed not for medical necessity but rather this child is somehow not ''perfect,'' at least as we see perfection.

Are we now, Mr. President, in the business of killing people for being defective? I would submit that the world has gone down that path once already in this blood-soaked 20th century. Are we really willing to go down that road again? Are we willing to go down that road again in this country that is based on the sanctity of human life, the sanctity of human rights? I hope not.

Mr. President, when the child which is subject to a partial-birth abortion exits the birth canal, once he or she is out, the child, of course, is protected by the U.S. Constitution. If the doctor performing the abortion slips, sneezes, something happens, and as a result the child's head exits the mother's body, then that doctor cannot legally kill that child.

Mr. President, do we as a nation really believe that those few inches between being inside the mother and being outside the mother, do we really believe that defines the difference between a legitimate medical procedure and barbaric murder? I hope and believe that we are better than that, that even our jaded, contemporary public morality would rebel in calling this a legitimate medical procedure.

Mr. President, the defenders of this procedure used to try to change the subject. They used to say that it rarely happens, so we shouldn't get all worked up about it.

Well, it is funny. You do not hear much of that argument anymore. The reason we do not hear that argument much anymore is because of the shocking confession made by a leader in the abortion rights movement. Ron Fitzsimmons is the executive director of the National Coalition of Abortion Providers. In 1995, when the Senate was considering the partial-birth abortion bill, he was helping lead the fight against this very bill. He went on ''Nightline'' to argue that the procedure ought to remain legal. At that time, he said the procedure was rare and was primarily performed to save the lives or the fertility of the mothers.

You know, a funny thing happened after that. Apparently his conscience starting gnawing at him. He says now that he felt physically ill about the lies he had told. He said to his wife the very next day, ''I can't do this again.''

Meanwhile, President Clinton was using Mr. Fitzsimmons' false statements to buttress his case for vetoing the partial-birth abortion bill that this Senate passed.

But a couple of months ago Mr. Fitzsimmons admitted that, in his own words, he ''lied through his teeth.'' The facts, as he now publicly acknowledges them, are clear. Partial-birth abortion is not a rare procedure. It happens tragically all the time. And it is not limited to mothers and fetuses who are in danger. It is performed on healthy women, it is performed on healthy babies—all the time.

Remember Dr. Haskell's quote that 80 percent of the abortions he performed are elective.

Mr. President, it is true that everyone is entitled to his or her opinion. Everyone is entitled to their own opinion. But people are not entitled to their own facts.

Ruth Padawer of the Record newspaper in Bergen, NJ, reported last September 15 that 1,500 of these partial-birth abortions happened in one local clinic in 1 year.

Once you confront the reality of what partial-birth abortion really is, you realize that from a moral perspective one of these atrocities is as bad as 1,500, but let nobody say this procedure is somehow de minimis, that it does not happen often enough to deserve legal notice.

Let me now describe briefly some of the proposed amendments to this legislation. I know we will have the opportunity later during this debate to talk about this at length. Let me just for a moment talk about several of the amendments at least as I now understand them.

Under the Boxer-Feinstein amendment, the exceptions swallow the rule. It is the old trick. Make it sound good, but then put an exception in there that, in reality, the way it really works as interpreted already by courts, the exception swallows up the entire rule and really makes the bill, in this case the amendment, meaningless. Under the Bolton precedent, the Bolton case, the ''health'' language clearly has unlimited meaning. So once the term ''health'' is in there, as interpreted by the Court, it swallows up the entire amendment and makes it useless. It is determined by the existence of health circumstances as decided by the very same doctor who performs the abortion. That is who does the decision. That is who makes the decision about the health under the Boxer-Feinstein amendment. Clearly that exception renders the bill meaningless.

Furthermore, if this really is about maternal health, then why do we have to kill the baby? Senator SANTORUM very eloquently talked about this a few minutes ago. No doctor, no witness, no Senator has yet offered any evidence that tells us why, when the health of the mother is in danger, you have to kill the baby. Why? Why can't we, if it is threatening the mother's health, deliver the baby and, if possible, save it? Why does this child have to be killed?

Senator SANTORUM earlier read in part from this letter, the letter from the Physicians Ad Hoc Coalition for Truth. I want to read one of the paragraphs because it addresses this very issue, and this is what the doctors said:

> As specialists in the care and management of high-risk pregnancies complicated by maternal or fetal illness, we have all treated women who during their pregnancies have faced the conditions cited by Senator DASCHLE. We are gravely concerned that the remarks by Senator DASCHLE and those who support the continued use of partial-birth abortion may lead such women to believe that they have no other choice but to abort their children because of their conditions. While it may become necessary, in the second or third trimester, to end a pregnancy in order to protect the mother's life or health, abortion is not required—i.e., it is never medically necessary, in order to preserve the woman's life, health or future fertility, to deliberately kill an unborn child in the second or third trimester, and certainly not by mostly delivering the child before putting him or her to death. What is required in the circumstances specified by Senator DASCHLE is separation of the child from the mother, not the death of the child.

Why then can't we as a society, if the child is threatening the mother's health, deliver the child and, if possible, to try to save it? Why does that child have to be killed? There is no medical answer for that, there is no medical reason. But let me submit a reason that I think is critically clear from the debate and, more importantly, from the evidence and, more importantly, from the words of the doctors who perform these abortions. Why is it done? Why does the child have to be killed? The child has to be killed because that is the goal. That is the goal. That is what the doctor wants to do.

Now, Dr. Haskell, who has performed hundreds and hundreds and hundreds of these, has said as much. In an interview with the American Medical News, he said:

> You could dilate further and deliver the baby alive, but that's really not the point. The point is you are attempting to do an abortion. And that's the goal of your work, is to complete an abortion. Not to see how do I manipulate the situation so that I get a live birth instead.

Dr. Haskell admits it. He admits what the goal is. He admits why it is done. Why can't we on the Senate floor?

An abortion is legal in this country. I happen to be pro-life. But nothing says we have to allow this procedure simply because it allows the doctor to speed up the procedure and move on to the next one. These are done for the doctor's convenience.

Let me specifically go back to the issue of the Daschle amendment, and again we will have the exact language in the Chamber, I am sure, and we will have the opportunity to more thoroughly debate this. Let me address the third trimester ban that is proposed by this amendment. The reality is that the exceptions are simply too numerous and the way they will be applied it will again swallow up the amendment.

The facts are that the vast majority of these partial-birth abortions occur in the fifth and sixth months. All the abortionist has to do under this amendment is to certify that either the baby is not viable, just certify it, or that the abortion is medically necessary. The conditions are spelled out apparently in the amendment. In practice, this means there will be no limit on the will of the abortionist. The same person who will be certifying is the person such as Dr. Haskell who has described why he performs this procedure. In practice, there will be no limit to what the abortionist does. Our colleague, my friend from Pennsylvania, Senator SANTORUM, has compared it—he does it better than anybody I have heard—to passing an assault weapons ban and then entrusting gun dealers to decide what constitutes an assault weapon. Would anybody propose to do that? I think not.

Viability has also been proposed as a standard. I fail to see what viability has to do with whether this procedure should really be permitted. Whether it should be permitted is a question of humaneness or arguably a question of health. If one can show that the fetus threatens maternal health and that abortion is the only way to save the mother's health, the opponents of the ban are still confronted with the insufferable difficulty of proving this specific procedure, partial-birth abortion, is the only way to accomplish that goal.

As Dr. Koop and Dr. Romer have testified, there is absolutely no way the partial-birth supporters can meet that test because this procedure is never medically necessary. The proponents of partial-birth cannot hide behind a false claim of medical necessity. There is no medical necessity. The evidence is abundantly clear.

Let us again, because I think it is so instructive, hear what Dr. Martin Haskell says, the abortionist who has performed so many of these abortions and who, frankly, has been so very candid about what he does and why he does it. Let us hear Dr. Haskell describe this procedure, again a procedure that is not medically necessary. This is what he says, not MIKE DEWINE, not Senator SANTORUM, not Senator BOXER. This is what Dr. Martin Haskell, who performs these abortions, has to say.

I just kept on doing D&Es because that is what I was comfortable with up until 24 weeks. But they were very tough. Sometimes it was a 45-minute operation. I noticed that some of the later D&Es were very easy so I asked myself why can't they all happen this way. You see the easy ones would have a foot-length presentation, you'd reach up and grab the foot of the fetus, pull the fetus down and the head would hang up and then you would collapse the head and take it out. It was easy.

It was easy, Mr. President, it was easy for Dr. Haskell. Dr. Haskell does not say it was easy for the mother. I suspect that he really does not care. His goal is to perform abortions.

Under these proposed amendments, is Dr. Martin Haskell, a man who has said—you have heard what he had to say—is he the person we are going to trust to decide whether abortions are necessary? He has a production line going. Nothing is going to stop him from meeting his quota.

Dr. Haskell concludes, again quoting:

I would reach around trying to identify a lower extremity blindly with the tip of my instrument. I'd get it right about 30–50 percent of the time. Then I said, ''Well, gee, if I just put the ultrasound up there I could see it all and I wouldn't have to feel around for it.'' I did that and, sure enough, I found it 99 percent of the time. Kind of serendipity.

Kind of serendipity, Mr. President.

Let me conclude. I believe we need to ask ourselves, what does our toleration of this procedure as a country, as a people, say about us? What kind of a people are we? What kind of a nation are we? I think you judge a country not just by what it is for. I think you also judge a country and a people by what we are against, and we judge a country and the people by what we tolerate. We tolerate a lot in this country, unfortunately. This is one thing that we should not have to tolerate. Where do we draw the line? At what point do we finally stop saying, oh, I really don't like this, but it doesn't really matter to me so I will put up with it? It really doesn't affect me so I will put up with it.

At what point do we say, unless we stop this from happening, we cannot justly call ourselves a civilized nation. I think it is very clear what justice demands. That is why I strongly support this ban. That is why I strongly support this bill to ban a truly barbaric procedure.

I look forward to the opportunity as this debate continues to debate the various amendments and talking about this bill further. At this point I yield the floor.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. I thank the Chair.

Mr. President, it has often been said that one is a product of one's life experiences. Because this is a bill about so-called partial-birth abortion, and because there is no medical definition of partial-birth abortion, and because most of us believe that what is being referred to is a procedure either called intact D&E or intact D&X—but that is not reflected in the bill—and because the bill affects more than just the third trimester of a pregnancy but also goes into the second trimester, and because it carries with it criminal penalties, I want to share with this body how I am a product of my life experiences with respect to abortion.

I well remember my early days. In college during the 1950's, abortion was illegal, and I knew young women who were in trouble. I knew one who committed suicide. I knew others who passed the plate to those of us in a dormitory—and this was Stanford University—to go to Mexico for an abortion.

Later in the 1960's, I spent 8 days a year for 5 years sentencing women in the State prison, and I sentenced abortionists because abortion was still illegal in California in the early 1960's. I remember these cases particularly well. I remember the crude instruments used. I remember women who were horribly damaged by some of these illegal abortions. I remember mortality as well. And I always thought maybe one day we will get past this and not have to go back to it.

What concerns me about this debate is that I see it as the opening wedge of a long march to take us back 30 years, back to the passing of the plate at Stanford, back to the back-alley abortionists.

I will never forget one woman because abortion carried with it a maximum sentence of 10 years in State prison at the time. I sentenced this woman—I remember her name, I am not going to say it here—to the maximum sentence because she had been in and out of the State institution. This was her third time. Every time she went out I asked her why she continued. She said, ''Because women were in such trouble and they had no other place to go, so they came to me because they knew I would take care of them.'' That was the reality of life from 1960 to at least 1966 in California. I do not want women, young women, to have to go back to those days again.

So basically I am pro-choice. I am also a member of the Judiciary Committee of the Senate, so I have been present at all of the hearings on this so-called partial birth abortion bill. Essentially, I believe that abortion should be a matter for a woman, for her doctor, for her faith, for medicine, and not for politicians. One of the most perplexing things in my life has always been why men are so desperate to control a woman's reproductive system.

Nonetheless, about 4½ years ago, I became a grandmother of a little girl who is the light of my life. Her birth was not uncomplicated. My daughter had a pregnancy-related condition. It was a condition that women bleed to death from. You have, essentially, about 20 minutes from the time you begin to hemorrhage before your life is extinguished, and that of the child.

This case of my daughter's is really only related to this whole debate in

that it caused me to really think. I never thought that my daughter would be in a situation of this type. I began to think of the ''whens'' and ''ifs,'' and whether one could really predict all of the exigencies that a woman in pregnancy is subject to. I could not with my own daughter, because I never would have dreamt that this would have happened. For her, she was a lucky one. Although at home I am a block and a half from the hospital, they would not let her stay with me. She stayed in the hospital right next to an operating theater, so that for 2 months the baby grew in her womb, and then at 35 weeks she was able to have a C section. And we have a wonderful little granddaughter—bright eyed, bushy tailed—and the story came out OK.

But I came to a few conclusions. The conclusion is, no matter how all-seeing we think we are, no one can possibly know all of the circumstances one may find themselves in. So, if we are going to pass laws, laws need to be flexible enough to anticipate the circumstances and to provide for a worthy exception. I basically believe that this intact D&E, or intact D&X, whichever one chooses to call it, is a procedure that should not be used. That is my basic belief and I think the AMA is beginning to come to grips with this and set down some precepts, as to when one should consider a late-term abortion.

I believe that abortions post-viability should not take place except in the rarest of circumstances. And that the only case for a post-viability abortion is either to protect the life and health of the mother or in cases where there is such a serious, severe fetal abnormality that the abnormality is inconsistent with life. In other words, the child could not survive outside of the womb for any period of time.

So, with my colleagues, Senator BOXER and Senator MOSELEY-BRAUN, we will offer a substitute at the appropriate time to the Santorum bill and one that will also be a substitute to the Daschle bill. Our bill will have the following provisions:

It will prohibit all abortions after viability in a way that will meet the test of constitutionality. The provision for life and health of the mother does just that.

The health requirement is drawn to correspond with the mandate of Roe versus Wade, to prevent serious adverse health consequences to the mother and not to restrict the judgment of the physician.

Additionally, the goal is to provide for post-viability abortions only in cases of serious fetal anomalies—or abnormalities incompatible with life.

The penalties of the bill will be civil but substantial. They will be limited to the physician. The penalty for the first violation will be up to $100,000, along with referral to a State licensing board for possible suspension of the license. For a second offense, a fine up to $250,000 and referral to a State licensing board for possible revocation of the license. Unlike the Daschle substitute, we would not withhold Medicaid funds. But we would allow the State to, essentially, register its will.

I am very much persuaded by the fact that some 41 States have already passed legislation limiting late-term abortions. In Arizona, no abortion may be performed after viability; in Arkansas, same thing; in Connecticut, no abortion may be performed after viability; and on and on.

So I, for one, have a very hard time understanding why it is necessary for the Federal Government to get involved in this area at this time. But, if we do, I think we ought to do it in a way that does not limit the doctor, that prohibits post-viability abortions, and contains an exception that accounts for those rare cases when the fetus has a severe abnormality that is not consistent with human life.

So, we would offer this as a substitute for that offered by the distinguished Senator from Pennsylvania, and as a substitute to the Daschle legislation as well.

I would like to illustrate the ways in which this bill that the three of us would offer would differ from that of the Senator from Pennsylvania. Most profoundly, our legislation would fully comport with the Supreme Court's landmark decision, Roe versus Wade, which affirms a woman's constitutional right to choose whether or not to have an abortion. According to Roe, in the first 12 to 15 weeks of pregnancy, when 95.5 percent of all abortions occur, that procedure is medically the safest. The Government cannot, under Roe, place an undue burden on a woman's right to have an abortion.

In the second trimester, when the procedure in some situations provides a greater health risk, abortion may be regulated but only to protect the health of the mother. This might mean, for example, requiring that an abortion be performed in a hospital or performed by a licensed physician.

In the later stages of pregnancy, at the point the fetus becomes viable and able to live independently from the mother, Roe recognizes the strong interest in protecting potential human life. On that basis, abortions can be prohibited, except in cases where the abortion is necessary to protect the life and health of the woman. The life or the health of the woman. Thus, Roe strikes a delicate balance in protecting the fetus as well as the mother.

Our bill will fully comport with Roe. It applies only to post-viability abortions, not pre-viability abortions. And it contains exceptions to protect the health as well as life of the mother.

In my humble opinion, the bill before us now, presented by the distinguished Senator from Pennsylvania, is unconstitutional and it represents a direct challenge to Roe. It provides no exception for cases where the banned procedure may be necessary to protect a woman's health. It ignores the viability line established in Roe and reaffirmed in Casey. Although the term ''partial-birth abortion'' is not a medically recognized term, the bill's focus on a particular procedure means that this procedure will be banned even if performed pre-viability, during the second trimester. Roe does not permit abortions to be banned prior to viability. That is the constitutional framework here.

I think the proponents of this bill know well the challenges to Roe that this legislation presents. The magnitude of this bill is enormous for the long-term preservation of safe and legal abortion in this country. The Santorum bill would have an immediate and direct effect on the lives of women facing tragic and health-threatening circumstances, even in the second trimester of pregnancy. The bill also holds a doctor criminally liable unless he or she can prove that the banned procedure was the only one that would have saved the woman's life. Not the woman's health, but the woman's life.

The vagueness of the term ''partial-birth abortion'' makes the use of criminal penalties particularly troublesome. Doctors will not necessarily know when they are violating the law, since no precise procedure is referred to in the law.

During last year's hearing before the Judiciary Committee, none of our medical experts who testified had heard of the term partial-birth abortion. Since then, of course, times have changed. But none could point to a medical text that used the term.

Georgetown law professor, Michael Seidman, stated in hearings last year:

If I were a lawyer advising a physician who performed abortions, I would tell him to stop because there is just no way to tell whether the procedure will eventuate in some portion of the fetus entering the birth canal before the fetus is technically dead, much less being able to demonstrate that after the fact.

This is the catch-22 in the bill of the distinguished Senator from Pennsylvania. It can be applied to much more than just the procedure we think is at hand. The use of criminal penalties in conjunction with a vague term such as ''partial-birth abortion'' is likely to make the Santorum bill unconstitutionally vague and, therefore, unenforceable.

Our bill, instead, provides civil penalties for any post-viability abortion performed without sufficient medical justification. I believe that these civil penalties will effectively deter any physician who would perform a post-viability abortion for anything other than the most serious reasons.

Women's health, I think, should be of great importance to this body, and I would also hope that every woman in the United States would want a Congress to legislate based on what we thought would help their health, rather than create situations which would

deny them the opportunity prevent long-term damage to their physical health.

Late in certain types of highly troubled pregnancies, there are only limited options available to physicians, and I would like to give some examples of rare medical conditions that could necessitate a post-viability procedure for which there are no other alternatives available.

One example would be a fetus that has a greatly enlarged hydrocephalic head, three times the normal size, the cranium filled with fluid. The head is so large the woman physically cannot deliver it. Labor is impossible because the fetus cannot get through the birth canal. A caesarean may well be impossible for medical reasons.

Let me give you an actual case, the case of Viki Wilson. She stated:

Then I had a final ultrasound at 36 weeks, just 4 weeks from my due date, and the world came crashing down around us. Our child was diagnosed with encephalocoele. Most of her brain had grown outside her head, and what did form was abnormal. Abigail could not survive outside the womb, and she was already suffering from seizures. At first I said, let's do a C-section, let's get her out of there! My doctor said, sadly, ''Viki, we do C-sections to save babies. I can't save Abigail, and I can't justify the risks of a C-section to your health when you are going to lose your daughter no matter what.'' So even though my medical training—

And this woman was a nurse—

told us that there was no hope, my husband and I went to several specialists in the desperate belief that there was someone out there with a magic wand who would say, ''I can help save your daughter.'' No one did, no one could. Finally, we made a decision, based entirely on love, to end the pregnancy.

This is one of those situations that no one knows beforehand that they may be in.

There is also a case of a rigid fetus caused by arthrogryposis. This kind of fetus cannot move through the birth canal. It risks rupturing the woman's cervix. With prolonged intense pushing, the mother's heart is placed at risk.

Other health conditions can prevent a woman from being able to tolerate the stress of labor or surgery. They include cardiac problems like congestive heart failure, severe kidney disease, renal shutdown, severe hypertension, and so on.

In fact, it is certain health-related concerns that has caused me to part ways with Senator DASCHLE's approach. In many regards, the bill which we are introducing is similar to Senator DASCHLE's in several respects, but in one it is different.

We are alike in that both bills would limit all forms of post-viability abortions. The principal difference is the health exception. Our bill would allow third trimester abortions only in cases where the life of the mother is at issue or where an abortion is necessary to avert serious adverse health consequences to the mother. The Daschle bill, as I understand it, would allow an exception only in cases where continuation of the pregnancy would risk grievous injury to the mother's physical health. Grievous injury is defined as a seriously debilitating disease or impairment specifically caused by the pregnancy or an inability to provide necessary treatment for a life-threatening condition.

I believe that the Daschle substitute would not allow the abortion procedure for certain serious conditions that, although they are not caused by the pregnancy, are exacerbated by the pregnancy. I believe the limiting language of this bill could foreclose a doctor's option in certain situations that cannot be anticipated, and that is my concern. Who knows what situation one may be in or if the situation may not arise until labor or delivery?

For example, one House witness testified that her baby had a brain improperly formed, pressured by a backup of fluid, a greatly enlarged head, a malformed and failing heart, a malfunctioning liver, and a dangerously low amount of amniotic fluid. A physician, we believe, needs the latitude to deal with these complex emergency situations as they are trained to do.

I also believe it is important to understand, and I hope if I am wrong that the Senator will correct me, that the Daschle substitute makes no provision for a severely malformed fetus incompatible with life, if that baby can be delivered in a live condition even for a matter of minutes or days.

Roe simply states if the State is interested in protecting fetal life after viability, it may go so far as to proscribe abortion during that period, except when it is necessary to preserve the life or health of the mother.

I think that is a very important constitutional mandate, that any bill passed here in the next day or so must meet the test of constitutionality.

So we will, at an appropriate time, present a bill that we hope will meet this test.

Let me just end by saying that everything that I have read, everything that I have seen indicates that post-viability abortions are extremely rare, and that the vast majority, over 99 percent of abortions, are performed very early in pregnancy. The latest data that we have from the Guttmacher Institute, whose figures are relied upon by the Centers for Disease Control, indicates that 99 percent of all abortions are performed before 20 weeks of gestation; 90 percent are performed within the first 12 weeks; and less than 1 percent are performed after 20 weeks. Only four-hundredths of 1 percent performed after 20 weeks are performed during the third trimester. So this means there is a total of about 400 to 600 abortions performed annually during the third trimester of pregnancy.

According to the Centers for Disease Control, 98.9 percent of all abortions are performed by the simple curettage procedure, which simply involves the scraping of the interior of the uterus.

So any way you view it, we are looking at a very small number of cases. I guess my plea is for those circumstances which cannot be anticipated, for circumstances where the mother's life and health truly are at risk and—as I learned firsthand with my own daughter—nobody really understands or can have a looking glass to indicate what those circumstances may be.

As I said, I basically believe that the intact D&E or intact D&X, whatever one may choose, should not be used. I am hopeful that the medical profession will take that view, and I believe that there are ongoing discussions on that subject.

But I believe that when we pass legislation that affects every single woman in the United States who can possibly be at issue in this case, that to pass a piece of legislation which would mandate that a seriously abnormal fetus, unable over time to sustain life outside the womb, would have to be delivered regardless of the health impacts on the mother, is not a piece of legislation that I, in good conscience, can support. So, Madam President, at the appropriate time, Senators BOXER, MOSELEY-BRAUN, and I will present a substitute amendment.

I thank the Chair and yield the floor.

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SANTORUM. Thank you, Madam President. I will just say in response to the Senators from California, I just need to reiterate what we stated earlier, and Senator DEWINE read earlier, that there is no health reason where this is the only option. AMA said that today. They came out with a report saying that today. The American College of Gynecologists and Obstetricians have said so.

This is not going to limit anybody's access to abortion if that is what they choose to do. It eliminates a procedure, a procedure, as I said before, that is not medically recognized, it is not in the literature, it is not peer reviewed, it is not taught anywhere in any medical school. It eliminates a procedure which many of us believe, and I believe the vast majority of the American public believes, goes too far, is too brutal, is outside the realm of what we should allow in a civilized society.

So I keep hearing the concerns that, ''Well, maybe there's something out there, maybe there's a case out there that this is necessary.'' I know that the Senator from California started with the case of Viki Wilson and talked about one of those instances being the case of hydrocephaly. I am going to talk about a case of hydrocephaly. I am going to talk about a case where a mother involved with a little baby in her womb, diagnosed with hydrocephaly, was confronted with the very same problems that Viki Wilson was confronted with, the very same challenges Viki Wilson was confronted with, the very same challenges that not just Viki Wilson or Laurie Watts

were confronted with, but, unfortunately, lots of mothers and fathers are confronted with.

I suggest that there is a different way, that there are other options, options that are much more fulfilling, more decent, more human, more humane than the option of a partial-birth abortion.

We hear so much talk about the people who came to the White House and stood with the President. The Senator from California, Senator BOXER, is very fond of putting up charts of individual families that have gone through this very difficult time. I have often talked about the millions of children who die because of abortion, and the thousands of abortions of partial-birth abortion. But somehow or another, that does not seem to lock on, at least with the media or, in some respects, even with the American public. It reminds me of what Joseph Stalin once said. He said:

A single death is a tragedy—a million deaths is a statistic.

I think for far too often, we have been arguing statistics here, about the numbers of millions of children, and maybe, oddly, we can learn something from Joseph Stalin.

So today I am going to talk about what could have been a single tragedy, what could very well have been a Viki Wilson, what could have been a whole host of other mothers and fathers who are confronted with this terrible dilemma of having a child who just might not survive.

Let me tell you the story about Donna Joy Watts and Lori and Donny Watts. The Watts live in Green Castle, PA. They did not always live there. They lived, until just a month or so ago, in western Maryland.

Seven months into her third pregnancy, Lori Watts learned that her child would not be normal, that there was a problem. A sonogram showed that her child had a condition known as hydrocephalus, the same condition that the Senator from California has just described with one of the cases the President points to as the reason for keeping this procedure legal. Hydrocephaly is an excessive amount of cerebral fluid in the skull, also known as water on the brain.

Lori's obstetrician said, after the sonogram was done, that he was going to refer her to a genetics counselor. I could talk for a long time about genetics counselors. But I think this story sums up, unfortunately, what far too many genetics counselors do.

Lori Watts phoned the clinic to ask directions and what they planned to do. The staff member told her that most hydrocephalic fetuses do not carry to term so that she should terminate her pregnancy. When she asked, how could you do an abortion so late in pregnancy at 7 months, she was told that the doctor could use a skull-collapsing technique that we refer to as partial-birth abortion.

Donny Watts demanded to know why they had been referred to a facility that counsels for abortion when talking to his obstetrician, whom he called. And the obstetrician said, ''Well, you know, there are doctors there who didn't encourage abortion. I thought you would talk to them, and you talked to the wrong person.''

It is amazing—but not amazing—that you can call a clinic, and depending on who you talk to is what kind of advice you are going to get as to whether to terminate your pregnancy or not. But I am, frankly, pleased that at least there are some counselors who will suggest other alternatives. Far too many do not in cases as severe as was confronting the Watts family.

In that conversation with their obstetrician, he advised the Watts to see a specialist in high-risk obstetrics. I can say that in conversations with the Watts, they were amazed at the attitude of the people they confronted.

The obstetrician, the original obstetrician, said that he could not take care of the baby anymore; it was too complicated. So they went and asked doctors at Johns Hopkins. They said they—well, they would not even see them. All they wanted to do was an abortion. They would not deliver the baby.

Then she went to Union Memorial Hospital, same thing. You hear so much talk about, well, we cannot get availability for abortions. How about availability for delivery?

She finally went to the University of Maryland Hospital in Baltimore. They were very quick to dismiss her also. They said the baby's chances for survival were nil, that she would be ''a burden, a heartache, and a sorrow.''

Where have we come in this country where we have so little respect for the little children among us who just may not be perfect, that they can be disposed of, that you can look into the eyes of a mother who desperately wants her child and tell her, ''It would just be a burden to you''?

I do not know of any child that is not at times a burden. Children are joys and struggles. I mean, that is just part of life. If you are not ready to have some burdens with your children, then you better not get pregnant in the first place and try to have children.

Where have we arrived?

She went through four separate occasions. They were discouraging her even from delivering her child, as desperately as she wanted to do so, not unlike what Viki Wilson ran into.

Lori Watts did not give up. Lori Watts finally found somebody who would do it, someone who was not going to say that it was a burden, a heartache, or a sorrow, or as the other doctors said, ''If you didn't abort, you would be jeopardizing your own fertility, your own health.''

So after all that treatment, they finally found someone who would do it.

In the process of the care, prior to the delivery, they found out that the fetus had occipital meningo-encephalocele, which is exactly again what Viki Wilson had. Part of the brain was developing outside of the skull.

There was an article from today's Washington Times, on page 2, about the Watts family. In that article, Mrs. Watts is quoted saying at this time in her life that ''everyone on the other side talks about choice, but they didn't want to give us a choice. They said they would not deliver her.''

Imagine, people wonder how far we have gone. People wonder how we can be debating partial-birth abortion on the floor of the U.S. Senate and have people get up and argue that it should be legal.

Listen to this. They would not even deliver her at four places—four places. They did finally find someone who would deliver the baby at the University of Maryland Hospital. They delivered through a cesarean section. The Watts' third daughter, Donna Joy—Donna, named after her dad, Donny; Joy, for obvious reasons—was born on November 26, 1991.

Yes, she was born with a lot of problems, a lot of serious problems. But let me describe to you what they had to confront now after they fought and did not give up to give their daughter a chance. Donna Joy was born with hydrocephaly.

That is a picture of her shortly after her birth.

For 3 days—for 3 days—they refused to drain the water off her brain. They said she was going to die, and so they refused to put a shunt in and drain the water. For 3 days they hydrated her, gave her fluids, but they did not feed her because they said she was going to die.

Mrs. Watts said in this article, ''The doctors wouldn't operate on her to save her life. I just about had to threaten one of the doctors physically. And I was seconds from throwing him against the wall. She was already born and they were still calling her a fetus.''

But Lori and Donny Watts did not give up. They did not cave in to what our culture around sick babies is any more, and they fought on. They had the surgery performed. They began the feeding. Initially, she fed the baby with breast milk in a sterilized eyedropper. Then, at 2 weeks of age, the shunt that was put in failed, and Donna Joy was readmitted to the hospital.

A tray of food was delivered by mistake to her room. It had some cereal and bananas and some baby formula on it. And so Lori decided that she would mix this together to form a paste, put it in an eyedropper, and place a drop in the back of Donna's tongue.

You see, Donna Joy was born with about 30 percent of her brain. Donna Joy was born without a functioning medulla oblongata, with a deformed brain stem. She had no control over her sphincter muscle, so things that were given to her would come straight back up. There was nothing to hold the food in her stomach. So Mrs. Watts came up with the idea of getting something that was heavy, pasty, and putting it way back. And it worked.

You want to talk about a burden and a joy? For the next several months, they had to feed Donna Joy that way. It took an hour and a half to feed their daughter; an hour-and-a-half break and then an hour-and-a-half feeding, 24 hours a day. She had to fight. She had to fight.

Four months later, a CT scan revealed she also suffered from lobarhaloprosencephaly, a condition that results in the incomplete cleavage of the brain.

She also suffered from epilepsy, a sleep disorder, and continuing digestive complications. The neurologist suggested that ''We may have to consider a gastronomy tube [a gastronomic tube] in order to maintain her nutrition and physical growth.''

She was suffering from apnea, a condition which spontaneously stops breathing.

At 18 months, Donna Joy had another brush with death. She contracted encephalitis, which is the inflammation of the brain. So a little girl, with 30 percent of her brain, who has to take medicine so she does not have seizures, hit with another problem of encephalitis.

As a result of high temperature—she had a 106 temperature—it was a big setback. Up until that time, she was developing along, using sign language. She was not talking, but she was communicating. That temperature wiped out, that encephalitis wiped out her memory. She could not walk or talk. She was laying in bed having all sorts of difficulty, could not focus on anybody, and had deteriorated substantially.

Then a miracle. Lori would tape shows late at night and put them on to give some diversion for Donna Joy to direct her attention. Nothing seemed to work, until one day a television show came on, a tape of a television show called Quantum Leap. The star of the show, Scott Bakula sings a song ''Somewhere in the Night.''

Upon hearing that song, she reacted as follows, according to the newspaper: ''The child stopped crying. Mrs. Watts rewound the piece and played it again. This time Donna sat up and tried crawling toward the television. The more she watched Quantum Leap the more Donna improved. She would only eat and drink when the TV character was on the screen. Just before she turned 2, she took her first steps toward Scott Bakula on the TV set.''

At 2 years, Donna Joy had already undergone eight brain operations, most of which occurred at the University of Maryland hospital. Finally, they received news about Donna Joy's prospects. The neurologist who examined her after her seizure in 1996 noted that at 4½ years of age Donna Joy could speak, walk, and handle objects fairly well. He also thanked a colleague for ''the kind approval for the follow-up in allowing me to reassess this beautiful young child who is, remarkably, doing very well in spite of significant malformation of the brain.''

Today, the story of Donna Joy Watts has inspired many, many people. She can do a lot in spite of her disabilities. She has cerebral palsy, epilepsy, tunnel vision, and Arnold-Chiari Type II malformation, which prevented development of her medulla oblongota. She walks, runs, plays. In fact, she was in my office most of the afternoon playing with my children. I know she has very good dexterity because we have Hershey kisses and Three Musketeer bars in the front of the office, and she can unwrap them as fast as any 5-year-old I have seen.

Prior to Donna Joy moving to Pennsylvania, the Governor of Maryland, Parris Glendenning, honored her with a Certificate of Courage commemorating her fifth birthday. The mayor of Hagerstown, MD, Steve Sager, proclaimed her birthday Donna Joy Watts Day. Members of the Scott Bakula fan club sent donations and Christmas presents for the Watts children. People from all over the world who learned about Donna Joy on the Internet have been moved to write and send gifts. Perhaps the most important is that the Watts' determination has inspired a Denver couple to fight for their little boy who was born with similar circumstances.

I asked the Watts if there are other children whom they know who have survived and done this well. Mrs. Watts looked back at me and said, ''Other children with this condition are aborted. We don't know. We don't know.'' We don't know the power of the human brain. I hear the story all the time about how you do not use all your brain. Well, I guess you do not need it all to be a functioning human being in our world. She is very functional.

There is a lot of talk that we need to have the abortions, particularly in the case of hydroencephaly to prevent future infertility. In June 1995, Lori and Donny Watts welcomed another child, Shaylah, into the family. Mrs. Watts looked at me very proudly and said, ''On the first try.''

I had the opportunity to walk over here with Donna Joy, hold her hand, ride the subway with her, go up the escalator, which was a big treat, and come up and be in the Senate gallery for only a brief time. She is now back in my office. I encourage anybody who would like to meet her, any one of my colleagues, I encourage all of them to go and talk to the Watts family and to look into the eyes of this little girl, this little girl who could have died through a partial-birth abortion. You want a face on partial-birth abortions? All of the faces are not here to be seen. They die. Brutal. This is the little girl who was saved from partial-birth abortion at 5½ years of age.

I will read the end of Tony Snow's article about this situation of the Watts. Lori and her husband, both children of steelworkers, had to overcome the contempt of snobbish doctors and social workers as they painstakingly built their own miracle. They never got any help from feminists, liberal Democrats or the President. These days, Don works the 4 p.m.-to-midnight shift in the local corrections facilities so he can spend time with his four kids. Lori educates them in the evening while he is gone. Unfortunately, they went bankrupt a couple years ago and have moved to Pennsylvania, Greencastle, a beautiful community in Franklin County, where they live in a 2-bedroom bungalow on a friend's farm.

As for choice, here is what Lori has to say: ''Choice they didn't give me. I had to beg for a choice. Why did I have to go out of my way when they wanted to kill my baby, when they didn't want to operate or feed her? I didn't get to choose anything.''

As I mentioned earlier today, I rose and asked unanimous consent to have little Donna Joy Watts sit up there with her mom and dad and watch this proceeding and watch Members debate whether we are going to allow a procedure that could have been used to kill her still be legal in this country. When I asked for that unanimous consent, the Senator from California, Senator BOXER, objected. Donna Joy Watts is only 5½ years of age, although I suggest she has lived a lot in those 5½ years. But you have to be 6 years of age to sit in the Senate gallery unless you can get unanimous consent in the Senate to do otherwise, and Senator BOXER rose and objected. She said, and I quote, ''I think I am acting in the best interests of that child.'' Oh, how many times has Lori Watts heard that? How many people have said to her, ''I am doing this for the best interests of your child.'' But she did not listen to them. If she had listened to them she would not be here today, sitting here in Washington, and Donna Joy would not be on this Earth. Thank God Lori did not listen to all of the voices, thank God Donny didn't listen to all of the voices that said, ''I think I'm acting in the best interests of your child.''

There is no reason—there is no reason—for the conditions that the Senator from California outlined as medically necessary reasons to do partial-birth abortions. There is no reason. Those are not good reasons. Here is an example of why it is not a good reason. You do not have to kill the baby. You can deliver the baby. You can do a cesarean section. You may at times—in this case, it was not the case—you may at times have to separate the mother from the child, but you never have to kill the child in the process. You do not have to do it.

So for all the arguments out there, for all the people who wanted to have a face, that is a beautiful face. It is a beautiful addition, a beautiful contribution to the human spirit. Does it not make you just feel good to know that people love their children so much, love life and respect it so much, that they will get up every 3 hours for an hour and a half every day to feed their children painstakingly one drop at a time? It ennobles us all. It lifts us all up.

What is the alternative? Death, destruction of a little baby. I do not see how that elevates any of us. How does that add to the human condition? How does that improve the quality of life in America? How are we ennobling our culture by this? How are we standing as a civilization on righteousness with this? There are beautiful tales to be told. Just give these children a chance.

That is what this bill does. It outlaws a barbaric procedure that is never, never, never, never, never necessary. Hold that thought. Believe that truth, then ask yourself why, why do we have people on the floor of the U.S. Senate, the greatest deliberative body on the face of the Earth, defending such cruelty, such barbarism, to some of the most vulnerable among us?

I yield the floor.

Mr. FRIST addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. FRIST. Madam President, I rise today to speak on the issue of partial-birth abortions. We know that public opinion on abortion is deeply divided, and reasoned debate too often degenerates into the shouted distortions of polarized parties. As elected leaders, we have a responsibility to resist the temptation of knee-jerk politics and carefully sift the facts from among the chaff of many fictions.

Americans, pro-life and pro-choice, Democrat and Republican, have united in opposition to partial-birth abortions because this issue transcends the politics of abortion. As a society, we have been shocked to realize we have allowed doctors to perform a procedure that is a mere 3 inches from infanticide. The nature of this brutal procedure has so shocked us that many pro-choice Americans fear that women and their circumstances will be forgotten in a backlash.

Fear has driven many activists to turn to deception for a defense. Understandable possibly, but unfortunate. As a physician, I know that women's health will never be served in the long term by myth and by deceit. Therefore, as we debate this procedure this afternoon, this evening, and tomorrow, I appeal to my colleagues to represent the facts accurately. Again and again, we have had to come to the floor to address the fallacies perpetuated by the opponents of the ban.

As a case in point, I would like to read an excerpt to illustrate the first myth, the myth that we have heard again and again, and the myth is that partial-birth abortion is necessary to preserve the health of the mother.

This myth really has been used as the primary objection, to the ban on partial-birth abortion. President Clinton has cited the absence of a health exception as his primary reason for carrying out the veto of the ban last year. In an Associated Press interview on December 13, 1996, President Clinton described a hypothetical situation where, without a partial-birth abortion, a woman could not ''preserve the ability to have further children.'' He said that he would not ''tell her that I am signing a law which will prevent her from having another child. I am not going to do it.''

The scenario described by President Clinton is heart wrenching, and is something that people listen to. It grabs their attention. But his claim about partial-birth abortion is entirely fictional. Partial-birth abortion is never necessary to preserve the health of a woman.

The College of Obstetricians and Gynecologists recently issued a statement admitting that their select panel on partial-birth abortion ''could identify no circumstances under which this procedure would be the only option to save the life or preserve the health of the mother.''

Madam President, I ask unanimous consent to have printed into RECORD the entire statement of policy.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ACOG STATEMENT OF POLICY AS ISSUED BY THE ACOG EXECUTIVE BOARD

STATEMENT ON INTACT DILATATION AND EXTRACTION

The debate regarding legislation to prohibit a method of abortion, such as the legislation banning ''partial birth abortion,'' and ''brain sucking abortions,'' has prompted questions regarding these procedures. It is difficult to respond to these questions because the descriptions are vague and do not delineate a specific procedure recognized in the medical literature. Moreover, the definitions could be interpreted to include elements of many recognized abortion and operative obstetric techniques.

The American College of Obstetricians and Gynecologists (ACOG) believes the intent of such legislative proposals is to prohibit a procedure referred to as ''Intact Dilatation and Extraction'' (Intact D & X). This procedure has been described as containing all of the following four elements: (1) deliberate dilatation of the cervix, usually over a sequence of days; (2) instrumental conversion of the fetus to a footling breech; (3) breech extraction of the body excepting the head; and (4) partial evacuation of the intracranial contents of a living fetus to effect vaginal delivery of a dead but otherwise intact fetus.

Because these elements are part of established obstetric techniques, it must be emphasized that unless all four elements are present in sequence, the procedure is not an intact D & X.

Abortion intends to terminate a pregnancy while preserving the life and health of the mother. When abortion is performed after 16 weeks, intact D & X is one method of terminating a pregnancy. The physician, in consultation with the patient, must choose the most appropriate method based upon the patient's individual circumstances.

According to the Centers for Disease Control and Prevention (CDC), only 5.3% of abortions performed in the United States in 1993, the most recent data available, were performed after the 16th week of pregnancy. A prelimary figure published by the CDC for 1994 is 5.6%. The CDC does not collect data on the specific method of abortion, so it is unknown how many of these were performed using intact D & X. Other data show that second trimester transvaginal instrumental abortion is a safe procedure.

Terminating a pregnancy is performed in some circumstances to save the life or preserve the health of the mother. Intact D & X is one of the methods available in some of these situations. A select panel convened by ACOG could identify no circumstances under which this procedure, as defined above, would be the only option to save the life or preserve the health of the woman. An intact D & X, however, may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman, and only the doctor, in consultation with the patient, based upon the woman's particular circumstances can make this decision. The potential exists that legislation prohibiting specific medical practices, such as intact D & X, may outlaw techniques that are critical to the lives and health of American women. The intervention of legislative bodies into medical decision making is inappropriate, ill advised, and dangerous.

Mr. FRIST. Madam President, in addition, the AMA task force entitled ''The Report of the Board of Trustees,'' convened on this very issue, concluded that ''There does not appear to be any identified situation in which intact D&X''—their attempt to coin a phrase the procedure we call partial birth abortion—''is the only appropriate procedure to induce abortion,'' and they admitted that ''ethical concerns have been raised about intact D&X.''

Madam President, I will read the second myth. It comes directly from a Planned Parenthood press release. It says: ''The D&X abortion is a rare and difficult medical procedure. It is usually performed in the most extreme cases to save the life of the woman or in cases of severe fetal abnormalities.''

That is taken from Allen Rosenfeld, dean of the Columbia School of Public Health, Planned Parenthood Federation of America, press release of June 15, 1995.

This simply is not true. I direct my colleagues' attention to the recent admissions of Ronald Fitzsimmons, executive director of the National Coalition of Abortion Providers. Mr. Fitzsimmons has shown amazing integrity and courage by stepping forward and really coming clean on this misinformation campaign surrounding this bill. While he himself opposes and is very adamant when he speaks to all of us that he opposes the ban on philosophical reasons, he admits that he ''lied through his teeth'' when he said that partial-birth abortion was used rarely and only on women whose lives were in danger or whose fetuses were damaged.

He said he just went out there to ''spout the party line.'' In a recent American Medical News article in March of 1997, he explained that he could no longer justify lying to the American people, saying, ''You know they're primarily done on healthy women and healthy fetuses, and it makes you feel like a dirty little abortionist with a dirty little secret.''

I admire him for his integrity in coming forth.

Let me quote another partial-birth practitioner, Dr. James McMahon. He aborted nine babies simply because they had a cleft lip. Many others, at

least 39, were aborted because of the psychological and emotional health of the mother, despite the advanced gestational age and health of the child. Another practitioner, Dr. Martin Haskell claims that 80 percent of the partial-birth abortions he performed were for ''purely elective'' reasons.

So, in summary, we can categorically dismiss claims that the procedure is necessary for the health of the mother and that most of these babies are severely deformed.

Women always have safe and effective alternatives to partial-birth abortion in any trimester. The Washington Post put it this way: ''It is possible—and maybe even likely—that the majority of these abortions are performed on normal fetuses, not on fetuses suffering genetic or developmental abnormalities. Furthermore, in most cases where the procedure is used, the physical health of the woman * * * is not in jeopardy.''

That is from the Washington Post of September 17, 1996.

I submit that part of the confusion on this issue is due to the deliberate manipulation of the collective sympathy that we all have when we talk about the health of the mother. When the President of the United States defends his veto of the partial-birth abortion ban on the grounds that he wants to protect women's health, most people assume that he is talking about women's physical health. I imagine that most Americans would actually be surprised to learn that babies in the late second and early third trimesters may be legally aborted for reasons other than the life and/or the physical health of the mother. What the President does not tell you is that under Doe versus Bolton, a 1973 Supreme Court case, health is defined to include ''all factors—physical, emotional, psychological, familial, and a woman's age—relevant to the well-being of the patient.''

A broad definition of health.

People in the abortion industry understand that there are many late-term abortions performed for social reasons as well as health reasons. A 1993 National Abortion Federation internal memorandum acknowledged, ''There are many reasons why women have later abortions,'' and they include ''lack of money or health insurance, social-psychological crises, lack of knowledge about human reproduction, et cetera.'' So when you see legislation come to the floor of the U.S. Senate to allow late-term abortions if the mother's health is at risk, just remember how health is being defined—so broadly that you can drive a truck through it.

Unfortunately, opponents of the bill don't stop there. You will hear a third carefully crafted myth that goes something like this.

This procedure, if not wildly accepted, could possibly be the best procedure in a particular woman's situation.

As a physician, I have a sworn commitment to preserve the life and health of every single patient. So I have taken the liberty of calling and checking with people around the country, checking with key obstetricians and abortion providers all across this Nation. From the outset, I will admit that it has been difficult for me to imagine how a procedure that is not taught in residency programs where obstetricians are trained—it is not taught today; it is not referenced in our peer review journals, which is really the substance, the literature through which we teach each other, and share information; it is not in peer review journals—it is a little bit hard for me to understand how people could argue that this is the best procedure available. Really until the recent controversy, many practitioners who you talk to had never heard of this particular procedure.

On the other hand, a lot of my medical colleagues—they rightly fear the Government coming in and trying to control everything that they do in their practice—have said that this procedure could be the best alternative in a given situation. They have not endorsed it. They have not listed specific medical indications for the procedure, and they have not even recommended that it be used in most circumstances, but they have said—again, with this great fear that the Federal Government will come in and control everything that they do—that the physician should retain the right to use this procedure if a circumstance should hypothetically arise in which an individual might think it is the best option.

But when questioned about this very specific issue, the ACOG president of the Society of Obstetricians and Gynecologists, Dr. Fredric Frigoletto, maintains that, ''There are no data to say that one of the procedures is safer than the other.'' When asked why the statement then said that the procedure ''may be the best'' in some cases, Dr. Frigoletto answered, ''or it may not be.''

That interview is from the American Medical News, March 3, 1997.

Moreover, Dr. Warren Hern, author of the textbook Abortion Practice, the Nation's really most widely used textbook on abortion procedures and abortion standards, said, ''I have very serious reservations about this procedure * * * You really can't defend it * * * I would dispute any statement that this is the safest procedure to use.''

Dr. Hern specializes in late-term abortions.

Incidentally, Madam President, I would like to note that it is difficult from a medical perspective to categorically describe late-term surgical abortions as the best option. In the first place, medical, nonsurgical, late-term abortion methods are generally regarded as superior to surgical methods.

Second, the National Abortion Federation concedes that at this point in time residents may not receive enough training in abortion to ''be truly competent.''

Third, Dr. Haskell who, is considered to be one, if not the creator, of the creators of the procedure we are talking about, specifically acknowledged in his paper that a disadvantage of the partial-birth procedure was that it requires a ''high degree of surgical skill.''

So let me just recap briefly. You have a brutal, basically repulsive procedure designed to kill a living infant outside of the birth canal—except for the head. Leading providers of women's obstetrical and gynecological services condemn it. They recommend it not be used. They refuse to endorse it. They highlight its risks, and say that there are other safe and effective alternatives available. But for political reasons—and I understand the politics involved—they urge us not to ban it because that would be violating the sanctity of the physician-patient relationship.

Madam President, as a physician and as a father, I submit that any provider who performs a partial-birth abortion has already violated that sanctity of the physician-patient relationship.

Another myth: Medical procedures should never, under any circumstances, be criminalized.

It is a myth that I thought about. I would like to defer to this matter to the American Medical Association which concedes that there are circumstances where Government intervention, even in the form of criminalization of specific medical procedures, is appropriate.

I am quoting now from the letter of AMA Executive Vice President P. John Seward, M.D., to Representative CARDIN: He says:

> AMA's generic policy calls for opposition to the criminalization of medical procedures and practices. Therefore, on the surface, it would seem obvious for the AMA to oppose this bill. However, our policy cannot be applied without context. For example, the AMA has a strong ethical and policy position against . . . the practice some have called ''physician-assisted suicide'' and we have opposed efforts to legalize such activities even though current law could be considered the criminalization of a medical procedure.

The context in the case of partial-birth abortion, as in the case of physician-assisted suicide, is the time-honored Hippocratic principle, ''First do no harm.'' An additional component of the context is the reality that this procedure is not endorsed by the medical academy, and is made unnecessary by other widely used, safe and effective options.

Those of us in this room have followed this debate for 2 years now, some for much longer. From day one, there has been a pattern of manipulation, deception, misinformation, and coverup; even at the risk of harming women's health.

There is one final myth that has been perpetuated, and then I will yield the floor.

Those of us in opposition to the partial-birth abortion have had to dispel the notion—actually dangerous to women's health—that their babies

would be killed if they took anesthesia for any reason during pregnancy.

Let me quote again from some pro-choice literature trying to appease women's fears about partial-birth abortion by asserting that the baby is already dead when the doctor plunges the scissors into the back of the baby's head.

''The fetus dies of an overdose of anesthesia given to the mother intravenously.''

That is from a Planned Parenthood fact sheet.

No. 2. ''Neurological fetal demise is induced, either before the procedure begins or early on in the procedure, by the steps taken to prepare the woman for surgery.''

That is from the National Abortion Federation news release July 1995. It is simply not true. I will turn to the president of the American Society of Anesthesiologists who personally came to Capitol Hill to refute this argument, and he basically, in testifying before the Senate Judiciary Committee, said that intravenous anesthesia would not kill the baby. He said:

''In my medical judgment, it would be necessary in order to achieve neurological demise of the fetus in a partial-birth abortion to anesthetize the mother to such a degree as to place her own health in serious jeopardy.''

Now, in closing, we have heard many eloquent statements today, and we will likely hear them tomorrow, in defense of this brutal and inhumane procedure, but in the words of the great poet Milton, ''All is false and hollow.'' Despite the preponderance of evidence, we are compelled to again listen to arguments designed solely to ''make the worse appear the better reason,'' and we must continue to address deceptions designed to ''perplex and dash'' honest counsel. There is no excuse at this stage of the game for not knowing the truth, the absolute truth. There is no room—no room any longer to pretend that this procedure is necessary for the health of the mother or that it might be the best. It is time, as Mr. Fitzsimmons so plainly put it, for ''the [abortion] movement to back away from the spins and half truths.''

Partial-birth abortions cannot and should not be categorized with other medical procedures or even other abortions. They should not be allowed in a civilized country. With the reintroduction of the partial-birth abortion ban legislation in the Senate, we have the opportunity to right now to right a wrong, and now once again the American people are calling on us to listen not to political advisers, not to radical interest groups—but to our conscience. It will take moral courage to put a stop to the propaganda, but we all have the means at our disposal to do the right thing. For the sake of women, for the sake of their children, and for the sake of our future as a society, we must put a stop once and for all to partial-birth abortion.

I yield the floor.

(Mr. FAIRCLOTH assumed the chair.)

Mr. KYL. Mr. President, when President Clinton vetoed the Partial-Birth Abortion Ban Act a year ago, he said there are ''rare and tragic situations that can occur in a woman's pregnancy in which, in a doctor's medical judgment, the use of this procedure may be necessary to save a woman's life or to protect her against serious injury to her health.''

I do not doubt that the President made that statement about the rarity of the procedure and its utility, relying in good faith on information provided at the time by certain organizations involved in this debate. We now know, however, that the information given the President was of questionable value, if not downright inaccurate.

A number of pro-abortion organizations, for example, had suggested that partial-birth abortions totaled only about 500 a year and that they were limited to very serious and tragic cases where there was no alternative.

This is how the Planned Parenthood Federation of America characterized partial-birth abortion in a November 1, 1995, news release: ''The procedure, dilation and extraction (D&X), is extremely rare and done only in cases when the woman's life is in danger or in cases of extreme fetal abnormality.'' Let me quote that again, done only—only—in cases when the woman's life is in danger or in cases of extreme fetal abnormality.

The organization repeated this several times. In a press release issued on March 26, 1996, Planned Parenthood said, ''The truth is that the D&X procedure is only used when the woman's life or health is in danger or in cases of extreme fetal anomaly.'' The statement is absolute: the procedure is only used under these conditions, said the organization.

In fairness, I will point out that Planned Parenthood was not the only group to make such sweeping statements at that time.

Within the last few months, however, the story has started to unravel. On February 26, the New York Times reported that Ron Fitzsimmons, executive director of the National Coalition of Abortion Providers, admitted he ''lied in earlier statements when he said [partial-birth abortion] is rare and performed primarily to save the lives or fertility of women bearing severely malformed babies.'' According to the Times, ''He now says the procedure is performed far more often than his colleagues have acknowledged, and on healthy women bearing healthy fetuses.''

Mr. Fitzsimmons told American Medical News the same thing—that is, the vast majority of these abortions are performed in the 20-plus week range on healthy fetuses and healthy mothers. He said, ''The abortion rights folks know it, the anti-abortion folks know it, and so, probably, does everyone else.''

I ask unanimous consent that the full text of the New York Times and the American Medical News articles be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. KYL. Mr. President, Ron Fitzsimmons' admission is really not all that surprising. Even at the time of the debate in the Senate last year, the preponderance of evidence suggested that the procedure was more common than some of its defenders wanted the public and Congress to believe. Consider, for example, that Dr. Martin Haskell, who authored a paper on the subject for the National Abortion Federation, said in a 1993 interview with American Medical News, ''in my particular case, probably 20 percent—of the instances of this procedure—are for genetic reasons. And the other 80 percent are purely elective.'' He suggested at the time that an estimate of about 4,000 partial-birth abortions a year was probably accurate.

Another doctor, Dr. James McMahon, who acknowledged that he performed at least 2,000 of the procedures, told American Medical News before he died that he used the method to perform elective abortions up to 26 weeks and nonelective abortions up to 40 weeks. His definition of ''non-elective'' was expansive, including ''depression'' as a maternal indication for the procedure. More than half of the partial-birth abortions he performed were on healthy babies.

The Record of Bergen County, NJ published an investigative report on the issue last year and reported that in New Jersey alone, at least 1,500 partial-birth abortions are performed annually, far more than the 450 to 500 such abortions that the National Abortion Federation said were occurring across the entire country.

According to the Record, doctors it interviewed said that only a ''minuscule'' number of these abortions are performed for medical reasons.

Mr. President, evidence overwhelmingly indicates that partial-birth abortions are performed far more often than President Clinton suggested when he vetoed the Partial-Birth Abortion Ban Act last year. But what about his comments about the need to protect the life and health of the mother?

Here is what the former Surgeon General of the United States, Dr. C. Everett Koop—a man who President Clinton singled out for praise as someone trying ''to bring some sanity into the health policy of this country''—had to say on the subject. He said that ''partial-birth abortion is never medically necessary to protect a mother's health or future fertility. On the contrary, this procedure can pose a significant threat to both.''

That is consistent with testimony that the Judiciary Committee received in late 1995 from other medical experts. Dr. Nancy Romer, a practicing ob-gyn

from Ohio, testified that in her 13 years of experience, she never felt compelled to recommend this procedure to save a woman's life. ''In fact,'' she said, ''if a woman has a serious, life threatening, medical condition this procedure has a significant disadvantage in that it takes three days.''

Even Dr. Warren Hern, the author of the Nation's most widely used textbook on abortion standards and procedures, is quoted in the November 20, 1995 edition of American Medical News as saying that he would ''dispute any statement that this is the safest procedure to use.'' He called it ''potentially dangerous'' to a woman to turn a fetus to a breech position, as occurs during a partial-birth abortion.

The American College of Obstetricians and Gynecologists, which, many will recall, supported the President's veto last year, was quoted by columnist Charles Krauthammer on March 14 as conceding that there are ''no circumstances under which this procedure would be the only option to save the life of the mother and preserve the health of the woman.'' I would point out that, in the event that a doctor determined that a partial-birth abortion was the only procedure available to save a woman's life, he should or could proceed since the legislation includes a life-of-the-mother exception.

Mr. President, I know that there are several other concerns that have been expressed about the legislation. For example, some have questioned its constitutionality, and that is a legitimate question. Of course, we all can speculate about how the U.S. Supreme Court might rule on the matter. But as Harvard Law School Professor Lawrence Tribe noted in a November 6, 1995 letter to Senator BOXER, there are various reasons ''why one cannot predict with confidence how the Supreme Court as currently composed would rule if confronted with [the bill].'' He noted that the Court has not had any such law before it. And he noted that ''although the Court did grapple in 1986 with the question of a State's power to put the health and survival of a viable fetus above the medical needs of the mother, it has never directly addressed a law quite like [the Partial-Birth Abortion Ban Act].''

Mr. President, neither Roe versus Wade nor any subsequent Supreme Court case has ever held that taking the life of a child during the birth process is a constitutionally protected practice. In fact, the Court specifically noted in Roe that a Texas statute that—making killing a child during the birth process a felony—had not been challenged. That portion of the law is still on the books in Texas today.

Remember what we are talking about here: ''an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.'' That is the definition of a partial-birth abortion in the pending legislation.

So we are talking about a child whose body, save for his or her head, has been delivered from the mother—that is, only the head remains inside. No matter what legal issues are involved, I hope no one will forget that we are talking about a live child who is already in the birth canal and indeed has been partially delivered.

Even if the Court did somehow find that a partially delivered child is not constitutionally protected, the Partial-Birth Abortion Ban Act could still be upheld under Roe and Planned Parenthood of Southeastern Pennsylvania versus Casey. Under both Roe and Casey, the Government may prohibit abortion after viability, except when necessary to protect the life or health of the mother. As I indicated earlier in my remarks, medical experts, including the former Surgeon General, Dr. C. Everett Koop, have said that this procedure is never medically necessary to protect a mother's health or future fertility. Others have even questioned its safety, calling it ''potentially dangerous.''

By contrast, in cases prior to viability, Casey allows regulation of abortion that is reasonably related to a legitimate State interest, unless the regulation places an ''undue burden'' on a woman's right to choose an abortion. But as I just indicated, the pending bill would only ban one type of procedure, involving the partial delivery of a child before it is killed. Other procedures would still be available if a woman's health were threatened. And the bill would allow a doctor to proceed with a partial-birth abortion if the woman's life were threatened.

Mr. President, Notre Dame's Professor of Constitutional Law, Douglas W. Kmiec, made the point in testimony before the Judiciary Committee on November 17, 1995, that ''even in Roe the Court explicitly rejected the argument that a woman 'is entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reason she alone chooses' [410 U.S. at 153].'' Professor Kmiec went on to note that under Casey, there is an elementary difference between banning all abortions and banning one procedure that medical testimony indicates is not at all necessary to save a mother's life.

Mr. President, although I believe the law would be upheld by the Court, I will concede that no one can say with certainty how the Supreme Court will rule until it has ruled. Until then, I suggest that we not use that as an excuse to avoid doing what we believe is right.

Mr. President, the other issue I want to address briefly before closing involves the question of when this procedure is performed. Some people, suggesting a way to compromise on the legislation, are now focusing on the third trimester, proposing that limitations on the procedure be restricted to that time period. Of course, all of the evidence suggests that the vast majority of partial-birth abortions—some 90 percent—occur during the second trimester of pregnancy. And as Ron Fitzsimmons put it, they are performed for the most part on healthy women and healthy babies.

A third-trimester partial-birth abortion ban would be a hollow gesture at best, and at worst, a cynical hoax on an American public that is outraged at the barbarity of this procedure.

It seems to me that a third-trimester limitation is merely a way for defenders of the status quo to make it appear that they are doing something to end this horrifying procedure without doing anything at all.

Mr. President, the spotlight is on this body. The facts are on the table. Let us do what is right and put a stop to what our colleague, Senator DANIEL PATRICK MOYNIHAN, has appropriately characterized as infanticide. Let us pass this bill.

EXHIBIT I

[From the New York Times, Feb. 26, 1997]

AN ABORTION RIGHTS ADVOCATE SAYS HE LIED ABOUT PROCEDURE

(By David Stout)

WASHINGTON.—A prominent member of the abortion rights movement said today that he lied in earlier statements when he said a controversial form of late-term abortion is rare and performed primarily to save the lives or fertility of women bearing severely malformed babies.

He now says the procedure is performed far more often than his colleagues have acknowledged, and on healthy women bearing healthy fetuses.

Ron Fitzsimmons, the executive director of the National Coalition of Abortion Providers, said he intentionally misled in previous remarks about the procedure, called intact dilation and evacuation by those who believe it should remain legal and ''partial-birth abortion'' by those who believe it should be outlawed, because he feared that the truth would damage the cause of abortion rights.

But he is now convinced, he said, that the issue of whether the procedure remains legal, like the overall debate about abortion, must be based on the truth.

In an article in American Medical News, to be published March 3, and an interview today, Mr. Fitzsimmons recalled the night in November 1995, when he appeared on ''Nightline'' on ABC and ''lied through my teeth'' when he said the procedure was used rarely and only on women whose lives were in danger or whose fetuses were damaged.

''It made me physically ill,'' Mr. Fitzsimmons said in an interview. ''I told my wife the next day, 'I can't do this again.'''

Mr. Fitzsimmons said that after that interview he stayed on the sidelines of the debate for a while, but with growing unease. As much as he disagreed with the National Right to Life Committee and others who oppose abortion under any circumstances, he said he knew they were accurate when they said the procedure was common.

In the procedure, a fetus is partly extracted from the birth canal, feel first, and the brain is then suctioned out.

Last fall, Congress failed to override a Presidential veto of a law that would have banned the procedure, which abortion opponents insist borders on infanticide and some abortion rights advocates also believe should be outlawed as particularly gruesome. Polls have shown that such a ban has popular support.

Senator Tom Daschle of South Dakota, the Democratic leader, has suggested a compromise that would prohibit all third-trimester abortions, except in cases involving

the ''life of the mother and severe impairment of her health.''

The Right to Life Committee and its allies have complained repeatedly that abortion-rights supporters have misled politicians, journalists and the general public about the frequency and the usual circumstances of the procedure.

''The abortion lobby manufactures disinformation,'' Douglas Johnson, the committee's legislative director, said today. He said Mr. Fitzsimmon's account would clarify the debate on this procedure, which is expected to be renewed in Congress.

Mr. Fitzsimmons predicted today that the controversial procedure would be considered by the courts no matter what lawmakers decide.

Last April, President Clinton vetoed a bill that would have outlawed the controversial procedure. There were enough opponents in the House to override his veto but not in the Senate. In explaining the veto, Mr. Clinton echoed the argument of Mr. Fitzsimmons and his colleagues.

''There are a few hundred women every year who have personally agonizing situations where their children are born or are about to be born with terrible deformities, which will cause them to die either just before, during or just after childbirth,'' the President said. ''And these women, among other things, cannot preserve the ability to have further children unless the enormity—the enormous size of the baby's head—is reduced before being extracted from their bodies.'' A spokeswoman for Mr. Clinton said tonight that the White House knew nothing of Mr. Fitzsimmons's announcement and would not comment further.

In the vast majority of cases, the procedure is performed on a healthy mother with a healthy fetus that is 20 weeks or more along, Mr. Fitzsimmons said. ''The abortion-rights folks know it, the anti-abortion folks know it, and so, probably, does everyone else,'' he said in the article in the Medical News, an American Medical Association publication.

Mr. Fitzsimmons, whose Alexandria, Va., coalition represents about 200 independently owned clinics, said coalition members were being notified of his announcement.

One of the facts of abortion, he said, is that women enter abortion clinics to kill their fetuses. ''It is a form of killing,'' he said. ''You're ending a life.''

And while he said that troubled him, Mr. Fitzsimmons said he continues to support this procedure and abortion rights in general.

[From the American Medical News, Mar. 3, 1997]

MEDICINE ADDS TO DEBATE ON LATE-TERM ABORTION—ABORTION RIGHTS LEADER URGES END TO ''HALF TRUTHS''

(By Diane M. Gianelli)

WASHINGTON—Breaking ranks with his colleagues in the abortion rights movement, the leader of one prominent abortion provider group is calling for a more truthful debate in the ongoing battle over whether to ban a controversial late-term abortion procedure.

In fact, Ron Fitzsimmons, executive director of the National Coalition of Abortion Providers, said he would rather not spend his political capital defending the procedure at all. There is precious little popular support for it, he says, and a federal ban would have almost no real-world impact on the physicians who perform late-term abortions or patients who seek them.

''The pro-choice movement has lost a lot of credibility during this debate, not just with the general public, but with our pro-choice friends in Congress,'' Fitzsimmons said. ''Even the White House is now questioning the accuracy of some of the information given to it on this issue.''

He cited prominent abortion rights supporters such as the Washington Post's Richard Cohen, who took the movement to task for providing inaccurate information on the procedure. Those pressing to ban the method call it ''partial birth'' abortion, while those who perform it refer to it as ''intact'' dilation and extraction (D&X) or dilation and evacuation (D&E).

What abortion rights supporters failed to acknowledge, Fitzsimmons said, is that the vast majority of these abortions are performed in the 20-plus week range on healthy fetuses and healthy mothers. ''The abortion rights folks know it, the anti-abortion folks know it, and so, probably, does everyone else,'' he said.

He knows it, he says, because when the bill to ban it came down the pike, he called around until he found doctors who did them.

''I learned right away that this was being done for the most part in cases that did not involve those extreme circumstances,'' he said.

The National Abortion Federation's Vicki Saporta acknowledged that ''the numbers are greater than we initially estimated.''

As for the reasons, Saporta said, ''Women have abortions pre-viability for reasons that they deem appropriate. And Congress should not be determining what are appropriate reasons in that period of time. Those decisions can only be made by women in consultation with their doctors.''

BILL'S REINTRODUCTION EXPECTED

Rep. Charles Canady (R. Fla.) is expected to reintroduce legislation this month to ban the procedure.

Those supporting the bill, which was also introduced in the Senate, inevitably evoke winces by graphically describing the procedure, which usually involves the extraction of an intact fetus, feet first, through the birth canal, with all but the head delivered. The physician then forces a sharp instrument into the base of the skull and uses suction to remove the brain. The procedure is usually done in the 20- to 24-week range, though some providers do them at later gestations.

Abortion rights activists tried to combat the images with those of their own, showing the faces and telling the stories of particularly vulnerable women who have had the procedure. They have consistently claimed it is done only when the woman's life is at risk or the fetus has a condition incompatible with life. And the numbers are small, they said, only 500 to 600 a year.

Furthermore, they said, the fetus doesn't die violently from the trauma to the skull or the suctioning of the brain, but peacefully from the anesthesia given to the mother before the extraction even begins.

The American Society of Anesthesiologists debunked the latter claim, calling it ''entirely inaccurate.'' And activists' claims about the numbers and reasons have been discredited by the very doctors who do the procedures. In published interviews with such newspapers as American Medical News, The Washington Post and The Record, a Bergen County, N.J., newspaper, doctors who use the technique acknowledged doing thousands of such procedures a year. They also said the majority are done on healthy fetuses and healthy women.

The New Jersey paper reported last fall that physicians at one facility perform an estimated 3,000 abortions a year on fetuses between 20 and 24 weeks, of which at least half are by intact D&E. One of the doctors was quoted as saying, ''we have an occasional amnio abnormality, but it's a minuscule amount. Most are Medicaid patients . . . and most are for elective, not medical reasons: people who didn't realize, or didn't care, how far along they were.''

A Washington Post investigation turned up similar findings.

'SPINS AND HALF-TRUTHS'

Fitzsimmons says it's time for his movement to back away from the ''spins'' and ''half-truths.'' He does not think abortion rights advocates should ever apologize for performing the procedure, which is what he thinks they are doing by highlighting only the extreme cases.

''I think we should tell them the truth, let them vote and move on,'' he said.

Charlotte Taft, the former director of a Dallas abortion clinic who provides abortion counseling near Santa Fe, N.M., is one of several abortion rights activists who share many of Fitzsimmons' concerns.

''We're in a culture where two of the most frightening things for Americans are sexuality and death. And here's abortion. It combines the two,'' Taft said.

She agrees with Fitzsimmons that a debate on the issue should be straight-forward. ''I think we should put it on the table and say, 'OK, this is what we're talking about: When is it OK to end these lives? When is it not? Who's in charge? How do we do it? These are hard questions, and yet if we don't face them in that kind of a responsible way, then we're still having the same conversations we were having 20 years ago.''

Fitzsimmons thinks his colleagues in the movement shouldn't have taken on the fight in the first place. A better bet, he said, would have been ''to roll over and play dead, the way the right-to-lifers do with rape and incest.'' Federal legislation barring Medicaid abortion funding makes exceptions to save the life of the mother and in those two cases.

Fitzsimmons cites both political and practical reasons for ducking the fight. ''We're fighting a bill that has the support of, what, 78% of the public? That tells me that we have a PR problem,'' he said, pointing out that several members of Congress who normally support abortion rights voted to ban the procedure the last time the measure was considered.

From a practical point of view, it also ''wasn't worth going to the mat on. . . . I don't recall talking to any doctor who said, 'Ron you've got to save us on this one. They can't outlaw this. It'd be terrible.' No one said that.''

He added that ''the real-world impact on doctors and patients is virtually nil.'' Doctors would continue to see the same patients, using an alternative abortion method.

In fact, many of them already do a variation on the intact D&E that would be completely legal, even if the bill to outlaw ''partial birth'' abortions passed. In that variation, the physician makes sure the fetus is dead before extracting it from the birth canal. The bill would ban only those procedures in which a live fetus is partially vaginally delivered.

Lee Carhart, MD, a Bellevue, Neb., physician, said last year that he had done about 5,000 intact D&Es, about 1,000 during the past two years. He induces fetal death by injecting digoxin or lidocaine into the fetal sac 72 hours before the fetus is extracted.

DAMAGE CONTROL

Fitzsimmons also questions whether a ban on an abortion procedure would survive constitutional challenge. In any event, he concludes that the way the debate was fought by his side ''did serious harm'' to the image of abortion providers.

''When you're a doctor who does these abortions and the leaders of your movement appear before Congress and go on network

news and say these procedures are done in only the most tragic of circumstances, how do you think it makes you feel? You know they're primarily done on healthy women and healthy fetuses, and it makes you feel like a dirty little abortionist with a dirty little secret.''

Saporta says her group never intended to send this message to doctors.

''We believe that abortion providers are in fact maligned and we work 24 hours a day to try to make the public and others understand that these are heroes who are saving women's lives on a daily basis,'' she said.

When Fitzsimmons criticizes his movement for its handling of this issue, he points the finger at himself first. In November 1995, he was interviewed by ''Nightline'' and, in his own words, ''lied,'' telling the reporter that women had these abortions only in the most extreme circumstances of life endangerment or fetal anomaly.

Although much of his interview landed on the cutting room floor, ''it was not a shining moment for me personally,'' he said.

After that, he stayed out of the debate.

DON'T GET ''SIDETRACKED'' BY SPECIFICS

While Fitzsimmons is one of the few abortion rights activists openly questioning how the debate played out, it is clear he was not alone in knowing the facts that surround the procedure.

At a National Abortion Federation meeting held in San Francisco last year, Kathryn Kohlbert, one of the chief architects of the movement's opposition to the bill, discussed it candidly.

Kohlbert, vice president of the New York-based Center for Reproductive Law and Policy, urged those attending the session not to get ''sidetracked'' by their opponent's efforts to get them to discuss the specifics of the procedure.

''I urge incredible restraint here, to focus on your message and stick to it, because otherwise we'll get creamed,'' Kohlbert told the group.

''If the debate is whether the fetus feels pain, we lose. If the debate in the public arena is what's the effect of anesthesia, we'll lose. If the debate is whether or not women ought to be entitled to late abortion, we probably will lose.

''But if the debate is on the circumstances of individual women . . . and the government shouldn't be making those decisions, then I think we can win these fights,'' she said.

PUBLIC REACTION

The abortion rights movement's newest strategy in fighting efforts to ban the procedure is to try to narrow the focus of the debate to third-trimester abortions, which are far fewer in number than those done in the late second trimester and more frequently done for reasons of fetal anomaly.

When the debate shifts back to ''elective'' abortions done in the 20- to 24-week range, the movement's response has been to assert that those abortions are completely legal and the fetuses are considered ''pre-viable.''

In keeping with this strategy, Sen. Thomas Daschle (D. S.D.), plans to introduce a bill banning third-trimester abortions. Clinton, who received an enormous amount of heat for vetoing the ''partial birth'' abortion ban, has already indicated he would support such a bill.

But critics counter that Daschle's proposed ban—with its ''health'' exception—would stop few, if any, abortions.

''The Clinton-Daschle proposal is constructed to protect pro-choice politicians, not to save any babies.'' said Douglas Johnson, legislative director of the National Right to Life Committee.

Given the broad, bipartisan congressional support for the bill to ban ''partial birth'' abortions last year, it's unlikely Daschle's proposal would diminish support for the bill this session—particularly when Republicans control both houses and therefore, the agenda.

And given the public reaction to the ''partial birth'' procedure—polls indicate a large majority want to ban it—some questions occur: Is the public reaction really to the procedure, or to late-term abortions in general? And does the public really make a distinction between late second- and third-trimester abortions?

Ethicists George Annas, a health law professor at Boston University, and Carol A Tauer, PhD, a philosophy professor at the College of St. Catherine in St. Paul, Minn., say they think the public's intense reaction to the ''partial birth'' abortion issue is probably due more to the public's discomfort with late abortions in general, whether they occur in the second or third trimesters, rather than to just discomfort with a particular technique.

If Congress decided to pass a bill banning dismemberment or saline abortions, the public would probably react the same way, Dr. Tauer said. ''The idea of a second-trimester fetus being dismembered in the womb sounds just about as bad.''

Abortions don't have to occur in the third trimester to make people uncomfortable, Annas said. In fact, he said, most Americans see ''a distinction between first-trimester and second-trimester abortions. The law doesn't, but people do. And rightfully so.''

After 20 weeks or so, he added, the American public sees a baby.

''The American public's vision of this may be much clearer than [that of] the physicians involved.'' Annas said.

The PRESIDING OFFICER. The Chair recognizes Mr. CAMPBELL, the Honorable Senator from Colorado.

Mr. CAMPBELL. I thank the Chair. We in the Chamber may agree or not agree with our colleague from Pennsylvania, but, frankly, I know of no one who would ever question his commitment to his beliefs or the ability to take on a tough, difficult, emotional issue such as we face today. It is an issue to which there probably is no universal right answer in the eyes of our fellow Americans.

I know that many people have very strong opinions, sometimes driven by religion, by culture, by their own experiences, and perhaps I am no different than they are, but I do wish to commend the Senator from Pennsylvania for bringing this to the floor.

I wish to speak for a few moments about this extremely emotional and difficult issue of partial-birth abortion. As the Senators from California know—they are not on the floor. I had hoped they would be. But as they know, I have defined myself over the years as pro-choice and have supported their efforts in protecting the rights of women in almost every debate in the last 10 years which I have known Senator BOXER and in the last 5 that I have known Senator FEINSTEIN. In fact, I, like them, have had a 100 percent voting record for NARAL.

Last year, I voted with them in opposition to the ban, this ban. I have always believed that all the laws in the world will not prevent a woman from aborting an unwanted fetus. Efforts to prevent it I think simply drive it underground. In fact, I saw that in graphic results years ago on a couple of occasions when I was a policeman in California prior to Roe versus Wade.

Last year, before the override of the President's veto of the bill came about, I listened very carefully to those who hold very strong views on both sides of the issue. I think I learned a great deal from conversations with the medical community about this procedure and its implications. I am certainly not an expert, not a doctor, as is our previous speaker, but I think like most Americans I respect doctors and listen to their views very carefully when it deals with health.

Certainly I will never suffer the tragic decision a woman has to make when she decides whether to terminate or not to terminate a pregnancy. But it did become clear to me that the procedure which would be banned is inflicted on a fetus so far along in its development that it is an infant, not a fetus, in the eyes of a layman like me.

We are subject, of course, to very emotional debate, charts and graphs that are very explicit and tragic when we look at them, but we have to make a decision based on conscience, and last year I thought I did. When the vote, however, to override came about, I found myself confined to a hospital bed in the little town of Cortez, CO, as a result of an injury I sustained in a vehicle accident. I was there for a week. I watched C–Caps, as so many Americans do. I had a chance to talk to the doctors who were involved in operating on me when I was in the hospital. And in watching the dedicated health professionals in that hospital working so hard day and night to save lives, as the days went by, it became increasingly clear to me that a vote to override the veto also represented an effort to save lives and not take lives.

I had the opportunity to speak candidly to several of the doctors in that hospital as well as our doctor colleague here and a number of others about how this procedure is done and how often it is used.

Mr. President, each of us has to make our own decisions based on our own frame of reference with our own conscience as our guide, and so it was with me last year. And although I was in the hospital, I did send a statement to be read into the RECORD by Senator DAN COATS, our colleague from Indiana, that I would have, had I been here at the time, changed my position and voted to override the President's veto.

In recent Senate Judiciary Committee, proceedings, it came to light that Mr. Ron Fitzsimmons, another expert whose opinion I respect, stated that this procedure is performed more often than he had originally said, which supports what other doctors had told me. In light of this evidence and the evidence indicating that this procedure is only one among several options that women may elect to protect the life and health S4449of the mother, this year I

intend to support my colleague from Pennsylvania and support this ban.

Now, I probably will not be alone among my colleagues in changing my view on this, and I am certainly aware that any time a Senator changes his mind, even if it is based on new evidence, he opens the door to all kinds of accusations of flip-flopping, being in someone's pockets, selling out, and all the other ludicrous charges that are immediately levied against him or her when he finds new evidence and does change his mind. I can live with that. What I cannot live with is not voting my conscience and will, therefore, vote in support of the Senator from Pennsylvania.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the junior Senator from Colorado.

Mr. ALLARD. I thank the Chair. I rise in support of H.R. 1122, otherwise referred to as the Partial-Birth Abortion Ban Act of 1997.

As we have just heard from the previous comments, there are strongly held views on both sides of the abortion issue. I see this every day in my discussions with Coloradans, and I realize that this debate will continue for a long time. The people of my home State of Colorado know that personally I am pro-life and as a State Senator I had a strong pro-life voting record. I maintained that strong stance in my 6 years in the House of Representatives, and I intend to continue to vote my conscience on the issue of abortion during my tenure in the Senate. But what we have before us today is not an issue that breaks down between the pro-choice camp versus the pro-life camp. Even people in the pro-choice camp believe that there are certain reasonable restrictions that should be placed on abortion. A good example is the restriction that we place on public funding of abortions. Each year pro-life people come together with pro-choice individuals to include the Hyde amendment language in the Labor, HHS appropriations bill so that Medicaid money will not be used to fund abortions. Partial-birth abortions should be viewed in a similar light to the public funding issue.

Mr. President, in my comments I have just used the term partial-birth abortion, and I refer to the bill itself to see how ''partial-birth abortion'' is defined in the bill. It is defined in this section, and I quote:

> The term ''partial-birth abortion'' means an abortion in which the person performing the abortion partially vaginally delivers—

In other words, the baby is in the birth canal—

> a living fetus or baby before killing the fetus and completing the delivery.

So this is a procedure where the baby is in the birth canal and then whoever is doing the procedure kills the baby and then finishes the delivery. Many pro-choice people agree that the partial-birth abortion procedure should be banned, and a general consensus seems to be forming that this is a brutal procedure which should not be tolerated in a civilized society.

The reason for this apparent consensus is that it is a medically unnecessary, barbaric procedure. In fact, the front page of today's Washington Times notes that the American Medical Association's board of trustees has determined that there are no situations in which a partial-birth abortion is the only appropriate procedure to induce abortion—the only appropriate procedure to induce abortion.

It seems likely that President Clinton will bow to political pressures from the extremes in the pro-choice camp and veto this bill. The House passed this bill H.R. 1122 by a veto-proof margin of 295 to 136. In the Senate we will likely need 67 votes in order to ban this procedure. I urge all of my colleagues to support this legislation so that we can ban this brutal procedure.

I yield the floor, Mr. President.

Mr. ENZI addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Wyoming.

Mr. ENZI. I thank the Chair.

I am proud today to join the Senator from Pennsylvania and my other colleagues in voicing support for H.R. 1122, the Partial-Birth Abortion Ban Act of 1997. I was an original cosponsor of the Senate version of this bill, and I commend my friends in the other body for passing this legislation by such a compelling majority. I urge my colleagues in the Senate to take action and pass this bill by a margin that can withstand the President's threatened veto.

Mr. President, we are debating an issue that has an important bearing on the future of this Nation. Partial-birth abortion is a pivotal issue because it demands that we decide whether or not we as a civilized people are willing to protect that most fundamental of rights—the right to life itself. If we rise to this challenge and safeguard the future of our Nation's unborn, we will be protecting those whose voices cannot yet be heard by the polls and those whose votes cannot yet be weighed in the political process. If we fail in our duty, we will justly earn the scorn of future generations when they ask why we stood idly by and did nothing in the face of this national infanticide.

We must reaffirm our commitment to the sanctity of human life in all its stages. We took a positive step in that direction a few weeks ago by unanimously passing legislation that bans the use of Federal funds for physician-assisted suicide. We can take another step toward restoring our commitment to life by banning partial-birth abortions.

In this barbaric procedure, the abortionist pulls a living baby feet first out of the womb and through the birth canal except for the head, which is kept lodged just inside the cervix. The abortionist then punctures the base of the skull with long surgical scissors and removes the baby's brain with a powerful suction machine. This causes the head to collapse, after which the abortionist completes the delivery of the now dead baby. I recount the grisly details of this procedure only to remind my colleagues of the seriousness of the issue before the Senate. We must help those unborn children who are unable to help themselves.

Opponents of this legislation have relied on distortions to bolster their position. Just this past February, the executive director of the National Coalition of Abortion Providers, Ron Fitzsimmons, admitted that he lied through his teeth about the true number of partial-birth abortions performed in the United States every year. Mr. Fitzsimmons had originally joined Planned Parenthood and the National Abortion and Reproductive Rights Action League in falsely claiming that this abortion procedure was used only in rare cases to save the life of the mother. Mr. Fitzsimmons now admits that partial birth abortions are common and that the vast majority of them are performed in the second trimester—at 4 to 6 months' gestation—on healthy unborn children with healthy mothers. Mr. Fitzsimmons summed up the chilling truth of this procedure when he admitted that partial-birth abortion is ''a form of killing. You're ending a life.''

Opponents have argued that this procedure is necessary in some circumstances to save the life of the mother or protect her future fertility. These arguments have no foundation in fact. First, this bill provides an exception if the procedure is necessary to save the life of the mother and no alternative procedure could be used for that purpose. Moreover, leaders in the medical profession including former Surgeon General C. Everett Koop have stated that this procedure is never necessary to save the life of the mother. In fact, it is more dangerous medically to the mother than allowing the child to be born alive. Finally, a coalition of over 600 obstetricians, perinatologists, and other medical specialists have stated categorically that there is no sound medical evidence to support the claim that this procedure is ever necessary to protect a woman's future fertility. These arguments are offered as a smoke-screen to obscure the fact that this procedure results in the taking of an innocent life. The practice of partial birth abortions has shocked the conscience of our nation and it must be stopped.

Since I was sworn in as a Member of this distinguished body in January, we have had the opportunity to discuss a number of pieces of legislation which will have a direct impact on our families and our children. I have based my decision on every bill that has come before this body on what effect it will have on those generations still to come. We in the Senate have deliberated about what steps we can take to

make society a better place for our families and the future of our children. We as Senators will cast no vote that will more directly affect the future of our families and our children than the vote we cast on this bill.

Mr. President, when I ran for office, I promised my constituents I would protect and defend the right to life of the unborn. The sanctity of human life is a fundamental issue on which we as a nation should find consensus. It is a right which is counted among the unalienable rights in our Nation's Declaration of Independence. We must rise today to the challenge that has been laid before us of protecting innocent human life. I urge my colleagues to join me in casting a vote for life by supporting the Partial Birth Abortion Ban Act.

Now, I know there has been a big change in the approach to the whole situation by Mr. Fitzsimmons, who testified a year ago that this was not a common practice. I know now that he says it is common practice, and that is part of the debate that made a big difference on the House side, and I am convinced it will make a big difference on the Senate side, someone who is admitting that this is a common practice, that it takes lives and that he regrets what he said and what has been done as a result. I think that will make a difference in the vote we have over here, and I hope it will make a difference in the approach that the President takes to the bill.

I would like to concentrate my remarks on the miracle of life. A year and a half ago, I had a torn heart valve and was rushed to the hospital for emergency surgery. I had never been in a hospital except to visit sick folks before. I have to tell you that I am impressed with what they were able to do, but I have also been impressed with what doctors do not know. That is not a new revelation for me.

Over 24 years ago, a long time ago, my wife and I were expecting our first child. Then one day early in the sixth month of pregnancy, my wife starting having pains and contractions. We took her to the doctor. The doctor said, ''Oh, you may have a baby right now. We know it's early and that doesn't bode well. We will try to stop it. We can probably stop it.'' I had started storing up books for my wife for 3 months waiting for the baby to come. However, the baby came that night, weighing just a little over 2 pounds. The doctor's advice to us was to wait until morning and see if she lives. They said they didn't have any control over it.

I could not believe the doctors could not stop premature birth. Then I could not believe that they could not do something to help this newborn baby. Until you see one of those babies, you will not believe what a 6-month-old baby looks like. At the same time my wife gave birth to our daughter, another lady gave birth to a 10-pound baby. This was a small hospital in Wyoming so they were side by side in the nursery. Some of the people viewing the other baby said, ''Oh, look at that one. Looks like a piece of rope with some knots in it. Too bad.'' And we watched her grasp and gasp for air with every breath, and we watched her the whole night to see if she would live.

Then the next day they were able to take this baby to a hospital which provided excellent care. She was supposed to be flown to Denver where the best care in the world was available, but it was a Wyoming blizzard and we couldn't fly. So we took a car from Gillette, WY, to the center of the State to Wyoming's biggest hospital, to get the best kind of care we could find. We ran out of oxygen on the way. We had the highway patrol looking for us and all along the way, we were watching every breath of that child.

After receiving exceptional care the doctor said, ''Well, another 24 hours and we will know something.'' After that 24 hours there were several times we went to the hospital and there was a shroud around the isolette. We would knock on the window, and the nurses would come over and say, ''It's not looking good. We had to make her breathe again.'' Or, ''Have you had the baby baptized?''

We had the baby baptized in the first few minutes after birth. But that child worked and struggled to live. She was just a 6-month-old—3 months premature.

We went through 3 months of waiting to get her out of the hospital. Each step of the way the doctors said this isn't our doing. It gave me a new outlook on life. Now I want to tell you the good news. The good news is that the little girl is now an outstanding English teacher in Wyoming. She is dedicated to teaching seventh and ninth graders English, and she is loving every minute of every day. The only problem she had was that the isolette hum wiped out a range of tones for her, so she cannot hear the same way that you and I do. But she can lip read very well, which, in the classroom, is very good if the kids are trying to whisper. But that has given me an appreciation for all life and that experience continues to influence my vote now and on all issues of protecting human life.

When I first came to the Senate, we talked about cloning. I thought cloning had been going on for a long time. Of course, we used to call it identical twins, and it was pretty unpredictable. But I want to tell you, through all of that cloning, nobody produced life. They took life and they changed it.

Life is such a miracle that we have to respect it and work for it every single day in every way we can. I think this bill will help in that effort, and I ask for your support for this bill.

I yield the remainder of my time.

The PRESIDING OFFICER. The Chair recognizes the Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, first let me congratulate the Senator from Wyoming for that very touching story about his daughter. I congratulate him for his courage in standing up for her and fighting for her and his willingness to share that with us and his support of this legislation.

I also would like to thank the junior Senator from Colorado, Senator ALLARD, for his excellent statement in support of this measure.

I want to cite specifically the senior Senator from Colorado, Senator BEN NIGHTHORSE CAMPBELL. Last year I very vividly remember receiving a call from Senator COATS about BEN sitting in a hospital room in Colorado, watching the debate and talking to doctors and seeing so many people do so much to save life, and his incredibly insightful comments about how he could watch through his door efforts to save life and then look up on the television screen and see C–SPAN and see people who wanted to extinguish life. That conflicted him and disturbed him.

It is a very hard thing, it is a very hard thing in politics for someone on the abortion issue to walk out of a camp. This issue is a very polarized issue. You are in one camp or the other. You are pro-life or you are pro-choice and you don't waffle. You don't walk down the middle of this one or you get run over. It takes a lot of courage to walk out of that camp because you know they are wrong.

A lot of folks are struggling with this issue today. They are fighting themselves in looking at this issue. They don't feel comfortable being in this camp against this bill. But it takes courage to step out and do the right thing for you, do the right thing according to your conscience, the right thing according to what you believe is best for America. It has political risks, tremendous political risks. You alienate your friends, you open yourself up to attack.

But I think it just shows a tremendous amount of courage and commitment to your principles, to stand up to your friends. It is easy to stand up to your opponents. We do that all the time. But when you stand up and face the people that you have supported on issue after issue and say, ''This time you are wrong,'' do you know how hard that is? You know in your own lives, anybody listening here knows how difficult it is to talk to a friend and say, ''You know, I have been with you,'' and just say, on something they care about, they deeply care about, ''You are wrong and I cannot be with you.'' It is great courage, the courage of convictions. I applaud him for doing that in a very dramatic and sensitive way.

Finally, I thank the Senator from Tennessee, Senator FRIST, the only physician in the Senate who articulated, not just from a medical point of view but from a moral point of view, why this ban is absolutely necessary and why this procedure is absolutely unnecessary for any reason to be performed on anyone.

So, we have just begun this debate. Unfortunately, as soon as some other

Senators come down here to start the next—I see the Senator from North Carolina is here. I will move on. We will have to break off the debate for a short period of time. I hope we will have more time to debate later this evening, and then, pursuant to this unanimous consent that I will read, we will move tomorrow at 11 o'clock to reconsideration of this bill, bringing this bill back up for consideration, and debate the Boxer amendment.

Mr. President, I ask unanimous consent that the time between 11 a.m. and 2 p.m. on Thursday be equally divided for debate regarding the Feinstein amendment to H.R. 1122, that no amendment be in order to the Feinstein amendment, and, further, at the hour of 2 p.m., the Senate proceed to a vote on or in relation to the Feinstein amendment.

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

EXECUTIVE SESSION

FLANK DOCUMENT AGREEMENT TO THE CFE TREATY

Mr. SANTORUM. Mr. President, in executive session I ask unanimous-consent the Senate now proceed to the consideration of Executive Calendar No. 2, the Treaty Doc. No. 105–5, the CFE Treaty.

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

The clerk will report.

The legislative clerk read as follows:

Treaty Document 105–5, Flank Document Agreement to the Conventional Armed Forces in Europe Treaty.

The PRESIDING OFFICER. The Chair recognizes the distinguished senior Senator from North Carolina.

Mr. HELMS. I thank the Chair very much. Mr. President, may I ask that the unanimous-consent be stated as to time on this resolution of ratification?

The PRESIDING OFFICER. There are 1½ hours equally divided between the chairman of the Foreign Relations Committee and the ranking member.

Mr. HELMS. Senator BYRD has some time, too?

The PRESIDING OFFICER. And an additional 30 minutes for Senator BYRD.

Mr. HELMS. Very well. I do thank the Chair.

Mr. President, I yield myself such time as I may require.

The Senate Foreign Relations Committee this past Thursday reported a treaty to amend the Conventional Armed Forces in Europe Treaty. The vote was unanimous.

I have never hesitated to oppose, or seek to modify, treaties that ignore the best interests of the American people. As long as I am a Member of the U.S. Senate, I will be mindful of the advice and consent responsibilities conferred upon the Senate and the Senators by the U.S. Constitution. Therefore, I have never hesitated to oppose bad treaties and bad resolutions of ratification without hesitation. But when a treaty serves the Nation's interests, if it is verifiable, and if the resolution of ratification ensures the integrity of these two points for the life of the treaty, I unfailingly offer my support to it. That is why I support the treaty before us today.

In that connection, let the record show that the pending treaty was signed on May 31, 1996, and was not submitted by the President to the Senate for our advice and consent April 7, 1997. With the bewildering delay in the delivery of this treaty, the administration demanded action by May 15, 1997, which is tomorrow.

So, after wasting an entire year, the administration demanded that the Senate act on this treaty within 1 month's time. I believe it is obvious that the Foreign Relations Committee has been more than helpful in fulfilling its constitutional responsibilities to advise and consent.

The treaty before us today is a modification of the treaty approved by the Senate in 1991. Specifically, it will revise the obligations of Ukraine and Russia in what is known as the flank zone of the former Soviet Union. In recognition of the changes having occurred since the collapse of the Soviet Union, the 30 parties to the CFE Treaty have agreed to modify the obligations of Ukraine and Russia.

The 1991 CFE Treaty could not and did not anticipate the dissolution of the Soviet Union and the Warsaw Pact, let alone the expansion of NATO to include Central and Eastern Europe countries. Consequently, recent years have been occupied with efforts to adapt the treaty to the new security environment of its members.

Mr. President, in its essentials, the Flank Agreement removes several administrative districts from the old flank zone, thus permitting current flank equipment ceilings to apply to a smaller area. In addition, Russia now has until May 1999 to reduce its forces sufficient to meet the new limit.

To provide some counterbalance to these adjustments, reporting requirements were enhanced and inspection rights in the zone increased.

Mr. President, with the protections, interpretations, and monitoring requirements contained in the resolution of ratification, I recommend approval of this treaty because it sets reasonable limits and provides adequate guarantees to ensure implementation.

However, the simple act of approving this treaty does not diminish the need for further steps by the U.S. Government to strengthen the security of those countries located on Russia's borders. If this agreement is not implemented properly, Russia will retain its existing military means to intimidate its neighbors—a pattern of behavior with stark precedents.

As the Clinton administration is so fond of saying, this treaty is but a tool to implement the foreign policy of the United States. During the past 4 years, the Clinton administration has remained silent while Russia has encroached upon the territory and sovereignty of its neighbors. It was the lack of a foreign policy—not a lack of tools—that allowed this to happen.

I have confidence that the new Secretary of State will correct the course of our policies toward Russia, and I gladly support this treaty to aid the Honorable Madeleine Albright in that endeavor. The collapse of the Soviet Union was one of the finest moments of the 20th century. To allow even a partial restoration of the Soviet Union before the turn of the century would be a failure of an even greater magnitude.

Mr. President, a final and related issue in the resolution of ratification is one upholding the prerogatives of the Senate in matters related to the ABM Treaty. During the past few years, the executive branch has sought to erode the Senate's constitutional role of advice and consent regarding treaties. In fact, the executive branch originally refused to submit for advice and consent the treaty that is before the Senate today. Through protracted negotiations, the Senate successfully asserted its proper role to advise and consent to new, international treaty obligations. Likewise, on revisions to the ABM Treaty, it is only through a legally binding mandate that we can ensure the proper, constitutional role of the U.S. Senate. I hope, Mr. President, that we can proceed to do that without delay. Mr. President, I ask for the yeas and nays on the resolution of ratification.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HELMS. I believe the Senator from Delaware wishes to speak.

Mr. BIDEN. Thank you, Mr. Chairman.

The PRESIDING OFFICER. The Chair recognizes the Senator from Delaware.

Mr. BIDEN. Mr. President, let me begin by acknowledging what the Senator and chairman of the committee said, and that is that this treaty has been around a long time, and all of a sudden it came popping up here. Some of us, like the Senator from North Carolina and the majority leader and others, myself included, have felt it is a Senate prerogative to determine whether or not this flank agreement should be agreed to. It is an amendment to the treaty. The administration for a long time concluded it was not a prerogative of the Senate, and it was not necessary to submit this treaty.

Some have asked, why are we acting so expeditiously on this treaty? Why is there this deadline? Two reasons: One, we waited a long time to agree we had the responsibility to accede to this or it could not occur, and, two, there is a real May 15 deadline by which all 30 nations must ratify this agreement. If, in fact, they do not, the agreement will have to be reviewed by all of them.

We are right now dealing with the enlargement of NATO, we are now dealing with the NATO-Russia Charter, and if it looks as though the United States is reneging on this flank agreement, it can just create a lot of confusion.

Having said that, had I been chairman of the committee rather than the ranking member and had it been a Republican President, I probably would have spent more time chastising the administration than the distinguished Senator from North Carolina. He just rolled up his sleeves and said, ''OK, this is a necessary and important treaty,'' and didn't spend a lot of time in recriminations about why it took so long to get here. I thank him for that, and I thank him for the way in which he moved this. I doubt there is any treaty or change in a treaty as significant as this that has moved as rapidly through the Foreign Relations Committee with as studied an approach as under the leadership of my colleague from North Carolina.

Mr. President, nearly 6 years ago, as chairman of the Subcommittee on European Affairs, I managed the ratification of the original CFE agreement for the then Democratic chairman of the committee. The treaty was, I believe then and I believe now, a monumental achievement, capping some two decades of negotiations between NATO and Warsaw Pact countries to establish a secure conventional military balance in Europe. I would argue, it was sort of the prelude to the undoing of our adversary at the time, the Soviet Union and the Warsaw Pact.

Mr. President, the treaty has succeeded as few other arms reduction measures have. Since 1992, it has fundamentally altered the military landscape from the Atlantic to the Urals, dramatically reducing the number of pieces of equipment that could be used to wage war.

In the last 5 years, the CFE Treaty has resulted in the removal or destruction of more than 53,000 pieces of heavy equipment, including tanks, artillery, armored combat vehicles, attack helicopters, and combat aircraft.

Since 1991, of course, the political face of Europe has changed dramatically. These developments had an impact on the relevance and potential durability of the CFE Treaty. Particularly effective were the so-called flank limits. To the average citizen out there, a flank limit is not much different than a flank steak or flank cut. The fact of the matter is, it has real significance; it is very important.

The flank limits were included to prevent military equipment that was removed from Central Europe from being concentrated elsewhere. We set limits on how much equipment could be set on that inter-German border, which we necessarily focused on for so many years. As that equipment was removed or destroyed, what we did not want to have happen is to have the Soviets take that equipment and move it into the flanks, moving it on the Turkish border or moving it up by Norway and having a predominance of force accumulated there.

After the collapse of the Soviet Union, Russia began to argue that the treaty, particularly the so-called flank limits, did not adequately reflect its security needs in the flank zone. We had placed limits on what type of equipment and how much could be placed in these flanks. Had I a map, I would reference it, but the fact of the matter is, we put limits on this. After the collapse of the Soviet Union, Russia began to argue that the treaty, particularly the flank limits, did not adequately reflect its security needs in the flank zone.

Put another way, all those folks in the Caucasus and Transcaucasus are now independent countries. When this was negotiated, they weren't part of the deal. They weren't part of the deal, and it was some Soviet general in Moscow deciding what could and could not be done in those countries.

Now the Russians come back and say, ''Hey, wait, this isn't the deal we signed on to.'' Russell Long—a great Senator who the Senator from North Carolina remembers well, but not nearly as well as the Senator from West Virginia sitting behind me—one of Russell Long's many expressions used to be, ''I ain't for no deal I ain't in on.'' All of a sudden, the Russians realized that they had signed on to a deal that, in a strong way, they were no longer in on, as it related to what was left of the Soviet Union.

Consequently, the NATO alliance agreed to negotiations on revising these flank limits, and the result was the agreement before us now known as the Flank Document that was signed by 30 states parties—a fancy term for saying 30 countries—to the treaty in Vienna on May 31, 1996. Reiterating the point made by my friend from North Carolina, this was signed a year ago, 1996. I believe that our negotiators, while meeting some Russian concerns, did an excellent job of protecting the interests of this country and the democracies on the northern and southern flanks of the former Soviet Union.

The CFE Flank Document removes some areas from what we call the old flank zone, but maintains constraints on equipment both in the new flank zone and in the old one. There are also limits on armored combat vehicles in each area that were removed from the old flank zone so as to prevent any tremendous concentration of equipment in any one place.

We all are concerned about Russian troop deployments outside its borders, Mr. President. We cannot allow Moscow to coerce its independent neighbors into accepting the presence of foreign forces on their soil or into giving up their own rights to military equipment, which would now be folded into this total limit.

But I believe the Flank Document and the resolution of ratification now before the Senate addresses these concerns and recognizes that sovereign countries must have the right to refuse Russian demands. Indeed, the chairman and I have found common ground on most of the issues in this resolution.

There are a total of, if I am not mistaken, 14 conditions, Mr. President. Two of these conditions of ratification, however, I think are extraneous and give me some concern. Of the 14, there are only two that I would flag for my colleagues, and I am not going to move to strike either one of them. I am not going to move to do anything about it. I just want to make the point of why I think they are unnecessary or counterproductive.

The first is condition 5, which includes a provision calling for a special report on possible noncompliance of the CFE Treaty by Armenia. I regret that this provision was included in the resolution at the insistence of the majority, but I am pleased that we have reached an agreement through the efforts of Senator JOHN KERRY and Senator SARBANES—and I am sure if they reached an agreement they must have run it by the distinguished Senator from West Virginia or it would not have been agreed to—to mitigate the one-sided nature of this original agreement.

More troubling, though, is condition 9. I will not speak more about condition 5 in the interest of time. Condition 9 also is insisted upon by the majority, and I note from a brief discussion, while working out yesterday out of the Senate environs with my distinguished friend from Virginia, that he feels very strongly about, and I happen to disagree with him on it.

Condition 9 requires the President to submit an agreement which will multilateralize the 1972 Anti-Ballistic Missile Treaty to the Senate for advice and consent. Put another way, there is a condition placed on here, very skillfully, I might add, by my friends who have concerns about the ABM Treaty that has nothing to do with this flank agreement. I was of the view it should not be included as part of a condition to this treaty. I did not have the votes. I must say to my friend from North Carolina, it is not merely because I hope I am a gentleman that I am not attempting to remove the condition, I do not have the votes to remove the condition, so I am not going to attempt to do something that I know will not prevail. But, I would like to point out, the condition is titled ''Senate Prerogatives.'' The title is interesting but, I think, inaccurate.

I take a back seat to no one when it comes to Senate prerogatives. As a matter of fact, it was the Byrd-Biden amendment attached to the INF Treaty. We have been jealous of the protection of our constitutional obligations and responsibilities. With all due respect, and it sounds self-serving, but I take a back seat to no one in the Senate in terms of protecting the constitutional obligations and responsibilities of the Senate. But in this case, I do not

think we have a prerogative to exercise, notwithstanding condition 9 is called ''Senate Prerogatives.''

The issue involves two powers: recognition of successor states and the power to interpret and implement treaties, both of which are executive functions.

Mr. President, it is undisputed that the President has the exclusive power, under the powers of article 2 of the Constitution, to recognize new states. I am not going to take a long time on this, so don't everybody worry I am in for a long constitutional discussion; I am only going to spend another 3 or 4 minutes, but I want to make the point for the RECORD. Under article 2, section 2 of the Constitution, the President and the Senate have a shared duty to ''make treaties.'' But once the treaty is made, it is the law of the land, and the President, under article 2, section 3, has the duty to take care that it is faithfully executed.

In exercising this duty, it is for the President to determine whether a treaty remains in force, a determination that, of necessity, must be made whenever a state dissolves.

So what are we talking about here? We had an ABM Treaty and CFE Treaty with the former Soviet Union. The Soviet Union dissolved. And the question remains, all those constituent countries that are now independent countries, is the President able to recognize Ukraine, for example, and, as a consequence, recognize the Ukrainians' assertion that they want to be part of the ABM Treaty? They were part of it when they were part of the whole Soviet Union, but as the constituent parts broke apart, the question was: As each individual country within that whole signs on to the continued commitment to ABM, does that require ratification by the United States Senate with each of them again? I would argue, and I will argue at a later date—I am sure we will hear more of this—that it does not require that. It is not a Senate prerogative.

In the case before us, the ABM Treaty, the President has the power to declare whether Russia and the other New Independent States inherit the treaty obligations of the former Soviet Union, provided those states indicate a desire to do so and provided that the succession agreement effects no substantive change in the terms of the treaty.

Both the Bush and Clinton administrations exercised this power following the breakup of the Soviet Union, Yugoslavia, Czechoslovakia, and Ethiopia as it relates to other issues, not as it relates to ABM. Moreover, it bears emphasis that the two arms control treaties, the CFE Treaty and the INF Treaty, were multilateralized by the executive action without the advice and consent of the Senate. By definition, we are all here, we are not asking for multilateralization of the flank agreement. It is somewhat curious that we say ABM requires the Senate to have a treaty vote on every successor nation, but on CFE, which we all like and we have no substantive disagreement on, we are not asking for that.

So the point I am making is that this condition has nothing to do with CFE and it is more about whether you like ABM or do not like ABM, not about who has what constitutional responsibility, I respectfully suggest.

I agree with my colleagues on the other side of the aisle and the other side of the issue in one respect, that this is the subject of legitimate debate. But the debate, which I am confident we can win on the merits, can readily be conducted at another time on a more germane subject than a treaty that it has nothing to do with. Nonetheless, the majority insisted upon this extraneous condition, and I think I can count votes.

I will never forget going to former Chairman Eastland as a young member of the Judiciary Committee asking for his support. He sat behind his desk, I say to the chairman of the committee, and said, ''Did you count?'' I didn't understand what he said.

I said, ''I beg your pardon, Mr. Chairman?''

He took that cigar out—I was asking to be chairman of the Subcommittee on Criminal Laws, because Senator McClellan had just passed away and, for years, it had been his job. It was a contest between me and another Senator.

I was looking at him, and he said, ''Did you count?'' I seriously did not understand what he was saying. ''I beg your pardon?'' I said. I tried to be humorous. I said, ''Mr. Chairman, I don't speak Southern very well.'' He smiled and looked at me, and he took the cigar out of his mouth, and said, ''Son, when you have counted, come back and talk to me.''

Well, I learned to count. The reason I am not contesting this now, as I said, I counted. I do not have the votes at this moment to remove condition 9 and still get this treaty up and out of here in time. So I will reserve that fight for another day.

Despite the inclusion of condition 9, I will strongly support the flank agreement because of its integral role in protecting American interests in maintaining security and stability in Europe. Indeed, the Flank Document we will be voting on is an important bridge to the broader revision of the CFE Treaty now under discussion as we talk about the enlargement of NATO. Those talks will allow us to achieve further reductions in military equipment in Europe and ensure that the confidence-building measures embodied in the CFE Treaty remain in place.

Mr. President, the CFE Treaty is just one component of the architecture of arrangements, including NATO, the Partnership for Peace, the Organization for Security and Cooperation in Europe, all of which are designed to ensure that in the post-cold war era, the European nations remain free and independent and are partners in a zone of security and prosperity.

But by maintaining the integrity of the CFE Treaty, we maintain the forum in which an enlarged NATO will make clear to Russia that our objective is stability in Europe, not military intimidation. Ratification of the flank agreement is a modest but important step toward the new European security system.

I urge my Senate colleagues to do two things—thank the chairman of the full committee for expediting this, and when we get very shortly to a vote on it, to vote their advice and consent to ratification.

I thank again the chairman of the full committee.

I reserve the remainder of my time.

Mr. HELMS. I thank the Senator from Delaware.

How much time do I have?

The PRESIDING OFFICER. The Senator has 41 minutes 42 seconds.

Mr. HELMS. I yield 8 minutes to the distinguished Senator from Virginia [Mr. WARNER].

Mr. WARNER. Mr. President, I thank my friend and colleague, the senior Senator from North Carolina. May I join others in urging that the Senate give its advice and consent to this very important treaty, a treaty brought forward by the leadership of the chairman and the distinguished ranking member at a critical time in the ever-increasing debates regarding Europe, whether it be NATO expansion or other issues.

I was prepared today to go toe to toe with my good friend, the ranking member of this committee, the Senator from Delaware, on the question of condition 9. I have spent a good portion of my career in the Senate on the question of the ABM Treaty. I think it was a very wise addition to this particular resolution of ratification, a provision, condition 9, that addresses the issue of the multilateralization of the ABM Treaty.

I go back to the Fiscal Year 1995 Defense Authorization Act, section 232. It was my privilege to introduce that provision as an amendment to that bill. That provision provided:

> The United States shall not be bound by any international agreement entered into by the President that would ''substantively'' modify the ABM Treaty unless this agreement is entered [into] pursuant to the treaty making power of the President under the Constitution.

That is section 232 of the Fiscal Year 1995 Defense Authorization Act. That is precisely, really a recitation, of what condition 9 requires—follow the law of the land. President Clinton signed section 232 into law, and yet, time and again, this President claims exemptions from the requirement to submit to the Senate agreements which clearly change the rights and obligations of the United States under the ABM Treaty.

For years, I have joined a number in this Chamber, primarily the Republicans, in insisting that the ''demarcation'' agreement, which the administration is currently completing in negotiations with the Russians, represents again another ''substantive'' change to the ABM Treaty that must be submitted to the Senate. I am pleased that the administration has at long last acknowledged that very fact and has agreed to bring that demarcation agreement before this body for the advice-and-consent responsibility entrusted to the Senate by the Constitution.

I, like the Senator from Delaware, was concerned about the use of the word ''prerogative'' in condition 9. I view the advice and consent role as an obligation of the U.S. Senate under the Constitution of the United States. It is an obligation that we must exercise in cases such as the demarcation and the multilateralization of the ABM Treaty.

I ask my colleagues to indulge me just for a minute. I go back to May 1972, a quarter of a century ago. As a much younger man, I was privileged to be a part of the delegation, headed by the President of the United States, that went to Moscow for the summit which culminated in the signing of SALT I, the ABM Treaty and other agreements. The particular matter for which I had primary responsibility was the Incidents at Sea Executive Agreement, which was also signed at that time.

I had been in the Pentagon as Secretary of the Navy during the course of the negotiation of the ABM Treaty. As such, I have spent a good deal of my career, beginning with the inception of that treaty to date, in trying to analyze it and defend it. I think it is a valuable part of our overall arms control relationship with the then-Soviet Union and today Russia. But there is a limit to which that treaty should be applied to other activities that this Nation must now undertake—activities that were not contemplated at the time the treaty was negotiated.

One of those activities—and I do not know of a more important one—is to protect the men and women of the Armed Forces when they are deployed abroad, and any number of civilians in their positions abroad, from the ever-growing threat of short-range ballistic missiles.

Hopefully, this year we will forge ahead and finally clarify—clarify—the misunderstandings about what the ABM Treaty was intended to do and what it was not intended to do on this issue. I have talked to so many of my colleagues who were in that delegation a quarter of a century ago who had a primary responsibility for the ABM Treaty. One after one they will tell you that they never envisioned at that time, from a technological standpoint, this new class of weapons, namely, the short-range ballistic missiles, and that that treaty was never intended to apply to those missiles.

As the Senator from Delaware said, there will be another day on which we can have that debate on the issue of that treaty's application to the current research and development now underway to develop and deploy those systems desperately needed in the Armed Forces of the United States to protect us from the short-range threat, an ever-growing threat, which is proliferating across the world.

The Foreign Relations Committee did precisely what it should have done: included in as condition 9 the protection of future debate on the ABM Treaty such that the U.S. Senate can make the decisions as to whether or not there are successions to the ABM Treaty by other nations.

The ABM Treaty was contemplated, negotiated, and signed as a bilateral treaty. It was approved by the Senate as a bilateral treaty. It strains credibility for the administration to now argue that the conversion of that treaty from a bilateral to a multilateral treaty is not a ''significant'' change to warrant Senate advice and consent.

At the time this treaty was negotiated, no one involved in the negotiations could ever have envisioned the dissolution of the Soviet Union in their lifetimes—much less within 20 years. Likewise, technical advances in the areas of both strategic offensive and defensive systems could not be adequately anticipated. That is why the treaty has provisions for amendment to adapt it to changing times circumstances, and technologies. I am personally of the view that this treaty should have been—and still needs to be—amended to allow the United States to protect its citizens, stationed abroad from short-range ballistic missile attacks which were not contemplated 25 years ago. But I also strongly believe that any amendment which alters U.S. rights and obligations—any substantive changes—must be submitted to the Senate for advice and consent.

We could argue for days about the international legal principles and requirements in this area. But one thing is clear—domestic law on this issue is unambiguous. Section 232 of the fiscal year 1995 Defense authorization bill, which I referred to earlier, clearly requires the President to submit for Senate advice and consent any international agreement which substantively modifies the ABM Treaty.

It is clear that multilateralization would constitute a substantive change to the ABM Treaty. For 25 years, this has been a bilateral treaty. If new parties are added, the geographic boundaries, which govern many aspects of the treaty, would be changed. Existing U.S. rights under the treaty to amend it by bilateral agreement would be lost. The draft memorandum of understanding on succession, the three new states parties will be given full voting rights in the Standing Consultative Commission [SCC], the body which supervises treaty implementation and negotiates amendments to the treaty. According to the guidelines of the SCC, changes to the ABM Treaty can only be made through a consensus of the parties. That means that any one of these three new states parties could block United States efforts to amend this treaty to allow for effective missile defenses to deal with current threats—even if the Russians agree to the changes.

The succession issue with the states of the former Soviet Union has been handled on a case-by-case basis. In the case of the CFE Treaty and the START I Treaty, the Senate specifically addressed the succession issue during consideration of the resolutions of ratification for those treaties. INF succession was handled without Senate involvement. It is clear that the matter of succession—far from being a legal absolute—is, at best, a murky legal issue.

The unique status of the ABM Treaty was highlighted in the 1994 legislation requiring Senate advice and consent of any international agreement that ''substantively'' modifies the ABM Treaty. This is not the case for the hundreds of other treaties we had in effect with the former Soviet Union.

Since the ABM Treaty reinterpretation debate of the late 1980's, the Democrats have insisted that any change to a treaty that differs from what was presented to the Senate at the time of ratification must be resubmitted to the Senate or the Congress for approval. Multilateralization of the ABM Treaty is not simply a reinterpretation of the treaty, it is a substantive change to the treaty text. By the Democrats own standards, such a change should clearly require Senate advice and consent.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I appreciate very much the comments by the distinguished ranking member of the Foreign Relations Committee. I must say for the record that I also enjoy the privilege of working with him. I think the committee has been more active in the last year or two than it has been for some time. But in any case, I am grateful to Senator BIDEN.

Mr. President, the history of the succession agreements to the various treaties concluded between the United States and the Soviet Union further supports the case for Senate consideration of ABM multilateralization. In only one case was advice and consent not required for multilateralization on an arms control treaty. Because the INF Treaty carried the so-called negative obligation of not possessing any intermediate-range nuclear missiles, that treaty could be multilateralized without altering any treaty terms or imposing any new treaty rights or obligations on the United States or new parties.

Multilateralization of the START I Treaty under the Lisbon Protocol, on the other hand, required Senate advice

and consent because this change had clear implications for the treaty's text and object and purpose. The Lisbon Protocol determined the extent to which countries other than Russia would be allowed to possess strategic nuclear weapons. Similarly, ratification of the Lisbon Protocol also effectively determined successorship questions to the Treaty on Non-Proliferation of Nuclear Weapons, NPT. Under that protocol, Belarus and other countries agreed to a legally binding commitment to join the NPT as nonnuclear weapons states. Thus when the Senate offered its advice and consent to the Lisbon Protocol, it approved successorship to both the INF and the START treaties.

Finally, the Senate specifically considered the question of multilateralization of the Treaty on Conventional Armed Forces in Europe under condition 5 of the resolution of ratification for the CFE Treaty.

Under article II, section 2, clause 2 of the Constitution, the Senate holds a co-equal treaty-making power. John Jay made one of the most cogent arguments in this respect, noting:

> Of course, treaties could be amended, but let us not forget that treaties are made not only by one of the contracting parties, but by both, and consequently that as the consent of both was essential to their formation at first, so must it ever afterwards be in order to alter . . . them.

Now, my colleagues of the Senate may disagree on the wisdom of continuing the national strategy embodied in the ABM Treaty. Where I hope all of our colleagues could agree, however, is on the imperative of upholding the constitutional responsibilities of the Senate, as reposed in this body by the Founding Fathers.

Mr. Justice Frankfurter stated:

> The accretion of dangerous power does not come in a day. It does come, however, slowly, from the generative force of unchecked disregard of the restrictions that fence in even the most disinterested assertion of authority.

I know the administration has demonstrated nothing if not disregard for the Senate's constitutional authority. The Senate's duty with regard to the issue of ABM multilateralization is, I believe, Mr. President, clear.

I yield the floor.

How much time does the distinguished Senator from Texas want?

Mrs. HUTCHISON. I do not know what the time limitations are. At least 10 minutes, in your range, or I could cut it back.

Mr. HELMS. If the Senator could do with 8 minutes, I think I could cover everybody, and the distinguished President pro tempore.

Mr. THURMOND. I need about 10 minutes. I can ask for extra time.

Mr. HELMS. Why don't you proceed.

Mrs. HUTCHISON. I will be happy to yield to the distinguished Senator.

Mr. HELMS. I say to Senator THURMOND, you have been yielded to by the distinguished Senator from Texas.

Mrs. HUTCHISON. Would you like to go next, Mr. Chairman?

Mr. THURMOND. Whatever suits you.

Mrs. HUTCHISON. After him, if I could have 8 to 10 minutes.

Mr. HELMS. Yes.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I rise in support of the CFE Flank Document resolution of ratification. My support of the CFE Flank Document is based largely upon the 14 conditions that the Foreign Relations Committee attached to the resolution of ratification. I am particularly pleased that the Foreign Relations Committee included condition 9, which deals with the Senate's prerogatives on multilateralization of the ABM Treaty. This has been an issue with which the Armed Services Committee has been deeply involved for many years.

I would strongly oppose any effort to dilute or eliminate condition 9 from the resolution of ratification. Condition 9 does not take a position, as such, on the ABM Treaty or treaty succession. It simply seeks to protect the Senate's prerogatives in case the treaty is substantively changed. I find it difficult to believe that any Member of this body would be opposed to this objective. In my view, it is a solemn and fundamental obligation of a Senator to consistently guard the rights and prerogatives of the Senate, regardless of which political party may occupy the White House at any given time.

Mr. President, although international law is ambiguous on the question of treaty succession, the U.S. Constitution and statutory law is clear. As section 232 of the National Defense Authorization Act for fiscal year 1995 states, ''the United States shall not be bound by any international agreement entered into by the President that would substantively modify the ABM Treaty unless the agreement is entered pursuant to the treaty making power of the President under the Constitution.'' This provision originated as an amendment sponsored by Senator WARNER of Virginia and Senator Wallop of Wyoming, two of the Senate's foremost experts on the ABM Treaty.

Notwithstanding the administration's assertion that treaty succession is an executive branch responsibility, or any argument that one might derive from international law, the real issue is simple and clear. Only one overarching question needs to be answered: Does multilateralization of the ABM Treaty constitute a substantive change to the treaty? If so, the President has no choice, under the law and the Constitution, other than to submit such an agreement to the Senate for advice and consent.

Ironically, those who have asserted that the President does not need to submit the multilateralization agreement to the Senate for advice and consent have not even attempted to answer the one relevant question: Is it a substantive change or not? Instead they have chosen to base their views strictly on ambiguity-laden international law and a simple assertion of executive prerogative.

If one carefully analyzes the issues associated with ABM Treaty multilateralization, it is difficult to avoid the conclusion that the ABM Treaty will indeed be modified in several substantive ways. The conferees to the fiscal year 1997 Defense Authorization Act recognized this in stating that ''the accord on ABM Treaty succession, tentatively agreed to by the administration, would constitute a substantive change to the ABM Treaty, which may only be entered into pursuant to the treaty making power of the President under the Constitution.'' This conference language, which was supported overwhelmingly on a bipartisan basis, was the culmination of 2 years of effort by several key Senators on the Armed Services Committee: I have been joined in this fight by Senator LOTT of Mississippi, Senator WARNER of Virginia, Senator—now Secretary of Defense—Cohen of Maine, and Senator SMITH of New Hampshire, as well as other stalwart supporters of the Senate's prerogatives.

Why would multilateralization of the ABM Treaty constitute a substantive change? First, because the basic strategic rationale for the treaty would be altered. The ABM Treaty was intended to be part of an overarching arms control regime for regulating United States-Soviet competition in strategic offensive forces. But under a multilateral ABM Treaty, some members will have neither strategic offensive nor strategic defensive forces, and hence no direct stake in the treaty's subject matter. Overall, the United States faces strategic and political circumstances that are vastly different than those that existed in 1972 when the ABM Treaty was signed. The Senate must carefully consider how these bear on the issue of treaty succession.

Second, the ABM Treaty will change from a treaty between two equal parties to one in which different parties have different rights and obligations. Some states will be entitled to a deployed ABM system, others will not. The United States will also face four states rather than one at any future negotiation concerning the future of the treaty. This clearly diminishes the weight of the American vote in the Standing Consultative Commission and increases the complexity of seeking changes or clarifications to the treaty.

Third, the actual mechanics of the ABM Treaty will be altered by multilateralization since the treaty is largely defined in terms of ''national territory.'' Some items that are regulated by the treaty, including large phased array radars, are currently located outside the national territory of any of the states that plan to accede to the ABM Treaty. Also, those former Soviet States that opt not to stay in the treaty would be legally permitted to deploy an unlimited ABM system even though their national territory

was formerly covered by the treaty's definition of Soviet ''national territory.''

Mr. President, these are only a few of the ways in which a multilateral ABM Treaty would constitute a substantive change from the original treaty. The evidence is overwhelming. For the Senate to do anything other than to insist on its right to provide advice and consent to such an agreement would be an abandonment of its rights and obligations. I urge my colleagues to stand together on this important constitutional prerogative of the Senate. The executive branch must not be permitted to circumvent the Senate on a matter of such fundamental importance.

The PRESIDING OFFICER (Mr. ALLARD). The Senator from Texas is now recognized for 8 minutes.

Mrs. HUTCHISON. Mr. President, I thank the distinguished chairman of the committee and, of course, the distinguished senior Senator from South Carolina.

Mr. President, there is no Senate responsibility I take more seriously than the obligation we have to advise and consent on treaties. We are discussing two treaties today that mark the past and the future of arms control. It is interesting to me that they have become linked in the manner before us today. I commend the distinguished chairman of the Foreign Relations Committee for his vision in this effort.

The Conventional Forces in Europe Treaty is a pillar of post-cold-war security in Europe. That treaty, over a decade in negotiation and finished by President Bush in 1990, solidified NATO's victory in the cold war by dramatically reducing the size of the conventional forces arrayed against each other.

That treaty also restricted the areas on the flanks of Europe where the Soviet Union or its successors could place troops and equipment. This particular provision was one of the most difficult to negotiate because it was one of the most meaningful. By restricting the size of forces on Europe's northern and southern flanks, we greatly reduced the likelihood that the Soviet Union or its successors could conduct an effective assault on western forces.

Because of the importance of this provision, it is with great reluctance that I support the changes to the agreement before us today, which will relax these flank restrictions.

It is true that over 50,000 pieces of equipment limited by the CFE Treaty have been destroyed or removed since the treaty went into effect. Nevertheless, with the changes in the agreement regarding the flanks of Europe, we will all have to be watchful that we not slide back too far from the high standard we set for ourselves and for Russia in the original treaty.

Mr. President, I will also say that we will have to reevaluate our actions when we learn the full details of the NATO-Russia agreement just announced today. For example, I am hopeful that we did not place unilateral restrictions on our own ability to deploy troops in the potentially expanded area of NATO responsibility in exchange for Russia support for NATO expansion. I light of the changes we are making to the CFE Treaty—permitting Russia to deploy forces in areas that have been off-limits until now—such a unilateral restriction on our own ability to move troops around Europe would be shortsighted indeed.

Even with these reservations, though, I am willing to support the treaty document before us today because of condition 9, which will require the President to submit to the Senate for ratification any substantive changes to the Anti-Ballistic Missile Treaty. My support for an effective, global ballistic missile defense system greatly outweighs the concerns I may have with changes to the CFE Treaty.

Mr. President, if the CFE Treaty is a forward looking treaty that reflects the new realities of post-cold-war Europe, the ABM Treaty is an outdated document that harkens back to an era that is thankfully behind us. The ABM Treaty was with the USSR. Now that the cold war is over it is restricting the inexorable march of technology, a technology that I am convinced will make ballistic missiles obsolete.

The Clinton administration wants to bring new countries into this outmoded agreement. If the United States was limited in its ability to deploy an effective missile defense when the treaty was with Russia alone, how much more restricted will we find ourselves when there are half-a-dozen or more new members in this treaty?

The document before us today does not prejudice the Senate's action regarding the ABM Treaty. It only says that if the President wishes to permit other countries to join this treaty, then the Senate must fulfill its constitutional role to advise and consent on such a change to the treaty. Colleagues will have the opportunity at that time to debate the merits of bringing new countries into the treaty or simply letting this treaty fade into the history it represents.

While I support the latter, we aren't deciding that matter today. Today, we're simply asserting our prerogative to advise and consent on treaties. No Member of this body should be comfortable that any administration would want to make major modifications to a treaty without Senate approval.

I urge my colleagues to support the resolution of ratification before us today and assert their rights as a Member of the U.S. Senate. I commend Senator HELMS once again with the wisdom and leadership, a staunch defender always, of senatorial prerogatives and U.S. national security.

I commend all of those who are going to stand for the rights of the Senate and therefore the people, to change any potential treaty that this country has committed itself to, because we will keep our treaty obligations and we must make sure that the people of our country are informed and support any changes in those treaties.

I yield back the balance of my time.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. I yield 12 minutes to the distinguished Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 12 minutes.

Mr. KERRY. Mr. President, before the Senate this afternoon is the task of taking the appropriate action, in fulfillment of the Senate's vital constitutional advice and consent responsibility and power, to adapt the Conventional Forces in Europe [CFE] Treaty to the constant change that affects our world—change which has been more sweeping and profound in Europe in the past 7 or 8 years than at any time in the preceding 40.

In 1990, after years of grueling negotiations to control the historically unprecedented conventional weaponry arrayed on opposite sides of the Iron Curtain in Central Europe, the CFE was signed. It entered into force in November of 1992. The long, difficult journey that led to the CFE treaty included one failed effort—the Mutual and Balanced Force Reduction Treaty episode—where negotiators eventually had to throw up their hands and acknowledge defeat in their efforts. But fortunately that failure was not permitted to become permanent. With U.S. leadership, efforts recommenced, and the CFE is the result.

The CFE treaty is the first in the post-World War II period to succeed in limiting and reducing conventional weaponry. While understandably strategic weapons treaty negotiations captured greater attention, since those negotiations addressed weapons of mass destruction each of which can annihilate great numbers of people and large cities, the CFE arguably addressed the greater threat to peace in Europe, because I believe it always was more likely that any conflict there would start as a conventional conflict. The CFE negotiating effort was successful in large part because it approached the issue of obtaining multilateral agreement to limitations of key offensive-capable weapons systems on an alliance-to-alliance basis—addressing on the one side the armaments possessed by not only the Soviet Union but all the Warsaw Pact nations taken together, and on the other side the armaments possessed by all the NATO nations taken together.

The CFE placed numerical limits on the numbers of five types of weapons systems critical to effective offensive operations which each alliance could possess in the Atlantic-to-the-Urals region of Europe where the Warsaw Pact confronted NATO: tanks; artillery pieces; armored combat vehicles; attack aircraft; and attack helicopters. It also contained sublimits based on

geographical regions—in realization of the fact that while a certain number of the covered items might not be a threat to peace or indicate diabolical intentions if spread evenly across the entire geography of each alliance, that same number if massed in a subregion could be threatening indeed and could indicate intentions to launch an attack or engage in other destabilizing behavior.

The treaty has been a notable success. It has resulted in reductions of over 50,000 items of heavy military equipment, verified by an intrusive verification regime that has included nearly 3,000 on-site inspections conducted to date under treaty auspices. It has worked and worked well. It is not a prospective treaty about which we all must guess or predict. It is a here-and-now, real-world treaty that has resulted in tangible reduction in armaments and consequently in real reduction in the threat of conflict. It is a treaty that we would do well to preserve and protect.

Its underlying premise remains valid. If buildups of a critical mass of the categories of treaty-limited equipment can be prevented, it will be very difficult for any nation to launch an attack against another with a significant prospect of success. And even if a nation seeks to flaunt the treaty's terms, and engage in a buildup of these weapons systems for the purpose either of conducting offensive military operations or engaging in a form of extortion, the treaty's verification procedures will reveal those efforts so that appropriate diplomatic and military responses can be made, and its terms give the other parties to the treaty the means to condemn violative activities and to enlist the community of nations in efforts to prevent escalation into conflict.

The implementation and ongoing administration of every treaty result in cases of different interpretations and various disagreements, and the CFE Treaty is no exception. But the mechanisms included in the treaty for resolving such conflicts or disagreements have worked reasonably well. And one can presume that the treaty would have continued to make a significant contribution to the security of Europe and, in turn, of the globe in a relatively smooth manner had the world remained as it was when the treaty was negotiated and entered into force. But, of course, the world has not stood still. The Soviet Union imploded. The Warsaw Pact disintegrated. Some of the very nations and armies that stared across the Iron Curtain at NATO's forces and their key United States components have become great friends of the United States and other NATO nations. Several of these appear to be on the verge of becoming a part of NATO itself. That, of course, is a matter of considerable controversy which should be and I trust will be debated separately and thoroughly. But our focus today is or should be on the CFE treaty.

In addition to the disappearance of the Soviet Union and the Warsaw Pact, and the realignment of some of the former pact nations with the North Atlantic Alliance, other components of the Eurasian security picture have changed dramatically. No longer is Russia's biggest concern the need to be ready for full-scale battle with NATO troops on the German and Benelux plains. Today ethnic conflict in some provinces and efforts of other provinces to obtain independence require much greater Russian attention. The ferment in the Middle East, and activities in Iran and Turkey south of the Russian Caucasus region also are of greater concern to Russia.

Not surprisingly the alterations in Russia's view of its own security picture resulted in alterations in what it believed to be the vital disposition of its security forces. Other nations of the former Soviet Union, including Ukraine, and of the now-defunct Warsaw Pact were faced with unanticipated anomalies resulting from the new maps of Eurasia. The changes occurred in and affected primarily one of four zones to which the CFE Treaty applies, the so-called flank region which consists of Norway, Iceland, Turkey, Greece, Romania, Bulgaria, Moldova, Georgia, Azerbaijan, Armenia, and parts of Ukraine and Russia.

To address the desires by Russia, Ukraine, and others to reallocate their forces, but to ensure that those reallocations protect the accomplishments and security provided by the CFE, the parties to the CFE Treaty negotiated the so-called flank agreement consisting of amendments to the original CFE treaty. The parties agreed to the flank agreement on May 31, 1996. It will enter into force if approved by all CFE Treaty party states by May 15, 1997.

The agreement does not change numerical limits for either of the two major sides of the post-World War II European alignment. Instead, it adjusts the boundaries of the flank, providing Russia and Ukraine more flexibility than they had before with respect to deployment of equipment limited by the treaty.

The flank agreement is in NATO's security interest, and, specifically, it is in the security interests of the United States. Without the adjustments it provides, it is likely Russia and possibly Ukraine would feel so impeded in their ability to meet their own national security requirements that they either would leave the treaty altogether or fail to comply with some of its provisions. The implications of neither of these outcomes would be acceptable, and would weaken or destroy the protections and added security offered by the CFE Treaty.

The judgment that the flank agreement is in our national interest is not just a judgment of our diplomatic community. It is fully endorsed by our Armed Forces leadership. On April 29 of this year, Brig. Gen. Gary Rubus testified:

In the judgment of the Joint Chiefs of Staff, the Flank Agreement is militarily sound. It preserves the CFE treaty and its contribution to U.S. and Allied military security. The additional flexibility permitted Russia in the flank zone does not allow a destabilizing new concentration of forces on the flanks of Norway, Turkey and other States in that area. Moreover, the agreement includes significant new safeguards, including greater transparency and new constraints on flank deployment:

The benefits of this agreement are apparent. The Foreign Relations Committee last week approved the resolution of ratification by a unanimous vote of 17–0. I am confident that a great majority of Senators approve of the flank agreement. But I am very troubled by how some in the majority seem determined to transform the constitutional treaty advice and consent process into an obstacle course.

The Foreign Relations Committee last week approved the resolution of ratification by unanimous vote. Mr. President, as the Foreign Relations Committee last week approved this by unanimous vote of 17 to 0, it doesn't mean that there were not some reservations. I just want to speak to them.

I am confident that the great majority of our colleagues will support the Flank Agreement. But I am troubled by the way in which some have transformed the constitutional treaty advise and consent process into something of an obstacle course that involves things that aren't directly in the treaty.

The conditions for ratification which the majority required before it would permit the Foreign Relations Committee and then the full Senate to perform the advice and consent role, fall into four rough categories. I find several of them—primarily those which the Senate appropriately and routinely attaches to treaties—beneficial and desirable. I find several others reflect a degree of fear and anxiety on the part of some Members, the basis for which I cannot ascertain—but which, all things told, appear unlikely to do fundamental damage to what should be our objective here: To keep the CFE Treaty in operation in order to continue to derive its benefits to security in Europe and a reduction in the risk of conflict there.

The third category, Mr. President, consists of a condition whose objective may have been desirable but which inadvertently or inadvisedly singles out one nation for implicit criticism when the kinds of actions it is implicitly criticized for taking may place it in the company of other nations in its region, and when it would be more appropriate to address these situations as a group so that all nations are held accountable to the same treaty standards. I speak of paragraph F of condition 5 which, in the form approved by the committee, singles out Armenia and requires a report directed solely at its activities and whether they comply with the terms of the treaty. I will address that matter separately, and will

offer an amendment to establish what I believe is an important balance and equity with respect to the entire Caucasus region.

Then, Mr. President, there is condition 9 which forms a special category all its own. I understand why a Senator who has not been deeply involved in the Senate's processing of the CFE Flank Agreement may be puzzled by the fact that condition 9 pertains to the ABM Treaty. In fact, I have been involved in the effort to move the Flank Agreement to Senate approval, and I cannot discern a reasonable or defensible rationale to link the issue of multilateralization of the ABM Treaty to action on the CFE Flank Agreement except for the reason of taking something that ought to happen that is important to our security and linking it to something that is not necessarily yet thoroughly considered by the Senate.

But even so, I do believe I understand what is going on here. Proposed condition 9 is hostage-taking, pure and simple. I think there are some who have a fundamental aversion to arms control agreements and want the United States to simply go it alone in the interdependent world of the last decade of the 20th century. Unfortunately they insist that unless the President concedes to their position on the unrelated issue of ABM multilateralization, they will refuse to let the United States ratify the CFE flank agreement.

I readily agree that the issues surrounding the ABM Treaty are both vital and very controversial. The Committee on Foreign Relations, with the contribution of the Committee on Armed Services, should devote considerable time and energy to thoroughly exploring those issues, and then the Senate as a whole should carefully determine how to proceed with respect to them.

But I want to register the strongest possible dissent from this tactic of hostage-taking. In my judgment these issues are separate and ought to be treated separately. Treaties are fundamentally different than bills on which this Congress acts on a daily basis. We ought to approach our advice and consent responsibility—a solemn constitutional duty—with more abstract side bar process. We should not load up resolutions of treaty ratification with essentially nongermane amendments.

Further, purporting to resolve the complex and very important ABM issues by attaching a condition to a wholly unrelated treaty—and without thoroughly airing and deliberating on those issues at the committee level via hearings and other means—is risky and ill-advised. Because I understand the power of the majority, perhaps the most significant feature of which is its considerable control over determining whether and when the Senate will address important issues, and because I believe it is of great importance that this flank agreement be considered and acted on by the full Senate, and that the Senate do so prior to the May 15 deadline which is imminent, I did not seek because of my aversion to condition 9 to derail the Foreign Relations Committee's action on the resolution of ratification last week, but I expressed my concerns which were published as additional views in the committee's report on the resolution.

Mr. President, as Senators, every one of us is sworn to uphold the Constitution. In my judgment that requires maintaining the separation of powers which plays so critical a part in maintaining the equilibrium of our unique form of government which has permitted it to survive and function successfully for over 200 years. Maintaining the separation requires a careful allegiance to preserving and protecting not only the constitutional obligations, responsibilities, and prerogatives of the legislative branch, and the Senate in particular, but also of the judicial and the executive branches.

We in this Chamber are most accustomed, understandably, to rising to the defense of the responsibilities, role, and prerogatives of our own branch and our own Chamber. I have joined many times in such efforts. Indeed, the very fact that the CFE Flank Agreement is being considered by the Senate is attributable to an effort to assert that the Senate properly should act on that agreement under the treaty clause of the Constitution because it substantively alters the original CFE Treaty.

Itis my view, and, I believe, the view of most Senators on both sides of the aisle who have carefully examined the issue, that the ABM Demarcation Agreement also makes a substantive change in a treaty to the ratification of which the Senate previously gave its advice and consent—thereby necessitating that U.S. ratification of the Demarcation Agreement can occur only if the Senate gives its advice and consent by means of the complete constitutional process.

But the ABM Succession Agreement is a different matter entirely. It effects no substantive change in the ABM Treaty or any other treaty. It does one and only one thing: It codifies the status with respect to the treaty of the states which succeeded to the rights and obligations of the former Soviet Union. It is a function of the executive branch, not the legislative branch, to determine if new nations which descend from a dissolved nation inherit the predecessor nation's obligations such as those under a treaty. This is not a matter of defending a Senate right or obligation or prerogative; the Senate has no right, obligation, or prerogative to defend with respect to determination of succession.

This principle has been illustrated on many occasions by its application. Recently, and of direct relevance, it has been applied in a number of circumstances with regard to the dissolution of the Soviet Union.

I believe I understand the objective here, Mr. President, and I do not believe it is the defense of a nonexistent constitutional principle or a nonexistent constitutional right or prerogative of the Senate. This is a wolf in sheep's clothing—a maneuver by opponents of the ABM Treaty to gain strategic advantage in their quest to demolish the ABM Treaty. The objective is to give them one additional shot at killing the Treaty.

I am prepared for the debate on the ABM Treaty. I look forward to thoroughly assessing whether this treaty continues to serve our Nation's security interests as I strongly believe it has well served those interests since its ratification. I look forward to examining in detail the probable reactions in Russia and elsewhere if we abandon the treaty.

But let me return to an earlier point that ABM opponents have shown they are willing to ignore. The Senate is not currently debating the ABM Treaty. The matter that is before us today is the Conventional Forces in Europe Treaty Flank Agreement. Condition 9 is an unwise, unnecessary, destructive digression from what we should be doing here today. It is yet another example of distressing political expediency too often illustrated in this Chamber in recent years. Fortunately, that expediency rarely has sunk to the level of sacrificing a vital constitutional principle—such as the separation of powers—for the sake of tactical gain. But, Mr. President, let there be no mistake: It is sinking to that level today in condition 9.

When we do such things, Mr. President, there is a price to be paid. Either we who serve here today will pay that price at a later time, or those who follow in our footsteps will pay that price. We disserve the Constitution we are sworn to uphold when we permit that to occur.

I must remark, Mr. President, on the peculiar and troubling silence of the administration on this issue. The administration, by position and motivation, is best situated to defend the constitutional prerogatives and responsibilities of the executive branch. And yet, for some unknown reason, perhaps a tactical calculus, or exhaustion, or distraction—for some reason—the administration never even joined this issue. I say to the administration: Despite the appearances given by your silence and inaction on this issue, this truly does matter in the long run. And this administration, and others to follow it, will regret this day. Much more is being ceded here than the authority to decide what nations properly hold the obligations of the ABM Treaty that previously were held by the Soviet Union.

Mr. President, I strongly support the ratification of the Flank Agreement. Before we vote on the resolution of ratification, I will offer the amendment I referenced earlier to address the Caucasus region, which I hope will be

approved. Then, despite the reservations about condition 9 I have enunciated, because of how important I believe the CFE Treaty is and will continue to be to European security and stability and therefore to world security and stability, I will vote to approve the resolution of ratification and urge all other Senators to do so.

QUESTIONS OF TREATY ADHERENCE IN THE CAUCASUS

Mr. President, the Conventional Forces in Europe Treaty was negotiated to limit the numbers and geographical distribution in Europe of five key types of offensive-capable weapons systems. The treaty contains sublimits for portions of the Atlantic-to-the-Urals region covered by the treaty that apply to the five types of treaty-limited equipment.

The treaty, when it was negotiated, was focused on the protracted cold war and the confrontation at the Iron Curtain that ran through Central Europe. Its design was to make it less likely that the cold war would turn hot, by making it more difficult to amass sufficient quantities of the weapons systems that would be needed for a successful attack of one side on the other, or, at the very least, to amass such weaponry without the other side being aware of the preparations for such an attack. The weapons limitations and the transparency are the treaty's keys.

But as the astonishing events of the late 1980's and early 1990's unfolded, the entire structure of Europe changed in such a fashion as to be virtually unrecognizable. For the most part, this was a very welcome change. For the first time in 40 years, there was no tense face-off of the world's greatest armies at the Warsaw Pact/NATO border.

But the disintegration of the Soviet Union, which was one of the most prominent of the changes in the region, removed the authority and control that had kept a lid on ethnic conflicts and territorial disputes in several regions of what had been the Soviet Union. Ancient tensions and hatreds soon began to bubble to the surface, and nowhere moreso than in the Caucasus region.

The Russian province of Chechnya sought to secede from Russia. Ethnic Armenians in the Nagorno-Karabakh region of Azerbaijan sought to gain independence so they could align with Armenia. Abkhaz separatists in Georgia have fought a long-running civil war with the central government.

Wars and revolutions are fought with weapons, of course. All parties to these conflicts have done all in their power to increase their firepower. Not surprisingly, these actions, when they involve treaty-limited equipment, have implications for the CFE Treaty even though contending with such situations was not the primary purpose for which the treaty was negotiated.

Responding to an allegation made publicly by a Russian Army general who now serves in the Duma, the majority included in the text of the resolution of ratification of the CFE flank agreement, as a part of condition 5 titled ''Monitoring and Verification of Compliance,'' paragraph F, which is a requirement that the President submit a report to the Congress regarding ''whether Armenia was in compliance with the treaty in allowing the transfer of conventional armaments and equipment limited by the treaty through Armenian territory to the secessionist movement in Azerbaijan.''

Mr. President, wherever there are credible allegations or concerns that the provisions of any arms control treaty have been violated, those allegations or concerns should be explored thoroughly and the truth determined. That, certainly, applies in this case. However, I believe this portion of condition 5 is too limited in its scope, and because of that limitation, leaves the impression that the Senate is not as concerned about the effects on the treaty of arms transfer and acquisition actions in other areas of the Caucasus region.

If we are to carefully examine alleged violations of treaty provisions in one specific location in this conflicted region, we should direct the same level of inquiry at all portions of the region. We know that arms buildups in other Caucasus locations have violated provisions of the CFE Treaty. Some of those violations, in fact, have been openly acknowledged.

It is my belief that the Senate should address this matter directly, and do so by expanding the scope of the report that will be required by paragraph F of condition 5. Together with Senator SARBANES, and with the support of several other Senators, I have prepared an amendment to do this. The amendment inserts a new subparagraph ii requiring that the President's report address ''whether other States Parties located in the Caucasus region are in compliance with the Treaty.'' The President also must indicate what actions have been taken to implement sanctions on any of these states found to be in violation.

I believe this change will make this provision of the resolution of ratification more useful. Because the report the Congress will receive will give a more complete picture of the level of compliance with or violation of the CFE Treaty in the Caucasus region, the United States can formulate a response that will be more complete and suitable.

AMENDMENT NO. 279

(Purpose: To require a compliance report on Armenia and other States Parties in the Caucasus region)

Mr. KERRY. Mr. President, the amendment that I send to the desk is an amendment that seeks very simply to create the equity and balance that I sought with respect to the question of Armenia.

I believe that we have an agreement on this language. It will simply reflect that we ought to hold all nations in the area to the same standard.

In my judgment, it is self explanatory. I believe it has been approved by both sides as a consequence of that.

Mr. President, I send the amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Massachusetts (Mr. KERRY), for himself, Mr. BIDEN, Mr. SARBANES, Mr. ABRAHAM, and Mrs. FEINSTEIN, proposes an amendment numbered 279.

Mr. KERRY. 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:

Strike subparagraph (F) of section 2(5) and insert the following:

(F) COMPLIANCE REPORT ON ARMENIA AND OTHER STATES PARTIES IN THE CAUCASUS REGION.—Not later than August 1, 1997, the President shall submit to the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives a full and complete classified and unclassified report regarding—

(i) whether Armenia was in compliance with the Treaty in allowing the transfer of conventional armaments and equipment limited by the Treaty through Armenian territory to the secessionist movement in Azerbaijan;

(ii) whether other States Parties located in the Caucasus region are in compliance with the Treaty; and

(iii) if Armenia is found not to have been in compliance under clause (i) or, if any other State Party is found not to be in compliance under clause (ii), what actions the President has taken to implement sanctions as required by chapter 11 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2295 et seq.; relating to assistance to the independent states of the former Soviet Union) or other provisions of law.

Mr. KERRY. Mr. President, I believe we have an agreement on this particular amendment.

I thank the distinguished chairman of the Foreign Relations Committee for working, as he always does, in order to find a common ground in these matters.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Massachusetts.

The amendment (No. 279) was agreed to.

Mr. KERRY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HELMS. Mr. President, I yield 6 minutes to the distinguished Senator from New Hampshire, [Mr. SMITH].

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. SMITH of New Hampshire. Mr. President, I thank the distinguished chairman of the Foreign Relations Committee.

Mr. President, I rise in strong support of the resolution of ratification reported by the Senate Foreign Relations

Committee. I want to specifically commend the distinguished chairman, Senator HELMS, for his outstanding leadership in moving this resolution promptly and responsibly.

I also want to commend the Foreign Relations Committee for including condition No. 9, which would require the administration to submit any agreement that would multilateralize the ABM Treaty to the Senate for advice and consent. This is an extremely important issue, Mr. President, and this provision ensures that the Senate retains its constitutional prerogatives to advise and consent on international treaties.

By way of background, there is an existing statutory requirement, with precedent, that any substantive change to an international treaty must be submitted to the Senate for advice and consent, as prescribed under the Constitution.

The Clinton administration has spent the better part of the past 4 years negotiating changes to the 1972 Anti-Ballistic Missile [ABM] Treaty. Foremost among these changes are a demarcation agreement that would restrict the performance of certain theater defense programs, and a multilateralization agreement that would expand the ABM Treaty to include the Republics of the former Soviet Union. It is this multilateralization agreement that condition No. 9 would address.

Mr. President, condition No. 9 has become necessary because the administration refuses to submit the multilateralization agreement to the Senate for advice and consent. They have rightly conceded that both a demarcation agreement and the CFE flank limits agreement are substantive changes requiring approval of the Senate, but they adamantly refuse to submit multilateralization for approval.

The administration asserts that the executive branch alone has the authority to recognize nations and determine the successor states on treaties whose participants no longer exist. They also argue that multilateralization is merely a clarification, not a substantive change to the ABM Treaty.

It is a very significant change that will fundamentally alter both the nature of the treaty and the obligations of its parties. It is most certainly a substantive change, and as such, it must be submitted to the Senate for advice and consent.

Mr. President, let me elaborate on exactly why a multilateralization agreement would represent a substantive change. The ABM Treaty was signed by the United States and the Soviet Union. It was premised on the policy of mutual assured destruction and it codified the bipolar strategic reality of the cold war. All negotiations on compliance and all discussions concerning amendments to the treaty were to be bilateral in nature, with any decisions being approved by each side. The negotiating ratio was 1 to 1, the United States versus the Soviet Union.

However, one of these two parties has now ceased to exist. There is no longer a Soviet Union. If the treaty is multilateralized, and thereby expanded to include multiple parties on the former Soviet side, it will dramatically change this negotiating ratio, both theoretically and practically.

Instead of the 1-to-1 ratio that the treaty was premised on, it will become at a minimum a 1-to-4 ratio, of the United States versus Russia, Khazakstan, Ukraine, and Belarus, and perhaps even a 1-to-15 ratio of the United States versus all 15 of the former Soviet Republics. We just don't know and the administration isn't saying.

Under a multilaterlization agreement, each of these former Soviet Republics would have an equal say in negotiations, even though they clearly would have unequal rights and unequal equipment holdings. For instance, only the United States and Russia would be permitted to field an ABM system, but other nations would be free to deploy ABM radars and other related components of a system. Further, while the ABM Treaty prohibits defense of the territory of a nation, the term territory is being redefined to mean the combined territories of all former Soviet Republics who choose to join the treaty.

What does this mean? It means that instead of the treaty applying to the territory of an individual nation, it applies to a number of nations, unevenly and in a manner that is very detrimental to the United States. For example, Russia could legally establish new early warning radars on the territory of other States, well beyond the periphery of Russia, while the United States is restricted to its own borders. Compounding this inequity, the territory and borders of the so-called former Soviet Union could change over time because the multilateralization agreement allows the admission of additional republics even after entry into force.

The bottom line, Mr. President, is multilateralization would by definition and practice create a fundamental asymmetry in the ABM Treaty. Rather than having two parties with equal offensive strategic forces and defensive capabilities, this agreement would create a tremendous imbalance. For us to negotiate any changes to the treaty, such as an agreement to permit multiple sites or to change the location, we would now need to convince all the participating Republics of the former Soviet Union rather than just one.

In essence, each of those countries would be able to veto our position at any time. And they would individually leverage the vote in the Standing Consultative Commission for more foreign aid, or trade recognition, or concessions on a variety of issues. Whenever we finally met any single Republic's demands, another could instantly leverage similar concessions. When would it end? Never. This scenario is very troubling. It is troubling there are people in the Senate who would be willing to accede to that kind of situation. At the very least, it will cause huge complications in our process for negotiating changes to the treaty.

There can be no question, an agreement to multilateralize the ABM Treaty is a substantive change to the ABM Treaty, plain and simple. It must be submitted for advice and consent. Condition 9 merely says that before the CFE Flank Limits Agreement can take effect, the President must certify that he will submit the ABM Treaty multilateralization agreement to the Senate for advice and consent.

Nothing in this condition will require any renegotiation of any provision of the CFE Flank Limits Agreement or, for that matter, require any renegotiation of any provision of the ABM Treaty multilateralization agreement. This condition will not affect any other country or any other treaty or the cause of strategic stability in any respect. That is a fact.

Contrary to the parochial appeals of the administration, it is not going to kill NATO expansion. It will not kill START II. And it will not kill the CFE Treaty. In fact, all the President has to do is send us a letter this afternoon certifying he will submit the agreement to the Senate for advice and consent and we will be done with it. Case closed.

I am pleased the Senate has seen fit, thanks to the tremendous leadership of Chairman HELMS, to adopt this very important condition. Senator HELMS, as he does so many times and often on the floor of the Senate and in private meetings on issues, stands sometimes alone. I am proud to be standing with him on this very important issue, and I think future generations will thank him for his leadership when we get to the point where this treaty does take effect. People will be thanking him for his leadership on the multilateralization issue.

I thank the Chair.

Mr. HELMS. I thank the Senator from New Hampshire. I assure him it is an honor to serve in the Senate with him.

Mr. President, I yield 5 minutes to the distinguished Senator from Nebraska.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. HAGEL. Mr. President, I am pleased to support this CFE Flank Treaty today. It is good for the security of the United States and the security of our NATO allies.

This treaty modifies the Conventional Forces in Europe Treaty. This treaty was reached in 1990 before the breakup of the Soviet Union and the Warsaw Pact. The modifications in CFE flank restrictions contained in this treaty are reasonable, and we all should support them.

Under Chairman HELMS' guidance, the Foreign Relations Committee added a number of important conditions to this treaty. These conditions

clarify parts of the treaty that could be construed as granting special rights to Russia to intimidate its neighbors, but most importantly are the clarifications that nothing in the CFE Flank Treaty grants to Russia any right to continue its current violations of the sovereignty of several neighboring states.

I am pleased that these clarifications were fully bipartisan conditions that received the support of our distinguished Foreign Relations ranking member, Senator BIDEN.

There is, however, one remaining condition that caused some controversy. This is condition 9, which requires the President to submit to the Senate for ratification another treaty modification, the ABM multilateralization treaty. This is not a question of support or opposition to the ABM Treaty. This is purely a matter of the prerogative of the Senate, of whether or not to adhere to the clear intent of the Constitution of this country.

During negotiations over the Chemical Weapons Convention, Senator HELMS and Majority Leader LOTT succeeded in convincing the President to submit to the Senate two out of three pending treaty modifications that the President had intended to implement as executive agreements. One of those treaty modifications, the CFE Flank Treaty now before us today, and another, the ABM Demarcation Treaty, is before the Foreign Relations Committee where it will receive serious consideration.

Only one treaty modification has yet to be submitted to the Senate, the ABM multilateralization treaty agreed to in Helsinki by Presidents Clinton and Yeltsin. It is right to require that treaty to be submitted as well.

Again, this issue is merely the constitutional obligation of each of us in this body to give our advice and consent on the ratification of treaties, not whether this treaty modification is good or bad.

I again congratulate Chairman HELMS, Senator BIDEN, and the distinguished majority leader. I am proud of the leadership they have shown on this treaty and on the constitutional prerogatives of the Senate.

Mr. President, I yield my time.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I have a little housekeeping function. I ask what I am about to do will not be charged to either side.

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

UNANIMOUS-CONSENT AGREEMENT—H.R. 1122

Mr. HELMS. As in legislative session, Mr. President, I ask unanimous consent that immediately following disposition of the Feinstein amendment to H.R. 1122 during Thursday's session of the Senate, Senator DASCHLE be recognized to offer an amendment and it be considered under the following time agreement: 2½ hours under the control of Senator DASCHLE or his designee, and 2½ hours under the control of Senator SANTORUM or his designee.

I further ask unanimous consent that following the conclusion or yielding back of time on the Daschle amendment, the Senate proceed to vote on or in relation to the Daschle amendment without further action or debate, with no amendments in order during the pendency of the Daschle amendment.

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

Mr. HELMS. I thank the Chair.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. I yield 12 minutes to the distinguished Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I thank my friend from Delaware.

First, let me congratulate the Senators from North Carolina and Delaware, the chairman and ranking member of the Foreign Relations Committee, for working together so speedily and quickly to bring this treaty to the floor. It is a real feat. It is difficult to do this in this length of time. The kind of bipartisan cooperation that this takes really, I think, reflects great honor on this body.

There is one condition that I have some difficulty with that I want to address some remarks to this afternoon, and that is condition 9, which is now part of the resolution before the Senate.

Condition 9 requires the President to submit to the Senate for its advice and consent the memorandum of understanding concerning successor states to the ABM Treaty. In my view, this condition is probably unconstitutional but certainly unwise. As a general rule, a condition on a resolution of ratification is a stipulation which the President must accept before proceeding to ratification of a treaty. And if the President finds the condition unacceptable, he generally has but one choice, which is to refuse to ratify the treaty. There is, however, a generally recognized exception: If the condition is inconsistent with or invades the President's constitutional powers, in which case the condition would be ineffective and of no consequence. The restatement of foreign relations law puts the matter this way:

> The Senate has not made a practice of attaching conditions unrelated to the treaty before it. If the Senate were to do so and were to attach a condition invading the President's constitutional powers, for example, his power of appointment, the condition would be ineffective. The President would then have to decide whether he could assume that the Senate would have given its consent without the condition.

In this matter before us, condition 9 has no relation to the CFE flank agreement. The condition, therefore, on that ground is improper. It seeks to invade the President's constitutional powers to recognize states and to implement treaties, and thus is probably unconstitutional.

When the Senate deals with the important issue of advice and consent to a treaty, I think it should limit itself to the treaty before it. When we go beyond that, it seems to me we do not bring honor on this institution, when we try to force the hand of the President in areas beyond the immediate treaty that is being considered.

In a very ironic twist, condition 9 could imperil the continued viability of the treaty that we are ratifying because if the ABM Treaty, when it is multilateralized, needs to come back for ratification, the same principle would apply to other treaties, of which we have dozens. The same principle, if it applies to ABM, would apply to CFE, the treaty before us.

Is this treaty binding on those other states, those other successor states of the Soviet Union without coming back to the Senate? INF, START I, probably dozens of treaties with the former Soviet Union which have been multilateralized, which have been accepted by the successor states, which we now, I hope, consider binding on those States and on us, even though they have not been brought back to the Senate for ratification, if the logic of condition 9 is correct, it would undermine the viability, the efficacy of those other treaties that we had with the former Soviet Union. It would call into question treaties that I do not believe this body wants to call into question.

The reason that it does that is that condition 9 requires the President to submit to the Senate for its advice and consent his recognition of the Soviet Union successor states to the ABM Treaty. It does provide an opportunity for opponents of the ABM Treaty to try to defeat that memorandum of understanding as it relates to the successor states. But in doing so, it jeopardizes the continuing viability of the acceptance by those successor states of their obligations under the ABM Treaty and, in terms of the point I am making, their obligations under a number of other treaties which have been signed by the former Soviet Union.

This outcome could undermine the reductions of former Soviet nuclear weapons that our military has testified are so clearly in our national security interests. Opponents of having successor states other than Russia appear to worry about the potential difficulty of negotiating changes or amendments to the ABM Treaty in order to permit deployment of a national missile defense system in the future. Their notion appears to be that while it may be straightforward for us to negotiate required changes with Russia, it will somehow be more difficult to get the other three successor states to agree to any changes. And according to that view, rather than to give each of the other three states a potential veto over changes to the ABM Treaty, it would be better to prevent those successor states from ever joining the ABM Treaty as a party.

That is what this condition is all about, but it is misguided from a number of perspectives. First, the notion that Ukraine, Belarus, and Kazakstan would obstruct any changes to the ABM Treaty but that somehow Russia would be an easier negotiating partner flies in the face of experience. In the negotiations at the Standing Consultative Commission, it is Russia that has been the most challenging negotiating partner, while Ukraine, Kazakstan, and Belarus have been more amenable to American proposals.

Furthermore, as the administration has pointed out on many occasions, if the United States determines that there is the threat that requires us to deploy a national missile defense system that would conflict with the ABM Treaty, they would seek to negotiate changes with our treaty partners to permit such a deployment. We would seek to adapt the treaty to our security requirements. But if the Russians would not agree to our proposed changes, then the administration would consider whether to withdraw from the ABM Treaty, as is our right under the treaty's provisions relating to our supreme national interests. That is the prudent approach and the one that best serves our security.

Let me just give one other example of the implication of this condition. In 1995, the United States recognized Ukraine as a successor to the former Soviet Union for 35 nonarmed control treaties that we previously had with the U.S.S.R. We did this without a Senate vote. So now we presumably want the Ukraine to be bound by 35 treaties previously negotiated. But there is no Senate vote ratifying that treaty with Ukraine.

In a diplomatic note from the United States Embassy to the Government of Ukraine dated May 10, 1995, the United States listed the 35 agreements that have continued in force with Ukraine and they include such treaties as the incidents at sea agreement of 1972 with its protocol, which our good friend from Virginia, Senator WARNER, negotiated when he was Secretary of the Navy. They included the prevention of dangerous military activities agreement of 1989, which is designed to prevent an accident or mistake from erupting into hostilities. These are extremely important agreements and we should not put those agreements in limbo, or in doubt, by setting this precedent relative to the ABM Treaty.

I ask unanimous consent that the list of those 35 treaties that Ukraine is hopefully bound by, through that note—but which we have not ratified, vis-a-vis Ukraine—that that list and note be printed in the RECORD at this time.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EMBASSY OF THE UNITED STATES OF AMERICA—KIEV, MAY 10, 1996

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs of Ukraine and has the honor to refer to discussions between technical experts of our two Governments concerning the succession of Ukraine to bilateral treaties between the United States of America and the former Union of Soviet Socialist Republics in light of the independence of Ukraine and the dissolution of the Union of Soviet Socialist Republics. In conducting their discussions, the experts took as a point of departure the continuity principle set forth in Article 34 of the Vienna Convention on Succession of States in respect of Treaties. In examining the texts they found that certain treaties to which the principle applied had since expired by their terms. Others had become obsolete and should not be continued in force between the two countries. Finally, after a treaty-by-treaty review, which included an examination of the practicability of the continuance of certain specific treaties, they recommended that our two Governments agree no longer to apply those treaties.

In light of the foregoing, the Embassy proposes that, subject to condition that follows, the United States of America and Ukraine confirm the continuance in force as between them of the treaties listed in the Annex to this Note.

Inasmuch as special mechanisms have been established to work out matters concerning succession to bilateral arms limitation and related agreements concluded between the United States and the former Union of Soviet Socialist Republics, those agreements were not examined by the technical experts. Accordingly, this Note does not deal with the status of those agreements and no conclusion as to their status can be drawn from their absence from the list appearing in the Annex.

With respect to those treaties listed in the Annex that require designations of new implementing agencies or officials by Ukraine, the United States understands that Ukraine will inform it of such designations within two months of the date of this Note.

If the foregoing is acceptable to the Government of Ukraine, this Note and the Ministry's Note of reply concurring therein shall constitute an agreement between our two Governments which shall enter into force on the date of receipt by the Embassy of the Ministry's Note in reply.

The Embassy of the United States of America avails itself of this opportunity to renew to the Ministry of Foreign Affairs of Ukraine the assurance of its highest consideration.

Enclosure: Annex.

ANNEX

Convention relating to the rights of neutrals at sea. Signed at Washington July 22, 1854; entered into force October 31, 1854.

Agreement regulating the position of corporations and other commercial associations. Signed at St. Petersburg June 25, 1904; entered into force June 25, 1904.

Arrangements relating to the establishment of diplomatic relations, nonintervention, freedom of conscience and religious liberty, legal protection, and claims. Exchanges of notes at Washington November 16, 1933; entered into force November 16, 1933.

Agreement relating to the procedure to be followed in the execution of letters rogatory. Exchange of notes at Moscow November 22, 1935; entered into force November 22, 1935.

Preliminary agreement relating to principles applying to mutual aid in the prosecution of the war against aggression, and exchange of notes. Signed at Washington June 11, 1942; entered into force June 11, 1942.

Agreement relating to prisoners of war and civilians liberated by forces operating under Soviet command and forces operating under United States of America command. Signed at Yalta February 11, 1945; entered into force February 11, 1945.

Consular convention. Signed at Moscow June 1, 1964; entered into force July 13, 1968.

Agreement on the reciprocal allocation for use free of charge of plots of land in Moscow and Washington with annexes and exchanges of notes. Signed at Moscow May 16, 1969; entered into force May 16, 1969.

Agreement on the prevention of incidents on and over the high seas. Signed at Moscow May 25, 1972; entered into force May 25, 1972.

Agreement regarding settlement of lend-lease, reciprocal aid and claims. Signed at Washington October 18, 1972; entered into force October 18, 1972.

Protocol to the agreement of May 25, 1972 on the prevention of incidents on and over the high seas. Signed at Washington May 22, 1973; entered into force May 22, 1973.

Convention on matters of taxation, with related letters. Signed at Washington June 20, 1973; entered into force January 29, 1976; effective January 1, 1976.

Agreement on cooperation in artificial heart research and development. signed at Moscow June 28, 1974; entered into force June 28, 1974.

Agreement relating to the reciprocal issuance of multiple entry and exit visas to American and Soviet correspondents. Exchange of notes at Moscow September 29, 1975; entered into force September 29, 1975.

Agreement concerning dates for use of land for, and construction of, embassy complexes in Moscow and Washington. Exchange of notes at Moscow March 20, 1977, entered into force March 30, 1977.

Agreement relating to privileges and immunities of all members of the Soviet and American embassies and their families, with agreed minute. Exchange of notes at Washington December 14, 1978; entered into force December 14, 1978; effective December 29, 1978.

Memorandum of understanding regarding marine cargo insurance. Signed at London April 5, 1979; entered into force April 5, 1979.

The Agreement supplementary to the 1966 Civil Air Transport Agreement, as amended by the Agreement of February 13, 1986. Signed at Washington November 4, 1966; entered into force November 4, 1966.

Agreement relating to immunity of family members of consular officers and employees form criminal jurisdiction. Exchange of notes at Washington October 31, 1986; entered into force October 31, 1986.

Agreement concerning the confidentiality of data on deep seabed areas, with related exchange of letters. Exchange of notes at Moscow December 5, 1986; entered into force December 5, 1986.

Agreement relating to the agreement of August 14, 1987 on the resolution of practical problems with respect to deep seabed mining areas. Exchange of notes at Moscow August 14, 1987; entered into force August 14, 1987.

Declaration on international guarantees (Afghanistan Settlement Agreement). Signed at Geneva April 14, 1988; entered into force May 15, 1988.

Agreement on cooperation in transportation science and technology, with annexes. Signed at Moscow May 31, 1988; entered into force May 31, 1988.

Memorandum of understanding on cooperation to combat illegal narcotics trafficking. Signed at Paris January 8, 1989; entered into force January 8, 1989.

Agreement on the prevention of dangerous military activities, with annexes and agreed statements. Signed at Moscow June 12, 1989; entered into force January 1, 1990.

Agreement on a mutual understanding on cooperation in the struggle against the illicit traffic in narcotics. Signed at Washington January 31, 1990; entered into force January 31, 1990.

Civil Air Transport Agreement, with annexes. Signed at Washington June 1, 1990; entered into force June 1, 1990.

Agreement regarding settlement of lend-lease accounts. Exchange of letters at Washington June 1, 1990; entered into force June 1, 1990.

Agreement on cooperation on ocean studies, with annexes. Signed at Washington June 1, 1990; entered into force June 1, 1990.

Agreement on expansion of undergraduate exchanges. Signed at Washington June 1, 1990; entered into force June 1, 1990.

Agreement on scientific and technical cooperation in the field of peaceful uses of atomic energy, with annex. Signed at Washington June 1, 1990; entered into force June 1, 1990.

Memorandum of cooperation in the fields of environmental restoration and waste management. Signed at Vienna September 18, 1990; entered into force September 18, 1990.

Memorandum of understanding on cooperation in the physical, chemical and engineering sciences. Signed at Moscow May 13, 1991; entered into force May 13, 1991.

Memorandum of understanding on cooperation in the mapping sciences, with annexes. Signed at Moscow May 14, 1991; entered into force May 14, 1991.

Memorandum of cooperation in the field of magnetic confinement fusion. Signed at Moscow July 5, 1991; entered into force July 5, 1991.

Memorandum of understanding on cooperation in natural and man-made emergency prevention and response. Signed at Moscow July 30, 1991; entered into force July 30, 1991.

Memorandum of understanding on cooperation in housing and economic development. Signed at Moscow July 30, 1991; entered into force July 30, 1991.

Agreement on emergency medical supplies and related assistance. Signed at Moscow July 30, 1991; entered into force July 30, 1991.

Mr. LEVIN. If the logic of condition 9 were extended to Ukraine, all those 35 treaties would be in limbo until we ratified the succession of the treaties. And this list of treaties is just one case of the 12 successor states to the former Soviet Union. Condition 9 could cast into doubt the effect of all of those treaties for all of those states.

I think the aim here, while it is aimed at ABM, does not hit ABM because our ABM Treaty is not touched by this condition. Our treaty relative to ABM, with Russia, is not affected by condition 9. Condition 9 does not refer to Russia. It is the other states that it refers to. So our ABM Treaty with Russia is not affected. It is all the other treaties which are undermined, with all the other successor states. It is the arms control treaties and the nonarms control treaties which are put in jeopardy, left in limbo by the logic of this condition. So, while the aim is at the ABM Treaty, it misses that and, instead, hits treaties that I believe this body wants to be binding on the successor states to the Soviet Union.

What about the treaty before us, the CFE Treaty? Does this have to be ratified with each of the successor states to the Soviet Union? If so, we are putting this very treaty in limbo. This very CFE Treaty which we are ratifying, by the logic of condition 9, is left in limbo as to the other successor states, because there is no ratification of this treaty relative to the other states.

Mr. President, I fail to understand the logic of the supporters of condition 9 that appears to say that Russia is a successor state to the former Soviet Union but the other states of the former Soviet Union can only become successor states if the Senate ratifies that action. If the Senate must ratify the succession of one state, then logically it should ratify the succession of all. Thus this condition would cast into doubt the continuing validity of Russia's obligations under the numerous treaties that the United States had entered into with the Soviet Union but which were not submitted to the Senate for ratification subsequent to the breakup of the Soviet Union.

And it could cast into similar doubt other treaties with other countries that have dissolved, such as former Czechoslovakia, or former Yugoslavia, where the Senate has not ratified the succession of states to those treaties.

We should also consider the impact of condition 9 on other arms control agreements which successor states to the former Soviet Union have joined. Since we are considering the resolution of ratification for the CFE Flank Agreement, let us start with the underlying CFE Treaty. It was ratified by the Senate in November 1991, prior to the accession of successor states based on the Oslo document in June of 1992. In other words, it was after the Senate voted for ratification of the CFE Treaty that the former successor states agreed on the arrangement for joining the CFE Treaty.

The precedent that condition 9 would set would, if followed in other cases, call into question whether those states are considered members of and bound by the CFE Treaty until the Senate votes on their succession to the treaty.

There is also the case of the intermediate-range nuclear forces, or INF, Treaty signed between the United States and USSR. When the Soviet Union dissolved into 12 successor states, 6 of those states had INF facilities on their soil while the other 6 did not. All twelve are successors to the INF Treaty, with six having obligations related to their INF facilities and the other six having the obligation not to have such facilities or INF missiles.

The logic of condition 9 would suggest that the successor states are not parties to, or bound by, the INF Treaty unless and until the Senate provides its advice and consent to their accession. I cannot imagine any Member of the Senate wanting to cast doubt on the obligation of these states to comply with the INF Treaty, but that is what condition 9 does when its logic extended to other treaties.

In a June 11, 1996, letter, then-Secretary of Defense William Perry explained the Defense Department's concerns with a proposed provision of law that was essentially the same as condition 9:

> . . . this section runs counter to the successful U.S. policy of involving within the framework of strategic stability all states which emerged from the former Soviet Union with nuclear weapons on their territory. Moreover, Russia, Belarus, Kazakstan, and Ukraine perceive a clear link between their participation in the START and INF Treaties and the ABM Treaty. Casting doubt on their ability to be equal partners in the ABM Treaty could poison our overall relationship with these states and needlessly jeopardize their compliance with their denuclearization obligations under START I.

The logic of condition 9, when extended to other treaties, could well lead the successor states to the former Soviet Union to reconsider whether they are bound by these treaties as well as the ABM Treaty. Such a move would be decidedly against our security interests.

I should point out, Mr. President, that the Congress itself urged the President to discuss ABM Treaty issues ''with Russia and other successor states of the former Soviet Union'' in the National Defense Authorization Act for Fiscal Year 1994. At that time there was no question that there were other successor states to the former Soviet Union with whom we would want to discuss possible changes to the ABM Treaty. Section 232(c) of that Act states:

> Congress urges the President to pursue immediate discussions with Russia and other successor states of the former Soviet Union, as appropriate, on the feasibility of, and mutual interest in, amendments to the ABM Treaty to permit—
>
> clarification of the distinctions for the purposes for the purposes of the ABM Treaty between theater missile defenses and anti-ballistic missile defenses . . .

I find it strange that the Senate, after urging the President to discuss the ABM Treaty with Russia and other successor states to the former Soviet Union on demarcation, now would call into question whether there are other successor states to the ABM Treaty without a Senate ratification.

If a treaty must be submitted to the Senate for ratification of successors to the former Soviet Union, or other countries, before it is binding, then hundreds of our treaty commitments are in doubt. All of this is because opponents of the ABM Treaty are trying to maim or kill this one treaty.

Additionally, we should consider the impact of accepting condition 9 on other parliaments in other nations that may take this signal as an invitation for them to reconsider their nation's treaty commitments. I find it ironic that on an act of treaty ratification the Senate is on the verge of creating a potential international treaty uncertainty.

There is no need for the Senate to drag in the ABM Treaty issue on the CFE Flank Agreement resolution of ratification. The Senate will have ample opportunity to debate the ABM Treaty when the administration submits the ABM demarcation agreement to the Senate, as they have committed to do. But this is neither the time nor the vehicle to try to decide this issue.

Furthermore, this issue of the memorandum of understanding on successor

states to the ABM Treaty is already connected to Senate consideration on the demarcation agreement. The text of the demarcation agreement states that the MOU on successor states will not go into effect until the Agreed Statement on Demarcation goes into effect. So in effect, the MOU cannot take effect until the Senate votes on the demarcation agreement. Consequently there is no need for this condition and it should not be included in this resolution of ratification.

Mr. President, thankfully, condition 9 is limited to the memorandum of understanding concerning successor states to the ABM Treaty. It is my fervent hope and expectation that the President will make clear in his signing statement for the CFE Flank Agreement that this extraordinary action is not a precedent. In that way he can limit the damage that could otherwise flow from this unwise condition.

Mr. President, I am pleased that condition 5(f) dealing with potential violations of the CFE Treaty in the Caucasus region has been modified. I would have much preferred that it not make any reference to any particular country.

More importantly, I am very concerned with the word ''secessionist'' in condition 5(f). The situation in this troubled area has a long and unfortunate history, and I am disturbed that this condition would seek to so characterize a conflict there.

Mr. COCHRAN. Mr. President, I am pleased the administration has decided not to contest condition 9 in the resolution of ratification now before the Senate. That condition makes the advice and consent of the Senate a condition precedent to the addition of parties to the Anti-Ballistic Missile Treaty.

Any agreement between the administration and the Government of Russia or other states that were part of the Soviet Union which purports to enlarge the ABM Treaty by adding new parties must be submitted to the United States Senate and a resolution of ratification approved by the Senate before it will have the force and effect of law.

There are important reasons why it is necessary for the Senate to insist on its constitutional role in treaty making in this resolution. The administration has announced its intent not to submit a memorandum of understanding on succession to the Senate for advice and consent to ratification, and it purports to transform the ABM Treaty from a bilateral agreement into a multilateral accord.

The addition of new parties to the ABM Treaty clearly would have serious national security implications for the United States. It would make it much more difficult and time consuming to negotiate other changes in the treaty that may be considered necessary in the future to protect our security interests.

Unless the Senate insists on fulfilling its advice and consent responsibilities with respect to the ABM Treaty, there may be a mistaken view taken by the administration that a demarcation amendment being negotiated now with Russia could likewise be the subject of an executive agreement without the benefit of Senate ratification.

I am concerned that by our inaction the Senate could be forfeiting its constitutional role in the making of treaties. It should be clear that no treaty or material change in a treaty can be entered into by our government without the consent of the Senate. That is what the Constitution says, and that is what condition 9 says, and that is what the Senate says today as it provides advice and consent to ratification of the amendments to the Conventional Armed Forces in Europe Treaty.

Mr. ABRAHAM. Mr. President, I rise today to express my support for both the resolution of ratification to the Conventional Forces in Europe Treaty flank agreement, and, more importantly, the manager's amendment to condition 5 regarding compliance with the treaty by member states in the Caucasus region. True, the manager's amendment does not change the original language to the extent that I would desire, but I do wish to thank Senator HELMS and the staff of the Foreign Relations Committee for being so open to my ideas and engaging in very full negotiations. I also wish to thank Senators MCCONNELL, KERRY, and SARBANES for providing such critical leadership on this issue.

Mr. President, it is indeed important that the United States respond forthrightly to violations of the CFE Treaty. And considering this deals with numerical limits on military equipment, the degree of alleged violations is also important. But in executing such diligence, I hope we do not assume too quickly that all alleged violations are, in fact, true. That is why I applaud the inclusion of the request for a report on alleged violations, to ensure that the United States does not blindly enter a treaty which others may disregard.

But in requesting such reports, we must also be mindful of the impact our actions may have upon the delicate fabric of ongoing negotiations to which the United States is party. Specifically, Mr. President, I refer to the OSCE negotiations, to which the United States is co-chairman, regarding the future status of the Nagorno-Karabakh region. To single out one nation for alleged violations, in this case Armenia, without taking into account the full geo-political environment under which that nation's government must operate, may subvert the very process we think has been violated. Better, in my opinion, to err by requesting too much information than not enough, and take into account the region as a whole, and all the players in the current dispute. To ensure we do not upend this ongoing process of peaceful resolution, we should minimize giving credence to unverified allegations and cast as wide a net as possible in requesting additional analysis.

Mr. President, Armenia has had a tough go of it in its short period of independence. It is landlocked, its ethnic population is geographically divided, and it has suffered egregiously in the past from the crimes of others who condemned them simply because of their heritage. Add on top of that a 70-year legacy of abuse and political game playing by the Soviet Union, and it is understandable that Armenia may find itself hard-pressed to execute the policies that we Americans would like to see in a perfect world. But it is not a perfect world, and sometimes we must understand the realities of a situation, and make the best of it.

Therefore, Mr. President, I appreciate the willingness of the Foreign Relations Committee chairman to work with me on making condition 5 more inclusive of all potential threats to U.S. interests and the treaty's viability. By taking a more evenhanded approach, hopefully no party to the current negotiations will feel slighted. And, Mr. President, they should not feel slighted at this point in the process. This condition is meant to address violations to the CFE Treaty, not express an opinion on the legitimacy of any party's negotiating position. Any other interpretation is, in my opinion, a misunderstanding of the condition's intent. Further, I do not believe that this will, or should, be interpreted in any manner that would impugn the ability of the United States to continue as co-chair to the OSCE negotiations. The United States has energetically taken on this mantle of leadership, and I reaffirm my support for this process.

Mr. President, both the viability of the CFE Treaty, and the continued good-faith negotiations regarding the future status of Nagorno-Karabakh are important United States interests. We can, and must, work toward the success of both. I thank the chairman of the Foreign Relations Committee for his leadership in these areas, and the assistance of Senators KERRY and SARBANES in bringing about this amendment which I have cosponsored.

Mr. President, I yield the floor.

Mrs. FEINSTEIN. Mr. President, I rise today to address Senate consideration of the CFE Flank Agreement.

The Conventional Forces in Europe Treaty [CFE] entered into in 1990 is an outstanding arms control achievement, requiring the destruction of over 50,000 items of heavy weaponry, including tanks, armored personnel carriers, artillery pieces, and attack helicopters. The CFE has helped to make the Europe of 1997 a far safer place than the Europe of even just a few years ago, and in doing so has served American national security interests well.

The implementation of CFE helps guarantee that a destabilizing concentration of military equipment—or a massed military attack in central Europe of the kind that has dominated strategic thinking in Europe through two World Wars and a cold war—will

now be next to impossible for any nation or group of nations to achieve.

But, as the flank agreement underscores, the treaty negotiated between NATO and the Warsaw Pact in 1990 is not adequate to the realities of the new European security environment.

To begin with, the Soviet Union and the Warsaw Pact no longer exist. There are now Soviet successor states in the Baltics and the Transcaucasus—the flank zones—with very different security and political concerns. Since the breakup of the Soviet Union, the Transcaucasus have been a region of almost singular instability. Russia and the Ukraine, likewise, have different security orientations than did the Soviet Union, as do the states of both central and western Europe. NATO is undergoing a searching debate about the possibility of enlargement. The Europe that the CFE must be relevant to in 1997 is radically different than the Europe of 1990.

Thus, in ways unanticipated by its original negotiators, the issues raised by the flank agreement touch on some of the most central and the most sensitive security issues of the new European security environment.

The history of the Transcaucasus since the breakup of the Soviet Union have served as a grim reminder of the deadly subtleties of rapidly changing regional geography. Civil war and ethnic strife has been the rule, not the exception, in Nagorno-Karabagh, Osettia, Abkhazia, Georgia, and, of course, Chechnya.

Stabilizing the military balance in the Transcaucasus and inculcating confidence and security building measures, as the CFE Treaty does, is critical for peace in the region.

Although not racked with the violence that has characterized the Transcaucasus, the security concerns of the Baltic States in the northern flank zone will prove to be central to future stability in Europe, and the limits placed on threatening conventional weapons by the CFE Treaty is a critical part of the security architecture of the Baltics.

Likewise, the flank agreement also touches upon the sensitive topic of Russian-Ukrainian ties, and the political and security relationship between the two, and it addresses the role of Turkey between Europe, the Middle East, and central Asia.

Last, the flank agreement has profound implications for Russian nationalist sentiment, and may well have an impact on the future of Russian domestic political development, and the dynamics of those domestic factors which may influence either a cooperative or confrontational Russian foreign policy.

In this sense, the flank agreement is also critical issue for the debate over NATO enlargement that is just now beginning to come to a simmer. In structuring the balance of forces between NATO and Russia, the CFE and the flank agreement—what it says as well as how it is implemented—will be at the heart of Russian perceptions and assessments regarding the potential of an enlarged NATO.

In short, the CFE will play a central role in determining the future course of peace and stability in Europe.

Notwithstanding the positive contributions of the CFE to U.S. national security interests—and it is a treaty which I will be voting for—I feel that I would be remiss in my duty as a Senator if I did not also point out some general concerns that I have with the flank agreement, as well as some specific concerns I have with the resolution of ratification for this treaty as it was voted out of the Foreign Relations Committee last week.

As I made clear in the Foreign Relations Committee hearing, I found the way in which the flank agreement was negotiated—opening up an already negotiated treaty for revision because of the reticence of one party to live up to its commitments—deeply troubling.

Although I would agree with those who argue that it is necessary to revisit international agreements when there has been a material change in circumstances—and few would argue that the breakup of the Soviet Union does not count on this score—treaties, by their very nature, are only worthwhile if they are binding the minute they are signed.

The post-cold-war world may very well be more turbulent and fluid than the world which we are used to, but I hope that the way in which the flank agreement was opened for renegotiation—with one party not in compliance with a treaty which they had signed—does not set a precedent which will call into question other treaties which, after the fact, a state may wish to change.

I think that it is important for the Senate to go on the record in support of the binding nature of the treaty obligations which we and other states enter into—obligations which should be opened for renegotiation in only the most extreme of cases—even as we give our support to this agreement.

Second, in changing the CFE flank equipment ceilings to meet Russian security concerns, we must be careful to make sure that we have not increased the insecurity felt by other states in or bordering the flank zone.

In its original conception, the CFE Treaty was intended to make Europe safe from the dangers of a big war between East and West. I think that there is general agreement that CFE has been and will continue to be effective in this respect.

But the CFE Treaty, as revised, must not become part of a European security architecture in which Europe is made safe for little wars, between the large and the small, or as a tool for intimidation used by the strong against the weak.

If such a situation were to result from the flank agreement revisions, Europe would be less stable and secure, not more.

Third, as several of my colleagues have already pointed out, the inclusion of condition 9 regarding Senate advice and consent for the multilateralization of the Anti-Ballistic Missile Treaty is, I think, unwarranted and unwise.

It is unwarranted because the Anti-Ballistic Missile Treaty is not connected in any way with the CFE. It is unwise because it calls into question whether the United States may attempt to reopen or substantively change a treaty because some now perceive that it is in our interests to do so.

There was an attempt to get this same language regarding the ABM inserted into last year's defense authorization bill. That effort failed. On its own, the Senate has already rejected this language. Now there is an attempt to resurrect this language and attach it to this treaty. The consideration of treaties is one of the highest responsibilities of the Senate, and I am disappointed that some of my colleagues have chosen to place petty politics above the interests of U.S. national security.

The ABM Treaty is the diplomatic foundation of our intercontinental ballistic missile reduction strategy. It was possible to negotiate and ratify the Strategic Arms Reduction Treaty, or START, and negotiate START II because of the strategic groundwork laid in the ABM Treaty. Abandoning or violating the ABM Treaty would threaten the strategic ballistic missile reductions under these two treaties, which, when implemented, would verifiably eliminate the intercontinental ballistic missiles carrying two-thirds of Russia's nuclear warheads.

I would have preferred to have had the opportunity to eliminate this condition from the final resolution of ratification, but, unfortunately, it does not appear that we will have this opportunity.

In addition to these general concerns, I also have one specific concern with the resolution of ratification for this treaty as it was voted out of committee last week, which I hope that we will have an opportunity to change.

I am concerned that condition 5 (F) of section 2 unfairly singles out Armenia for a report on compliance with the CFE Treaty. In so doing, this condition makes the treaty weaker, and less effective in guaranteeing U.S. security interests in Europe, not more.

Although some of my Armenian friends might not want me to say this, I do believe that there should be a report on Armenia's compliance with the treaty. There have been some troubling questions raised in the press and in our committee discussions regarding Armenian transshipments of arms from Russia, and whether Armenia is in violation of certain provisions of the CFE.

As I noted previously, this is a very sensitive part of the globe, and one in which even a relatively small amount of heavy weaponry can have tremendous impact on the balance of power. If

Armenia is in violation of the treaty, then appropriate measures should be taken.

However, it is precisely the volatile nature of this region that dictates that U.S. national security interests demand that we seek compliance reports on the other states in the region as well. There are questions regarding Azerbaijan's compliance with the CFE's Treaty Limited Equipment (TLE) limits, for example, and recent experience with civil war and ethnic strife in Georgia, Osettia, Chechnya, Abkhazia, and elsewhere in the region all suggest that a condition calling for region-wide compliance reports would be in order.

Indeed stigmatizing and isolating Armenia in this fashion may well prove to be counterproductive. If the CFE Treaty is perceived as a tool of one side or another in an already tense and volatile region, it will have the effect of destroying confidence, not building it, and will contribute to an atmosphere where the states of the region may seek to build their armed forces, not lessen them.

This would be a grave mistake, and that is why I believe that condition 5 (F) must be changed to call for compliance reports for the other countries in the Transcaucasus as well. I urge my colleagues to support the amendment offered to make just these changes when we vote on this issue.

Even with these reservations, however, I find that the treaty merits support. The CFE, with the revised flank agreement, provides an invaluable tool for stabilizing European security and lessening regional tension. I would urge all of my colleagues to join me in voting in favor of this treaty.

Mr. LUGAR. Mr. President, I voted in committee to support the CFE Flank Document and the accompanying resolution of ratification that was reported favorably by the Committee on Foreign Relations last week.

Let me review a few of the issues that commanded committee concern.

THE FLANK DOCUMENT AND RELATIONS BETWEEN RUSSIA AND FORMER SOVIET STATES

During committee consideration of the CFE Flank Document, members on both sides of the aisle voiced concern over United States willingness to serve as an intermediary in negotiations between Russia and other former Soviet states to secure permission for temporary Russian troop deployments on their soil or for revision of the Russian treaty-limited equipment quotas set in the 1992 Tashkent Agreement. Paragraphs 2 and 3 of section IV of the Flank Document restate Russia's right to seek such permission ''by means of free negotiations and with full respect for the sovereignty of the States Parties involved''. A United States note passed to the Russians, according to Undersecretary of State Lynn Davis, said that the United States was ''prepared to facilitate or act as an intermediary for a successful outcome in'' such negotiations. United States officials state that Washington's offer to serve as an intermediary between Russia and other Tashkent Agreement signatories was for the purpose of leveling the playing field between Russia and smaller countries.

Many of the conditions in the resolution of ratification seek to bind the executive branch to its asserted purpose.

THE FLANK DOCUMENT AND AN ADAPTED CFE TREATY

In short, I agree with a number of the cautions presented by various witnesses with regard to the impact of the flank agreement on both Russia and a number of the States of the former Soviet Union, as well as its implications for bordering Western States. Thus, I am supportive of most of the conditions in the Committee resolution.

But I also believe that, on balance, this flank agreement is a useful contribution to the larger effort to adapt the original CFE agreement to the changed circumstances we now confront in Europe. I believe that the Flank Agreement must be viewed in that context as well.

The original CFE agreement has been a useful instrument for winding down the military confrontation in Europe that was a principal feature of the cold war. The United States is now presented with an opportunity to adapt that treaty to the new security situation in Europe in a way that could, in my judgment, facilitate both NATO enlargement and improved NATO-Russian cooperation. Because the former Soviet Army, and indeed some elements of the current Russian Armed Forces, always disliked CFE and considered it inequitable, some have argued that amending or adapting it now would be a concession to Russia or a price the United States should not have to pay. In my view, it is in the interest of the United States, NATO, and, for that matter, Russia to update the CFE Treaty as the only way to ensure its continued viability and its stabilizing influence in the Europe of the next century.

In light of the dramatic developments that have occurred in Europe since the treaty was negotiated, the CFE Treaty should not be exempted from the kind of change that is occurring in so many other European political, economic and security institutions. Thus, it is wholly appropriate to eliminate the bloc-to-bloc character of the original treaty in favor of national equipment ceilings and to reduce the amount of military equipment that will be permitted throughout the treaty area.

In short, I tend to analyze the benefits and costs associated with the CFE Flank Agreement not only on their own merits, but also in terms of their contributions to overhauling the entire treaty; that is one of the contexts in which I believe we must review the CFE Flank Agreement.

I am supportive of the general direction of NATO's recent proposals for adapting the CFE Treaty. As a general matter, it would emphasize the need for reciprocity in the adjustments that are made and encourage transparency.

However, I would raise some concerns relating to three aspects of the NATO proposals for an adapted CFE regime and suggest that we need to bear them in mind as we consent to ratification of the CFE Flank Agreement.

First, NATO has proposed limits on the ground equipment that could be deployed in the center zone of Europe, defined as Belarus, the Czech Republic, Hungary, Poland, Slovakia, Ukraine—other than the Odessa region—and the Kaliningrad region of Russia. This could be viewed as singling out potential new members of NATO for special restrictions, thus saddling them de facto with second-class citizenship within NATO. It is one thing for NATO to make a unilateral statement, as it has recently done, that it has, at present, no intention or need to station permanently substantial combat forces on the territory of new member states. It is quite another for it to accept legal limitations on its ability to station equipment on the territory of these states as part of an adapted CFE Treaty. While NATO would not be precluded from stationing forces on the territory of these states, such deployment would be constrained by the individual national ceilings which apply to the equipment of both stationed and indigenous forces.

It is certainly useful to have such a limitation with respect to the Kaliningrad region of Russia. With that exception, however, all of Russian territory lies outside the central zone. While Russian forces, permitted by a pliant Belarus to be stationed on its territory, would presumably be subject to the national ceiling applicable to Belarus, such a deployment could be viewed by Poland, for example, as an attempt to intimidate it. This consideration needs to be taken into account by NATO negotiators as they elaborate the terms of the NATO proposal for adapting the CFE Treaty. It is possible that provisions covering cooperative military exercises and temporary deployments in emergency situations, as well as ensuring adequate headroom in the national ceilings of the Central European States, may resolve this concern.

Secondly, this special central zone could be viewed as isolating Ukraine. If Russia chose to build up forces in the old Moscow Military District abutting Ukraine, then Ukraine could find itself unable to respond because it is subject to the special provisions of the central zone. It may be that in the negotiation of the revisions in the CFE Treaty, some arrangement can be found to allay Ukrainian concerns by some special limitation on Russia with respect to all or a portion of the Moscow Military District.

Finally, in negotiating changes to the CFE Treaty, NATO negotiators must keep in mind the possibility of further enlargement of NATO at some

future date to include states beyond three or four central European nations. It must ensure that whatever revised CFE limitations it negotiates will permit NATO, should it so decide, to extend security guarantees to these countries that will be credible and on which NATO can make good, even under the provisions of a revised CFE Treaty.

In sum, the CFE Flank Agreement, if ratified, provides the first building block to a revised CFE Treaty. NATO's proposals for an adapted CFE Treaty are based on the assumption that the flank agreement will be ratified. That being the case, it is appropriate that the Senate, in consenting to the CFE Flank Document, not only judge it on its own terms but also in terms of the contribution it can make to a revised CFE Treaty.

Mr. KYL. Mr. President, Article II of the Constitution gave the President and the Senate equal treaty making powers, stating that the President ''shall have the power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur.'' Substantive changes to treaties also require the advice and consent of the Senate. John Jay made one of the most persuasive arguments about this point, noting that, ''of course, treaties could be amended, but let us not forget that treaties are made not by only one of the contracting parties, but by both, and consequently that as the consent of both was essential to their formation at first, so must it ever afterwards be to alter . . . them.''

Condition 9 of the resolution of ratification for the CFE Flank Agreement protects the Senate's constitutional role by requiring that any agreement to multilateralize the 1972 ABM Treaty be submitted to the Senate for advice and consent, since any such agreement would substantively alter the rights and obligations of the United States and others under the treaty. This condition is not the first expression of the Senate's view on this issue, and would merely be the latest addition to a clear legislative history.

Section 232 of the Defense Authorization Act for fiscal year 1995 clearly states that any agreement that substantively modifies the ABM treaty must be submitted to the Senate for advice and consent.

The conference report accompanying the fiscal year 1997 Defense Authorization Act built on the language in the 1995 Authorization Act stating that, ''the accord on ABM Treaty succession, tentatively agreed to by the administration would constitute a substantive change to the ABM Treaty, which may only be entered into pursuant to the treaty making power of the President under the Constitution.''

The conversion of the ABM Treaty from a bilateral to a multilateral agreement represents a substantive modification of the treaty. First of all, multilateralization changes the agreement by altering the definition of territory, which is at the heart of the treaty. Article I of the 1972 ABM Treaty states, ''Each Party undertakes not to deploy ABM systems for a defense of the territory of its country.''

Under the terms of the memorandum of understanding on Succession to the ABM Treaty, territory would now be defined as the ''combined national territories of the U.S.S.R. Successor States that have become Parties to the Treaty.'' The term periphery would also be changed to mean the combined periphery of all the former Soviet states party to the treaty. Thus, instead of the treaty applying to the territory of a single nation, in the case of the former Soviet Union, it would apply to a number of nations.

Multilateralization would also be a substantive change since it would create a system of unequal rights under the treaty, wherein the New Independent States of the former Soviet Union would be treated as second class citizens. The ABM Treaty that the Senate agreed to 25 years ago created identical rights and obligations for each party. Under the memorandum of Uunderstanding on succession, however, only two of the potential parties to the treaty—the United States and Russia—would be permitted to field an ABM system. Other nations, while responsible for regulating ABM activities on their territory, would not be allowed to deploy such a system. For example, Ukraine could locate new early warning radars on the periphery of its territory, oriented outward, but would not be permitted to protect its capital with an ABM system.

The multilateralization of the ABM Treaty also undermines U.S. efforts to promote the independence of the former Soviet republics. The memorandum of understanding on succession states that the term capital of the U.S.S.R. will continue to mean the city of Moscow. This designation, in addition to granting the New Independent States inferior rights under the treaty, and defining territory and periphery as the combined total of the former Soviet states sends the wrong message. It tells the New Independent States that they remain linked to Russia, without equal rights.

Finally, multilateralization represents a substantive change to the agreement since it would diminish U.S. rights and influence under the treaty. New parties will surely be given a seat at the Standing Consultative Commission [SCC], which interprets, amends, and administers the ABM treaty. Under the 1972 ABM Treaty, the United States could take actions through bilateral agreements with the Soviet Union. By expanding the number of nations in the treaty, it will now be necessary to reach multilateral consensus to interpret or amend the treaty. One country, such as Belarus, could effectively block United States actions or demand concessions, even if Russia and the other parties to the treaty agreed with the United States. Negotiating changes or common interpretations of treaty obligations with Russia is a difficult task. Adding up to 11 new parties to the treaty will make this process much more difficult.

In addition to the reasons I have cited as to why multilateralization would substantively modify the ABM Treaty, and the legislative history compelling the administration to submit the agreement to the Senate for advice and consent, the way the Senate has considered succession agreements for the various arms control treaties concluded between the United States and the Soviet Union further supports the case for Senate consideration of any ABM successorship document.

Since the breakup of the Soviet Union, the only arms control treaty which was not re-submitted to the Senate for advice and consent due to changes in countries covered, was the INF Treaty. This treaty carried a negative obligation, namely not to possess intermediate-range nuclear missiles. Since no treaty terms were altered and U.S. rights and obligations remained unchanged, advice and consent was not necessary.

The resolution of ratification for the START I Treaty was accompanied by a separate protocol multilateralizing the treaty, which was submitted to the Senate for advice and consent.

This same protocol determined successorship questions for the Nuclear Nonproliferation Treaty [NPT].

Finally, the Senate specifically considered the question of multilateralization of the Conventional Armed Forces in Europe [CFE] treaty under condition #5 of its resolution of ratification.

As I have discussed today, the addition of parties to the ABM Treaty clearly represents a substantive modification of the treaty. The Defense Authorization Acts passed by the Senate in 1995 and 1997, and the history of how this body has considered succession agreements to previous arms control accords with the Soviet Union strongly support the submission of any ABM multilateralization agreement to the Senate. Voting to require the administration to submit the ABM multilateralization agreement for advice and consent, simply protects the Senate's constitutional role in treaty making. Reasonable people may differ over the merits of the ABM Treaty or the addition of one or more countries to the agreement, but I believe all my colleagues can agree that before this new treaty is implemented, the Senate needs to fulfill its constitutional duty by considering whether to give its advice and consent to this new agreement.

Mr. SHELBY. Mr. President, I rise in support of condition 9 of the resolution of ratification of the CFE Flank Agreement.

Condition 9 simply confirms the Senate's role in treatymaking, as established in the U.S. Constitution and reaffirmed in existing law.

Specifically, condition 9 restates the requirement, enacted as section 232 of

the National Defense Authorization Act for fiscal year 1995, Public Law 103–337, that:

The United States shall not be bound by any international agreement entered into by the President that would substantially modify the ABM Treaty unless the agreement is entered pursuant to the treaty making power of the President under the Constitution.

Thus, this body is already on record supporting the preservation of the Senate's constitutional prerogatives in this area.

In other words, the President may not unilaterally negotiate substantive changes to the ABM Treaty without the advice and consent of the Senate.

Frankly, I am surprised some of my colleagues, who in the past have been strong supporters of this body's constitutional prerogatives with respect to treaties in general, and the ABM Treaty in particular, are arguing to strike condition 9.

Not only do the Constitution and U.S. law require Senate advice and consent, but submission to the Senate is also consistent with recent practice on the multilateralization of arms agreements with the Soviet Union to include successor states.

Both the multilateralization of START I and the multilateralization of the CFE Treaty were considered by the Senate when it acted on the Lisbon protocol and the CFE Treaty itself.

Mr. President, some of my colleagues argue that the multilateralization of the ABM Treaty is not a substantive change.

Consider the following:

The proposed changes would alter the basic rights and obligations of the parties—the central issue in any contract or treaty.

Second, the proposed changes would modify the geographic scope and coverage of the Treaty, and would do so by taking the extraordinary step of defining Russia's national territory to include the combined territory of other independent states of the former Soviet Union.

Third, the role and function of the Standing Consultative Commission [SCC], in particular the ability of the United States to negotiate amendments to the treaty to protect our national interests, would be dramatically changed by the accession of new parties to the treaty with effective veto power over treaty amendments.

Lastly, some of my colleagues have cited a Congressional Research Service legal analysis that seems to suggest that the Senate has no role in the process.

In response, I would like to point out that:

The CRS analysis concludes that an apportionment of the rights and obligations of the U.S.S.R. under the ABM Treaty to its successor states would not, in itself, seem to require Senate participation.

The CRS analysis goes on to say, however, ''arguably, a multilateralization agreement could include matters that would alter the substance of the ABM Treaty and require Senate advice and consent.''

The administration's proposal clearly falls into the latter category.

It does much more than merely apportion the rights and obligations of the U.S.S.R.

It apportions some rights to some successor parties—but denies them to others, in effect creating two classes of parties. This asymmetry and lack of reciprocity represents a clear departure from both the legal and strategic assumptions embodied in the initial treaty.

It specifically permits Russia to establish ABM facilities on the territory of other independent states. This is not an apportionment; this creates a new right under the treaty.

The administration proposal admits to the treaty states which neither have nor intend to have offensive or defensive strategic weapons, while giving them virtual veto rights over the strategic posture of other parties.

This brings me to the most important point: The administration's proposal affects the rights of the United States to provide for our own defense as we see fit.

It was to protect those rights that the Senate was given its advice and consent role in the first place. The Senate must not abdicate its role, now.

I urge my colleagues to support this provision.

Mr. DODD. Mr. President, today I rise to recognize the past success of the CFE Treaty and to stress that, in order to continue that success, this body must now offer its advice and consent for the CFE Treaty's Flank Document.

Since the CFE Treaty entered into force in 1992 it has made Europe a safer place; not just because it has resulted in the removal or destruction of over 53,000 items of major military equipment; not just because it has enabled international inspectors to undertake nearly 3,000 on-site international inspections; but, above all, because it has fostered a sense of trust between NATO and Russia.

Now, as we move to build on that sense of trust and deal with Russia as a new democratic state rather than an old arch-enemy, it is only fair and proper that we address Russia's concerns with respect to some of the arcane provisions of this treaty. The CFE Treaty, as written, establishes zones on an old cold war map, a map drawn before the breakup of the former Soviet Union. The pending revised Flank Document updates alters some of the provisions of this treaty to reflect the fact that we're now dealing with a new map.

Clearly the Flank Document does not address all the issues that we must face in adapting the CFE Treaty to the new situation in Europe, but it is a fine first step.

The conditions in the resolution of ratification are, for the most part, thoughtful and necessary. I also support the amendment, offered by Senators KERRY and SARBANES, clarifying condition 5 as it relates to Armenia.

Without this amendment, section F of condition No. 5 would have required the President to submit a special report to Congress regarding whether or not Armenia has been in compliance with the CFE Treaty, and, if not, what actions the President has taken to implement sanctions.

Why should we single out Armenia? Without the amendment, the language assumed that Armenia and only Armenia violated the CFE Treaty and should suffer sanctions.

This amendment was added in the interest of fairness and simply asks the President to examine compliance of all States Parties located in the Caucasus region rather than singling out Armenia for special treatment.

While the amendment ameliorates one problem with the resolution of ratification, I have another misgiving about another condition that was adopted by the Committee on Foreign Relations during consideration of the treaty last week. Condition No. 9 would require the President to certify that he will submit to the Senate, for its advice and consent, the agreement to multilateralize the 1971 Anti-Ballistic Missile Treaty.

I am of the same mind as my distinguished colleague, Senator BIDEN, on this issue. While the Senate does not prohibit itself from attaching unrelated conditions to resolutions of ratification, the Senate should exercise some self-restraint in such important matters. The Founding Fathers clearly distinguished the question of treaty ratification by requiring a supermajority in such cases. This is not every day legislation we're dealing with here. We're debating whether or not to ratify a treaty, and this attached, unrelated condition really has no place in today's debate.

In short, condition No. 9 links ratification of the Flank Document with the unrelated, but controversial 1972 Anti-Ballistic Missile Treaty debate. There are merits to both sides of that issue and that debate will surely have its time. This is the wrong way to move that debate forward.

Let us be certain of one thing: The Senate, with condition 9, interferes with what has long been a function of the executive branch. In the breakups of the U.S.S.R., Yugoslavia, Czechoslovakia, and Ethiopia, when the new States took on the treaty rights and obligations of their predecessors, no request for Senate advice and consent was sought. I ask my colleagues: Why are we treating the ABM Treaty differently?

In spite of my objection to condition 9, this treaty and its resolution of ratification are too important to be bogged down today over a debate on the ABM Treaty. I believe that the appropriate course of action is to ratify the pending Flank Document this is a reasonable initial adjustment to the CFE

Treaty. In doing so, we will also show Russia that we are willing to work with Russian officials in facing legitimate concerns, and, most importantly, we will maintain the viability of this valuable 30-nation agreement.

Mr. HELMS. Mr. President, I yield the remainder of my time to the distinguished Senator from Oregon [Mr. SMITH].

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. SMITH of Oregon. Mr. President, I rise in appreciation for the leadership of the chairman, the Senator from North Carolina, on this issue and as member of his committee I rise in support of the ratification of the CFE Flank Agreement.

The CFE Treaty has been remarkably successful in reducing the cold war arsenals of conventional weapons in Europe. To date well over 50,000 tanks, artillery pieces and aircraft have been destroyed or removed from Europe. This treaty serves as an important mechanism to continue balanced force reductions in Europe, to build confidence among European States, and to provide assurances that NATO expansion will in no way threaten Russia.

In addition to the Europe-wide national ceilings on specific categories of military equipment, the CFE Treaty established a system of four zones inside the map of Europe with separate subceilings. The three central zones are nested and overlapping, the fourth zone is the flank zone. The flank zones include Russia's northern and southern military districts that, during the cold war, were areas of heightened tension with NATO. NATO has corresponding limits on its Northern and Southern Flanks.

The CFE flank zones limit the amount of equipment a country is permitted to deploy in certain areas of its own territory. The outbreak of armed ethnic conflicts in and around the Caucasus in 1993 and 1994, most notably the large scale offensive launched by the Russian Government in Chechnya, led to Russian claims for the need to deploy equipment in excess of treaty limits in that zone.

Under the CFE Treaty, mechanisms exist that would allow parties the flexibility to make temporary adjustments in the size or location of their military equipment holdings with proper notification. However, in 1994 the Government of Russia signaled its intention to violate the treaty if such restrictions were not permanently relaxed.

In early 1995, Clinton administration officials adamantly insisted that Russia must meet its obligations under the CFE Treaty on schedule. By May of that same year, those rigid statements demanding compliance soon collapsed into a frenzied effort to renegotiate the treaty on terms that would be acceptable to Russia.

Aside from the embarrassing spectacle of Western concessions in the face of Russian arms control violations, the NATO alliance was further undermined by a United States-Russian side deal that failed to gain the support of our allies. A key element of the final compromise on this treaty is a confidential side statement which U.S. negotiators provided to the Russian delegation in order to win their approval of the Flank Document. An interim United States-Russian proposal—known as the Perry-Grachev understanding—led to yet another embarrassing retreat, this time from our own NATO allies. Finally, after 11th hour negotiations, the agreement before us today was accepted by all 30 parties to the CFE Treaty.

In order to understand the process through which this treaty was approved, I strongly recommend that any interested Senator review that short document, which is available in the Office of Senate Security on the fourth floor of the Capitol. After reading that document, the purpose of the numerous restrictions contained in the resolution of ratification—particularly paragraphs 3 and 6—should be abundantly clear.

The committee resolution reverses the affects of this side agreement by prohibiting United States participation in any negotiations which would allow Russia to violate the sovereignty of its neighbors. As further assurance, the resolution requires the President to certify, prior to deposit of the instrument of ratification, that he will vigorously reject any other side agreements sought by the Russians or any other country.

I believe that the proper approach for the United States would have been to insist on Russian compliance 18 months ago. However, the 30 parties to the treaty were willing to reach a compromise consisting of the document before the Senate today. In all likelihood, if this treaty is rejected, it will be renegotiated on less favorable terms. With that in mind, and because of the 14 conditions included in the committee's resolution of ratification, I am willing to recommend support for this treaty.

The treaty is an acceptable first step in resolving the difficult challenge of adapting a cold war era treaty to post-cold-war realities. It is one part in a series of efforts underway to redesign the security architecture of Europe, and as such it is an important step toward the larger goal of NATO enlargement.

The CFE Treaty and the Vienna-based organization that oversees its implementation are important pieces of the geopolitical landscape of Europe and the former Soviet Union. With the end of the cold war, decisions made in the context of the CFE Treaty affect U.S. security on the margins. But for countries such as the Baltic States, Ukraine, Georgia, and Azerbaijan, such decisions can affect the very sovereignty of these newly independent countries.

Russia—still the largest military power in Europe—has used its armed forces in recent years in both Georgia and Azerbaijan. Russia uses its military presence in Ukraine and Moldova to influence the sovereign governments of those states. Russian Government officials have made open threats of military invasion against the Baltics. Finally, less than a year ago, a bloody war in Chechnya was brought to an end. That war was characterized by wide scale Russian atrocities, the intentional targeting of civilians, and casualties possibly in excess of 100,000 people—mostly innocent men, women, and children. It is against this back drop that the countries on Russia's periphery watch any revisions to the security guarantees contained in the CFE Treaty.

Mr. President, I understand my time is up.

On this basis, this treaty has been negotiated. Again, with the leadership of the chairman, I urge support from the Senate and thank you for this time.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I want to pay my respects to the distinguished Senator from Oregon [Mr. SMITH]. He is the chairman of the Europe subcommittee, and he has devoted an enormous amount of time and effort to bringing this treaty forward. So he thanks me, but I thank him. I am glad he is in the Senate. I am glad he is a member of the Foreign Relations Committee.

I have been asked to advise Senators that the coming vote, after the able Senator from West Virginia, Senator BYRD, completes his presentation, the ensuing vote will be the last vote of the day.

I yield the floor and yield back such time as I may have.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, how much time remains before the vote?

The PRESIDING OFFICER. There is 3½ minutes for Senator BIDEN. You have 30 minutes.

Mr. BYRD. I thank the Chair.

Mr. President, I want to commend the managers of the agreement for the expeditious manner in which they have moved this agreement through the committee and to the floor in time for the deadline of May 15 in order that it not be subject to further action by the review conference in Vienna. As I understand it, the agreement was not submitted to the Senate by the Secretary of State until April 3, 1997. So I commend the committee. But I also wish to express my concern over the rushed manner in which the Senate has been forced to deal with this important treaty. All of us in this Chamber know that treaties are not considered by the House of Representatives, but they still have the effect and status of being the law of the land of our Nation. They have as much or even more importance, in some respects, and certainly as far as the Senate is concerned, than any bill that is passed by both Houses and has been subjected to the scrutiny of a conference committee.

In the case of treaties, the Senate considers them and, assuming that the President exchanges the instruments of ratification, they become the law of the land according to article 6 of the United States Constitution. Therefore, the Senate has a special responsibility, in the case of treaties, to exercise due caution and great care in dealing with treaties, since there is no review or check by the other body. Additionally, the Senate provides the only forum for the debate of the provisions of treaties, and for informing the American people about their content. Because of those realities, I am very concerned about the increasing tendency in this body, as has been evidenced by the Chemical Weapons Treaty that we recently passed, and now by this treaty, to enter into time agreements that inadequately protect the rights of all Senators to debate and amend treaties, but which also fail to defend the rights of the American people to know what is in the treaties. I think it is a bad trend. I think it should be curtailed, because it does not allow Members to thoroughly study and debate these complicate and important matters.

This committee report bears the date of May 9, 1997, when it was ordered to be printed. That was last Friday. As I understand it, it was made available to my staff on Monday of this week, and, so, I have had between Monday and now to consider the contents of the committee report. The committee report is where we naturally turn to understand the content of the treaty or content of the bill or resolution, as it were. Also, the courts turn to the phraseology of a committee report to better understand the intent of the legislature when it passes on a bill or resolution, or approves the resolution of ratification of a treaty. So it is important that Members have an adequate opportunity to study a committee report.

It is important that they have adequate opportunity to study the hearings. It is likewise important that they have an adequate opportunity to fully debate a treaty. Let me say, again, that according to article 6 of the United States Constitution—the Constitution, this Constitution—and the laws that are made in pursuance of this Constitution and the treaties that are made under the authority of the United States shall be the supreme law of the land—the supreme law of the land.

Now, that is a very heavy burden to place upon the U.S. Senate, as it is given the sole responsibility with respect to the Congress. As far as the Congress is concerned, the Senate has the sole responsibility, a very heavy responsibility, to study treaties, to conduct hearings thereon, to mark up the treaties, to approve of conditions or reservations, amendments, whatever, to those treaties. There is no other body that scrutinizes the treaty. The Senate of the United States—and that is one of the reasons why the Senate is the unique body that it is—unique body, the premier upper body in the world today, more so than the House of Lords in our mother country. And so it places upon us as Senators a responsibility that is very, very heavy, and we have a duty to know what is in a treaty before we vote on it. We get these requests, and here we are backed up against a date of the 15th.

We had the same problem, in a way, I think, with respect to the chemical weapons treaty. We are handed a unanimous consent request, and it is a bit intimidating for one Senator to be faced with the prospect that he will be holding up the business of the Senate if he holds up the unanimous consent request. But that is our responsibility; that is our duty.

So, I am increasingly concerned by the trend, as I have said, that we are finding ourselves being subjected to. It did not just begin yesterday or the day before, and I am not attempting to place any blame for that. I am simply calling attention to the fact that we have the responsibility as Senators under the Constitution, to which we swear an oath to uphold to support and defend, we have a duty to know what is in this treaty.

I am not on the committee, but I am a Senator, and I have as heavy a duty as does the Senator from North Carolina or the Senator from Delaware. That is the way I see it. I have as heavy a duty to know what I am voting on, because this is the law of the land. It is not an ordinary bill or resolution which can be vetoed by the President and which, if signed into law by the President, can be repealed next week or the following week or the next month. It is not that easy to negate the effects of a treaty if we find we made a mistake.

Well, so much for that. Here we are debating the treaty. We have one, two, three, four Senators on the floor debating an important treaty, and we are confined within a 2½-hour time limit, I believe. Four Senators. The law of the land. We should be debating the treaty without a time limit, at least in the beginning.

I have been majority leader of the Senate twice during the years when President Carter was President. I did not serve under Mr. Carter, I served with him. Senators don't serve under Presidents, we serve with Presidents. But I was majority leader during those 4 years. I was majority leader in the 100th Congress. I was minority leader in all of the Congresses in between 1981 and 1986.

We had some important treaties: INF Treaty, we had the Panama Canal Treaties, and we did not bring treaties like this to the floor and ask they be debated, no amendments thereon, and in a time limitation of 2 hours. And there was a request to cut that to 1 hour. We did not do that.

When I came here, we debated treaties, and we took our time. At some point, it is all right to try to get a time limitation after things have been aired; it is all right to try to bring it to closure. But I am somewhat disturbed and concerned by this trend that we find ourselves being subjected to.

As to the substance of the treaty, I want to note that condition No. 8 dealing with treaty interpretation provides sound guidance on the meaning of ''condition,'' which was authored by the distinguished Senator from Delaware, Mr. BIDEN, now the ranking Democrat on the Foreign Relations Committee, myself and former Senator Sam Nunn, the former chairman of the Senate Armed Services Committee, and agreed to on the Treaty on Intermediate Nuclear Forces in Europe of 1988. That is the INF Treaty.

In that instance, I was under great pressure from my friends on the Republican side of the aisle and great pressure from my friends on the Democratic side of the aisle to bring up the treaty. As majority leader, I thought it was my duty to wait until we had resolved some critical problems that were estimated to be critical problems by the Armed Services Committee and the Intelligence Committee before I brought it up. We spent considerable time on the treaty.

Condition (8) states that ''nothing in [the so-called Biden-Byrd] condition shall be construed as authorizing the President to obtain legislative approval for modifications or amendments to treaties through a majority approval of both Houses.''

Why was it necessary—I would like to ask this question of either the manager or the ranking manager of the resolution—why was it necessary for us to include condition (8), which certainly is a condition that I strongly support? Why was it necessary for us to include condition (8)?

(Ms. COLLINS assumed the chair.)

Mr. BIDEN. Madam President, would the Senator like me to respond?

Mr. BYRD. Yes, I yield, Madam President.

Mr. BIDEN. The Senator makes a valid observation. The truth is, it was not necessary, but I would like to give the explanation why it was included, and the majority can speak even more clearly to it.

The concern on the part of the majority was that the Clinton administration would use the Biden-Byrd language to justify sending a modification of a treaty for a two-House approval by majority vote rather than to the Senate for a supermajority vote when, in fact, it was a modification that constituted an amendment to the treaty.

You never intended it for that purpose; I never intended it for that purpose. The concern was, I think it is fair to say on the part of the majority, that the Clinton administration might have attempted to read it to allow them to avoid submission to the Senate for a supermajority vote under the Constitution and just go to each House for a majority vote.

Mr. BYRD. Does the manager wish to add anything?

Mr. HELMS. No, except to say Senator BIDEN has said it correctly.

Mr. BYRD. I am pleased that we have not done that. In other words, as I understand the distinguished ranking manager, the administration originally wanted the approval of disagreements through normal legislative action by both bodies of the Congress which would, of course, require only majority approval in both bodies. Was that the concern?

Mr. BIDEN. Yes, it is. If I may say, Madam President, to the distinguished leader, that in a November 25, 1996, memorandum for Alan J. Kreczko, Special Assistant to the President and Legal Adviser to the National Security Council, from Christopher Schroeder, Acting Assistant Attorney General, there is this phrase on page 14 of that memorandum. It says:

Because the Senate took the view that such ''common understandings'' of a treaty had the same binding effect as express provisions of the treaty for the purposes of U.S. law, the Biden condition logically supports the proposition that the President may be authorized to accept changes in treaty obligations either by further Senate advice and consent or by statutory enactment.

The next paragraph:

In light of these judicial and historical precedents, we conclude the Congress may authorize the President, through an executive agreement, substantially to modify the United States' international obligations under an arms control (or other political-military) treaty.

So the purpose, again, was to make it clear what you and I, as we understood at the time that condition was added—I might add, I get credit for it being called the Biden-Byrd condition, of which I am very proud, but the truth of the matter is, after having suggested such a condition early in the ratification process, I spent the next 7 months in the hospital during the remainder of the whole ratification process, and it was the distinguished leader, the Senator from West Virginia—it really should be the Byrd-Biden condition. Nonetheless, that is the reason. You and I never thought a majority vote in both Houses as a simple piece of legislation would be sufficient to approve an amendment to a treaty, and that was the concern expressed by the majority that it be memorialized, if you will, in condition (8).

Mr. BYRD. I thank the very able ranking manager, and I compliment him again and compliment the manager. I am glad that condition has been made clear.

Secondly, I would like to ask the managers of the agreement their reasoning behind their view of the collective impact of conditions (1), (2) and (3). Let me preface what I have just said by reading excerpts from these conditions.

CONDITION 1: POLICY OF THE UNITED STATES

I read from the committee report, page 20:

Condition (1) simply restates United States policy that no Russian troops should be deployed on another country's territory without the freely-given consent of that country. Unfortunately, Russia continues to station troops in several sovereign countries of the former Soviet Union—in several cases against the express wishes of the host country.

CONDITION 2: VIOLATIONS OF STATE SOVEREIGNTY

Condition (2) states the view of the Senate that Russian troops are deployed abroad against the will of some countries (namely, Moldova). It further states the Secretary of State should undertake priority discussions to secure the removal of Russian troops from any country that wishes them withdrawn. Further, it requires the Administration to issue a joint statement with the other fifteen members of the NATO alliance reaffirming the principles that this treaty modification does not give any country: (1) The right to station forces abroad against the will of the recipient country; or (2) the right to demand reallocation of military equipment quotas under the CFE Treaty and the Tashkant Agreement. This joint statement was issued, in fact, on May 8, 1997 in Vienna.

CONDITION 3: FACILITATION OF NEGOTIATIONS

Now, I am particularly interested in this condition.

Condition (3) ensures that the United States will not be party to any efforts by Russia to intimidate or otherwise extract CFE Treaty concessions from its smaller neighbors.

Let me interpolate right there for the moment with a rhetorical question.

Why should we have to have a condition to ensure that the United States will not be party to any efforts by Russia to intimidate or otherwise extract CFE Treaty concessions from its smaller neighbors? It would seem to me that would be a given.

Let me continue, and then I will yield to the distinguished ranking member.

Indeed, this condition, along with much of the rest of the resolution, is specifically designed to require the United States to safeguard the sovereign rights of other countries (such as Ukraine, Moldova, Azerbaijan, and Georgia) in their dealings with the Russian Federation.

Listen to this:

The committee became alarmed, over the course of its consideration of the CFE Flank Document, with several aspects of the United States negotiating record. This condition [condition No. 3] will ensure that the United States will adhere to the highest principles in the conduct of negotiations undertaken pursuant to the treaty, the CFE Flank Document, and any side statements that have already been issued or which may be issued in the future.

Now, there are several questions that jump out at anyone who reads that paragraph.

It makes reference to ''side statements.'' It uses the word ''alarmed.'' There is a condition there that ensures that the United States will not be a party to any efforts by Russia to intimidate or otherwise extract CFE Treaty concessions from a smaller neighbor.

Why do we have to have a condition to that effect? Is there some confusion about what the right position is that the United States should take? Is it not a given that the United States would not be a party to any efforts by Russia to intimidate concessions from its smaller neighbors?

I yield to the distinguished Senator.

Mr. BIDEN. Let me say, this all came about—and they are, obviously, as usual, very good, incisive and insightful questions.

I think it is unnecessary because I think it is a given. But let me explain, in fairness, why we got to this point and why I thought it was—speaking only for myself—a clarification, although in some sense I thought it was a demeaning clarification. Let me explain.

During the negotiations on the flank agreement, there was concern about what became referred to as a ''side agreement.'' That was, there was an issue that came up during the negotiations where a diplomatic note was passed, which is classified—I am not able to give you, but I can tell you from the committee testimony what it said—a note that was passed to the Russian representative dealing with the issue of the stationing of Russian troops on the soil of the countries you named.

The Under Secretary of State, Lynn Davis, who appeared before the committee on April 29, was asked to explain. He went on to explain why a statement was made to the Russians. The statement made was that we would—this is the quote, in part—''the United States is prepared to facilitate or act as an intermediary for a successful outcome in discussions that could take place under the flank agreement and the CFE Treaty between Russia and other Newly Independent States.''

The worry expressed by my friends in the Republican Party was that this reflected a possible inclination to try to mollify Russia and put American pressure on Moldova or Georgia or other states to accept Russian deployment of Russian forces on their soil.

The concern was that the assertion made by the U.S. negotiators was a way of saying, do not worry, we are going to help you to get Russian troops placed in those regions.

Lynn Davis, the Under Secretary said, no, that was never the intention of that ''side agreement,'' as it became referred to.

I will quote what he said at the hearing to my friend from West Virginia. He said:

We see this particular statement of our intentions as part of the reassurance that we can make so that those countries will feel that this is an agreement that continues to be in their security interests. This statement of our intentions makes clear that the commitment is predicated on an understanding that any agreements between Russia and the Newly Independent States must be done on a voluntary basis with due respect for the sovereignty of the countries involved, and our role here is indeed to reinforce that and ensure that it is carried out.

This was the concern that was expressed by my friends on the Republican side, that the United States intention to level the playing field between Russia and other Newly Independent States had not been seen that way by all concerned.

So what was done—and the administration signed on to the condition—was to make it crystal clear that this offer of an intermediary role was not for the purpose of using our influence or power to coerce them into accepting a demand or a suggestion from their Russian brethren.

That is the context, I say to my friend, in which it came up. You used the phrase ''the committee became alarmed.'' Some in the committee were alarmed because of the wording of the ''side agreement.'' This was done to clarify what the administration says was their intent from the beginning but now locks in the stated interpretation by the administration of what that whole thing was all about.

I hope I have answered the question, and I hope I have done it correctly.

Mr. HELMS. You have done it correctly, I say to the Senator.

Conditions 1, 2, and 3 of the resolution on ratification require the President to observe reasonable limits in the conduct of certain negotiations facilitated by the United States in support of the CFE Treaty. Specifically, this entails an obligation for the President to conduct his diplomacy in a manner that respects the sovereignty and free will of countries on the periphery of Russia that are under pressure by Russia to allow the establishment of military bases.

In fact, I do not believe that the United States should be party to any negotiation which could result in allowing Russia to deploy its troops into the territory occupied by the Soviet Union for nearly 70 years. Yet this is exactly the result contemplated by the Clinton administration if this resolution of ratification is not clear on this point. Conditions 1, 2, and 3 are clear on this matter.

It is clear from this document that the Clinton administration has demonstrated a willingness to participate in negotiations that could actually result in the establishment of Russian military bases on the territory of other States with the endorsement—and even with the active assistance—of the United States. Is there anyone in the administration who is prepared to state that it would be in the United States' interest for Russia to establish military bases outside of its territory?

The Clinton administration offers hollow assertions that Russian troops will not be deployed in other States without the freely given consent of the relevant government. Russia—still the largest military power in Europe—has used its armed forces in recent years in both Georgia and Azerbaijan with virtually no complaint from the Clinton administration.

Russia uses its military presence in Ukraine and Moldova to influence the sovereign governments of those States while the Clinton administration remains silent. Russian Government officials have made open threats of military invasion against the Baltic States. Finally, less than 1 year ago, a bloody war in Chechnya was brought to an end. That war was characterized by wide scale Russian atrocities, the intentional targeting of civilians, and casualties possibly in excess of 100,000 people—mostly innocent men, women, and children. Do the administration's lawyers find that these incidents were with the freely given consent of the affected governments?

Conditions 1, 2, and 3 set reasonable limits specifically tied to activities cited in paragraph IV (2) and (3) of the CFE Flank Document.

Mr. BIDEN. Mr. President—Madam President, I made the mistake of referring to the Presiding Officer as ''Mr. President'' before I turned around. And I also made the mistake of referring to Under Secretary Davis as ''he.'' It is ''she.'' I knew that, and I apologize on both scores.

Mr. BYRD. Well, Madam President, I came up, I suppose, at a time when political correctness did not make any difference. As far as I am concerned, it does not make any difference yet. And the pronoun ''he'' is inclusive. It was inclusive when I was a boy; it was inclusive when I became a man. It still is inclusive of the female. So I would not worry too much about that.

Mr. BIDEN. Madam President, as the distinguished former majority leader knows, another former majority leader, Senator Baker, used an expression all the time. He would come to the floor, and he would say, ''I ain't got no dog in that fight.''

Mr. BYRD. I commend the committee for including that condition.

I can understand how the committee would become alarmed. I think that it would have been well if all Senators could have been notified that there was—and maybe they were, I do not know, but I do not remember being notified except through my own staff that there was such a paper up in room 407 so that they could have gone up and examined it. I heard about it this afternoon, and I went up and looked at it.

So I think the committee had a right to be alarmed. I congratulate the committee on including the condition which, as Mr. BIDEN has just said, locks it in, locks the administration in, so there will be no doubt that the United States will not be party to any efforts by Russia to intimidate or otherwise extract CFE Treaty concessions from its smaller neighbors.

I would dare say, if the people in Azerbaijan or Armenia or Georgia should see that language, they would be alarmed also—they would be alarmed also. They would wonder, where does the United States stand? But the condition is there. And I again commend the committee on including it.

Do the managers feel that U.S. policy is now clearly to protect the interests and rights of the newly sovereign nations of the Caucasus against intimidation and pressure tactics by the Russians regarding equipment that is covered by the flank agreement that we are considering here today?

Mr. HELMS. Yes, sir.

Mr. BIDEN. I would say yes, as well, Madam President.

Mr. BYRD. Madam President, how much time remains?

The PRESIDING OFFICER. The Senator has 6 minutes remaining.

Mr. BYRD. Madam President, I thank all Senators. Especially I thank the manager and ranking manager on the committee.

I shall vote for the treaty.

I yield the floor.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Will the Senator yield me 1 minute?

Mr. BYRD. I yield 1 minute to the Senator.

Mr. HELMS. I thank the Senator.

During the past 4 years, the Clinton administration has remained silent while Russia has encroached upon the territory and sovereignty of its neighbors. It was the lack of a foreign policy—not a lack of tools—that allowed this to happen.

I have confidence that the new Secretary of State will correct the course of our policies toward Russia, and I gladly support this treaty to aid the Honorable Madeleine Albright in that endeavor. The collapse of the Soviet Union was one of the finest moments of the 20th century. To allow even a partial restoration of the Soviet Union before the turn of the century would be a failure of an even greater magnitude.

Senator LOTT, I believe, is standing by.

I thank the Senator.

Mr. BYRD. I thank the distinguished Senator.

I reserve the remainder of my time.

Mr. BIDEN. Madam President, before the distinguished leader takes the floor, if I could just take 60 seconds of the 3 minutes I have remaining to comment on something the Senator from West Virginia said.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. BIDEN. Madam President, the Senate has always been served well by the talent of the Senator from West Virginia and, most importantly, in making sure that we do our job responsibly.

I would make only one 20-second explanation of why I think this treaty got less of a cover than any others.

One was the way in which it was delayed and being presented and the timeframe. But a second reason is that people who followed this, which is a mistake to assume everyone should, people who follow this have been aware of what the terms of the agreement were since May of last year.

I think many of us fell into the routine on Foreign Relations and Armed Services of thinking that its terms were well known. And it was widely accepted, the broad outlines of the treaty. But I think the Senator makes a very valid point and I, too, as ranking member of this committee, do not want

to be party to these expedited efforts to deal with very significant security issues relating to the United States.

Mr. HELMS. Let us make a pact.

Mr. BIDEN. We make a pact.

Mr. BYRD. Mr. President, I thank both Senators.

Mr. BIDEN. I reserve the remainder of my time, if I have any.

Mr. LOTT. Madam President, could I inquire how much time is remaining for debate?

The PRESIDING OFFICER. The Senator from West Virginia has 5 minutes remaining. The Senator from Delaware has 2 minutes remaining.

Mr. LOTT. Then I will yield myself time off my leader's time.

Mr. BYRD. Do you need more time?

Mr. LOTT. No. I thank the Senator from West Virginia.

I am glad I was able to come to the floor, Madam President, and listen to this exchange. I always enjoy learning from the exchanges involving the senior Senators, like the Senators from West Virginia and North Carolina and Delaware. I wish all Members had been here for the last hour and heard this debate.

I do want to take just a few minutes, as we get to the close of debate, to speak on the Chemical Forces in Europe flank agreement or resolution of ratification because I think it is very important. I wish we did have more time to talk about all of its ramifications, but I know the chairman and the ranking member have gone over the importance of this treaty earlier today.

Madam President, we have an important treaty before us today modifying the 1990 Conventional Armed Forces in Europe Agreement [CFE]. The Flank Document adjusts the CFE boundaries to reflect the collapse of the Soviet Empire, adds reporting requirements, and increases inspection provisions.

Negotiations to modify the CFE Treaty began in 1995, because Russia threatened to violate the flank limits in the original treaty. The precedent of modifying a treaty to accommodate violations by a major signatory concerned many of us. We have also been concerned about how Russia intends to use the Flank Agreement to pressure countries on its borders—former Republics of the Soviet Union. Our concerns were dramatically heightened by the classified side agreement the administration reached to further accommodate Russian demands. This side agreement is available for all Senators to review in room S–407 of the Capitol.

The concerns about the CFE Flank Agreement are shared by a number of states which have been subjected to Russian intimidation, pressure and subversion. States with Russian troops on their soil without their consent—Moldova, Ukraine, and Georgia—have rightly expressed concern that the Flank Agreement must not undermine their sovereign right to demand withdrawal of those Russian forces. A fourth country, Azerbaijan, has been subject to Russian-sponsored coups and assassination attempts. They have been reluctant to approve the Flank Agreement without adequate assurances.

The resolution of ratification before the Senate today addresses these concerns. The resolution includes a number of binding conditions which make clear to all CFE parties that no additional rights for Russian military deployments outside Russian borders are granted. The resolution ensures that United States diplomacy will not be engaged on the side of Russia but on the side of the victims of Russian policies. In addition, the 16 members of NATO issued a statement last week affirming that no additional rights are granted to Russia by the Flank Agreement. This statement was a direct result of the concerns expressed by other CFE parties and by the Senate.

The resolution directly addresses the administration's side agreement in condition 3 which limits United States diplomatic activities to ensuring the rights of the smaller countries on Russia's borders. This resolution ensures the United States will not tacitly support Russian policies that have undermined the independence of Ukraine, Georgia, Moldova, and Azerbaijan. Finally, the resolution requires detailed compliance reports and lays out a road map for dealing with noncompliance in the future.

The resolution of ratification also addresses important issues of Senate prerogatives. It clarifies that the Byrd-Biden condition, added to the INF Treaty in 1988, does not allow the administration to avoid Senate advice and consent on treaty modifications or amendments. The resolution addresses the issue of multilateralizing the 1972 ABM Treaty in condition 9. The administration has raised objections to this provision as they have to many previous efforts to assert Senate prerogatives on this point. This should be an institutional position—not a partisan issue.

For more than 3 years, Congress has been on the record expressing serious misgivings about the administration plan to alter the ABM Treaty by adding new signatories. Section 232 of the 1994 defense authorization bill states the issue clearly: ''The United States shall not be bound by any international agreement entered into by the President that would substantively modify the ABM Treaty unless the agreement is entered pursuant to the treaty making power of the President under the Constitution.''

Efforts to address the multilateralization issue since then have resulted in filibusters and veto threats. It should not surprise anyone that the Senate selected this resolution of ratification to address the issue—just as Senators BYRD and BIDEN selected the resolution of ratification for the INF Treaty to address an ABM Treaty issue 9 years ago.

Many of my colleagues are familiar with the issue of ABM multilateralization. Despite the often arcane legal arguments, the issue is not complicated. The Senate gave its advice and consent to the 1972 ABM Treaty as a bilateral agreement between the United States and the Soviet Union. The administration has proposed adding as many as four new signatories to the treaty and has negotiated limited treaty rights for those new signatories. The administration's proposal would define Russia's national territory to include these countries for purposes of the ABM Treaty. The administration's proposal would essentially define military equipment of these countries as belonging to Russia for purposes of the ABM Treaty. The administration's proposal would add new countries to the ABM Treaty but not grant them rights allowed the original signatories. This would mean that countries would have the power to block future U.S. amendments to the ABM Treaty—even though the new signatories would not have the same rights and obligations as the United States. The administration's proposed multilateralization would only address some of the military equipment covered under the original ABM Treaty—leaving a radar in Latvia, for example, outside the scope of the new treaty. Under the administration's proposal, the vast majority of states independent which succeeded the Soviet Union would be free to develop and deploy unlimited missile defenses—a dramatic change from the situation in 1972 when the deployment of missile defenses on these territories was strictly limited by the ABM Treaty.

In part and in total, these are clearly substantive modifications which require—under U.S. law—Senate advice and consent. Multilateralization would alter the object and purpose of the ABM Treaty as approved by the Senate in 1972. Multilateralization, therefore, must be subject to the advice and consent of the Senate.

The administration argues that it has the sole power to determine questions of succession. But that is not true. The Congressional Research Service opinion, quoted widely in this debate, recognizes that ''International law regarding successor States and their treaty obligations * * * remains unsettled.'' It also notes that ''international law does not provide certain guidance on the question of whether the republics formed on the territory of the former U.S.S.R. have succeeded to the rights and obligations of the ABM Treaty'' and that ''a multilateralization agreement could include matters that would alter the substance of the ABM Treaty and require Senate advice and consent.'' It is my understanding that this opinion was prepared a year ago by a lawyer who has not even seen the text of the proposed agreement.

The administration's position does not recognize the arms control precedents followed in the last decade. Arms control treaties are different from

treaties on fisheries, taxes, or cultural affairs. START I was concluded with the Soviet Union but entered into force only after the Senate gave its advice and consent to the Lisbon Protocol apportioning the nuclear forces of the former Soviet Union among successor States. The Bush administration did not argue that Ukrainian SS–19 missiles were the property of Russia. Yet, the Clinton administration is essentially arguing that Ukrainian phased-array radars are Russian under the proposed ABM multilateralization agreement. The question of successor state obligations under the CFE Treaty was explicitly recognized by the Senate when we gave our advice and consent to that treaty. During our consideration, a condition was included in the resolution of ratification which specified procedures for the accession of new States Parties to the CFE Treaty. On the issue of ABM multilateralization, Congress has specifically legislated on our right to review the agreement. To my knowledge, that has not happened on any other succession issue. Clearly, ABM multilateralization is very different from routine succession questions which have been decided by the executive branch alone.

Madam President, I agree with the administration on one important point. This is a constitutional issue. The White House has taken one position until today, and now the Senate has definitively taken another. Last January, I asked President Clinton to agree to submit three treaties for our consideration. the President has agreed to submit the ABM Demarcation agreement and the CFE Flank Agreement, which is before the Senate today. After he refused to submit ABM multilateralization, I said publicly that I would continue to press for the Senate prerogatives—because the Constitution, the precedents and the law are on our side. We do not prejudge the outcome of our consideration of ABM multilateralization. All we require is that the administration submit the agreement to the Senate. Yes, that requires building a consensus that may not exist today but such a consensus is necessary for a truly bipartisan national security policy. That is the issue before the Senate today.

Late last week, the administration recognized the Senate's desire to review ABM multilateralization. They proposed replacing the certification in condition 9 with nonbinding ''sense of the Senate'' language. In exchange, Secretary Albright offered to send a letter assuring us that we could address multilateralization in an indirect way—as part of a reference in the ABM demarcation agreement. But this offer was logically inconsistent. It asked the Senate to simply express our view about a right to provide advice and consent to multilateralization—and then accept a letter that explicitly denied that right. Adding new parties to the ABM Treaty is a fundamentally different issue from the proposed demarcation limits on theater defense systems. The administration's offer would allow multilateralization regardless of Senate action on the demarcation agreement. Our position is simple: We want to review multilateralization through the ''front door'' on its own merits—not through the ''back door'' as a reference in a substantively different agreement.

When the administration agreed to submit the CFE Flank Agreement for our advice and consent, we were asked to act by the entry into force deadline of May 15. We will act today even though the treaty was not submitted to the Senate until April 7—3 months after my request. We will act today even though we have a very full agenda—including comp time/flex time, IDEA, partial birth abortion and the budget resolution. We will fulfill our constitutional duty, we will address our concerns about policy toward Russia, and we will address the important issue of Senate prerogatives.

I urge my colleagues to support the entire resolution of ratification reported by the Foreign Relations Committee—including condition 9 on ABM multilateralization.

Madam President, I want to thank many Senators who have worked very hard and for quite some time on this treaty and on the ABM condition.

I particularly would like to thank Chairman HELMS, Senator BIDEN, Senator GORDON SMITH, and their staffs for all the work they did to get this resolution before the Senate today. Also, I would like to thank Senators who helped in insisting on Senate prerogatives—Senator WARNER and Senator MCCAIN, Senator SMITH, Senator KYL, Senator SHELBY, Senator LUGAR, and Senator HAGEL. A number of Senators on the committee and some not on the committee have been very much involved in this process. I commend them all.

Senators have had concerns about how and why this agreement was negotiated, and we had concerns about a side deal the administration made with the Russians concerning the allocation of equipment under the treaty.

The Senate has addressed these concerns decisively in this resolution of ratification. The resolution places strict limits on the administration's flank policy. It ensures that we will be on the side of the victims of Russian intimidation and that the United States will stand up for the independence of States on Russia's borders.

Most important, this resolution addresses a critical issue of Senate prerogative, our right to review the proposed modifications to the 1972 ABM Treaty. It was a decade ago that another ABM Treaty issue was brought in this body. That debate over interpretations of the ABM Treaty was finally resolved in the resolution of ratification for the INF Treaty in 1988.

Today, we are resolving the debate over multilateralization of the ABM Treaty in this resolution of ratification. For more than 3 years now Congress and the executive branch have discussed back and forth the appropriate Senate rule in reviewing the administration's plan to add new countries to the ABM Treaty.

Condition 9 requires the President to submit any multilateralization agreement to the Senate for our advice and consent. It does not force action here. It just says we should have that opportunity. We should be able to exercise that prerogative to review these changes. It ensures we will have a full opportunity to look at the merits of multilateralization in the future. I believe the Constitution and legal precedence are in our favor.

Today, the Senate will act on the Conventional Forces in the Europe [CFE] Flank Agreement in time to meet the May 15 deadline. In spite of the limited time we had to consider the agreement and the very full schedule that we have had on the floor, we are meeting that deadline.

I did have the opportunity to discuss this issue with our very distinguished Secretary of State yesterday, and we discussed the importance of this CFE Flank Agreement. Also, we talked about how we could properly and appropriately address our concerns about multilaterilization. I suspect that she probably had something to do with the decision to go forward with it in this form, and I thank her for that, and the members of the committee for allowing it to go forward in this form.

Mr. BIDEN. Will the Senator yield?

Mr. LOTT. I am happy to yield to the Senator.

Mr. BIDEN. I would like to publicly comment and compliment the Senator from Mississippi. The truth of the matter is that this treaty would not be before the Senate today as a treaty without the efforts of the majority leader. The executive believed that they can do this by executive agreement. They did not think they needed to submit this to the Senate, although I had been for several months explaining that I thought it should be treated as a treaty. It was not until the distinguished leader from Mississippi said, if it is not treated as a treaty, we have a problem.

The truth of the matter is the reason it is here is because of the distinguished Senator from Mississippi. I thank him for that.

Mr. LOTT. I thank the Senator for those comments. I did write to the President expressing my concerns in this area in January of this year, and other issues.

When I had the opportunity to visit with Secretary Madeleine Albright before she was confirmed by the Senate, I had the temerity to read to her from the Constitution about our rights in the Senate in advice and consent, and she said, ''You know, I agree with you. I taught that at Georgetown University,'' and I believe she meant that.

I think we are seeing some results of that, and I appreciate the fact that our prerogatives are being protected. We

have had this opportunity to review it, debate it, and we will be able to take up other issues later on this year that are very important for Senate consideration. I think the process has worked. I urge my colleagues to support this resolution of ratification.

I yield the floor.

Mr. BYRD. Madam President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 5 minutes remaining.

Mr. BYRD. I will take 30 seconds. I want to thank the majority leader, and I associate myself with the remarks of Senator BIDEN. I thank the majority leader in insisting that this come to the Hill as a treaty, which requires a supermajority in the Senate. I very much appreciate that.

Madam President, I yield back the remainder of my time to Mr. BIDEN and Mr. HELMS. They can yield it back or they can use it.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Madam President, I have nothing more to say, which will surprise my colleagues, except that the distinguished Democratic leader, I am told, may wish to speak on leader's time for a few moments on this issue. Give me a minute to check on whether or not the distinguished leader, Mr. DASCHLE, wishes to speak.

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. BIDEN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DASCHLE. Madam President, the Senate today is being presented with an opportunity that is as rare as it is important. For the second time in less than 3 weeks, the Senate is being asked to give its advice and consent on a major arms control treaty: the flank agreement to the Conventional Forces in Europe treaty.

Late last month, the Senate had placed before it the Chemical Weapons Convention [CWC]. After much debate, the Senate resoundingly rebuffed several attempts by the treaty's opponents to scuttle it, and eventually passed CWC with the support of 74 Senators.

Now many have questioned the length to which CWC opponents went in their efforts to kill or delay Senate consideration of this treaty. I share some of those concerns. However, in the end, when the Senate was finally allowed to take up the CWC treaty, I would argue that the ensuing floor debate on the CWC treaty represented the Senate at its best. Senators discussed honest disagreements on issues directly related to the CWC treaty, carefully weighed those discussions, and finally voted up or down on those issues and, ultimately, the treaty itself. In short, during the actual floor debate of the CWC treaty, we saw the Senate acting in a responsible and exemplary fashion.

I am confident that if we had this same kind of debate on the CFE treaty, we would see the same result. In fact, the margin would probably be significantly greater for CFE than for CWC. I have listened carefully to the comments of my fellow Senators on for their views on this important agreement and have yet to hear a single Senator voice his or her opposition to the CFE treaty. This was true before the Foreign Relations Committee attached 13 CWC-related conditions and it is especially true after. As a result, Senate support for the CFE agreement itself probably exceeds the 74 who voted for the CWC.

Unfortunately, the Senate is being prevented from considering the CFE treaty in the same fashion we considered the CWC. We are not being allowed to look at just the CFE treaty and issues directly related to it. Instead, the time for Senate consideration of the CFE treaty is likely to be spent largely on a wholly unrelated issue—the ABM treaty and opponents efforts to undermine it.

Now, I understand this is an important issue to many members on the other side of the aisle. And, I know that Senators are well within their rights to attach unrelated matters to most types of legislation we consider

However, I disagree with the proponents of the ABM condition on the merits and I especially disagree with them on their methods. On the merits, the administration's lawyers argue persuasively that the Constitution assigns the exclusive responsibility to the President to determine the successor states to any treaty when an original party dissolves, to make whatever adjustments might be required to accomplish such succession, and to enter into agreements for this purpose. Increasing the number of states participating in a treaty due to the dissolution of an original party does not itself constitute a substantive modification of obligations assumed. This is the view of the administration's lawyers. This is also the view of the nonpartisan Congressional Research Service in a legal review they conducted last year.

As for their methods, I think it is both unfortunate and short-sighted to use a treaty that is in our national security interests as a vehicle for advancing a totally unrelated political agenda. The principal sponsors of this condition have previously made no secret of the fact that they would like to see the United States walk away from the entire ABM treaty and immediately begin spending tens of billions of dollars to build a star wars type missile defense. With this act, they have now revealed the lengths they are willing to go to force their views on this Senate and this administration.

Nevertheless, that is what has been done. Senators are now faced with a difficult choice: vote for this treaty in spite of the unacceptable ABM condition or against it because of the ABM language. This is an extremely close call for many of us.

In the end, Madam President, we must support this treaty. We must do so for two reasons. First, the treaty is still fundamentally in our strategic interest. Failure to pass this treaty now could unravel both the CFE agreement as well as any future efforts to enhance security arrangements in Europe. Second, the administration, which must ultimately decide how to deal with the objectionable ABM condition, has indicated that we should vote for this treaty now and let them work out what to do about this provision later. It is for these reasons that I cast my vote in support of this treaty and urge my colleagues to do the same.

Mr. BIDEN. Madam President, depending on the disposition of the chairman of the committee, I am prepared to yield back whatever time we have left and am ready to vote. The distinguished minority leader does not wish to speak on this at this moment.

I yield back the remainder of my time.

Mr. BYRD. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have been ordered.

Mr. LOTT. Madam President, if I could say for the Senators that will be coming over, this will be the last vote for the night so we can attend a very important dinner we have scheduled momentarily.

The PRESIDING OFFICER. The question is on agreeing to the resolution of ratification. On this question, the yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The yeas and nays resulted—yeas 100, nays 0, as follows:

[Rollcall Vote No. 67 Ex.]

YEAS—100

Abraham	Enzi	Leahy
Akaka	Faircloth	Levin
Allard	Feingold	Lieberman
Ashcroft	Feinstein	Lott
Baucus	Ford	Lugar
Bennett	Frist	Mack
Biden	Glenn	McCain
Bingaman	Gorton	McConnell
Bond	Graham	Mikulski
Boxer	Gramm	Moseley-Braun
Breaux	Grams	Moynihan
Brownback	Grassley	Murkowski
Bryan	Gregg	Murray
Bumpers	Hagel	Nickles
Burns	Harkin	Reed
Byrd	Hatch	Reid
Campbell	Helms	Robb
Chafee	Hollings	Roberts
Cleland	Hutchinson	Rockefeller
Coats	Hutchison	Roth
Cochran	Inhofe	Santorum
Collins	Inouye	Sarbanes
Conrad	Jeffords	Sessions
Coverdell	Johnson	Shelby
Craig	Kempthorne	Smith (NH)
D'Amato	Kennedy	Smith (OR)
Daschle	Kerrey	Snowe
DeWine	Kerry	Specter
Dodd	Kohl	Stevens
Domenici	Kyl	Thomas
Dorgan	Landrieu	
Durbin	Lautenberg	

Thompson	Torricelli	Wellstone
Thurmond	Warner	Wyden

The PRESIDING OFFICER. Two-thirds of the Senators present having voted in the affirmative, the resolution of ratification is agreed to.

The resolution of ratification, as amended, is as follows:

Resolved (two-thirds of the Senators present concurring therein),

SECTION 1, SENATE ADVICE AND CONSENT SUBJECT TO CONDITIONS.

The Senate advises and consents to the ratification of the CFE Flank Document (as defined in section 3 of this resolution), subject to the conditions in section 2.

SEC. 2. CONDITIONS.

The Senate's advice and consent to the ratification of the CFE Flank Document is subject to the following conditions, which shall be binding upon the President:

(1) POLICY OF THE UNITED STATES.—Nothing in the CFE Flank Document shall be construed as altering the policy of the United States to achieve the immediate and complete withdrawal of any armed forces and military equipment under the control of the Russian Federation that are deployed on the territories of the independent states of the former Soviet Union (as defined in section 3 of the FREEDOM Support Act) without the full and complete agreement of those states.

(2) VIOLATIONS OF STATE SOVEREIGNTY.—

(A) FINDING.—The Senate finds that armed forces and military equipment under the control of the Russian Federation are currently deployed on the territories of States Parties without the full and complete agreement of those States Parties.

(B) INITIATION OF DISCUSSIONS.—The Secretary of State should, as a priority matter, initiate discussions with the relevant States Parties with the objective of securing the immediate withdrawal of all armed forces and military equipment under the control of the Russian Federation deployed on the territory of any State Party without the full and complete agreement of that State Party.

(C) STATEMENT OF POLICY.—Prior to the deposit of the United States instrument of ratification, the President shall certify to the Senate that the United States and the governments of Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, and the United Kingdom have issued a joint statement affirming that—

(i) the CFE Flank Document does not give any State Party the right to station (under Article IV, paragraph 5 of the Treaty) or temporarily deploy (under Article V, paragraphs 1 (B) and C) of the Treaty) conventional armaments and equipment limited by the Treaty or the territory of other States Parties to the Treaty without the freely expressed consent of the receiving State Party;

(ii) the CFE Flank Document does not alter or abridge the right of any State Party under the Treaty to utilize fully its declared maximum levels for conventional armaments and equipment limited by the Treaty notified pursuant to Article VII of the Treaty; and

(iii)the CFE Flank Document does not alter in any way the requirement for the freely expressed consent of all States Parties concerned in the exercise of any reallocations envisioned under Article IV, paragraph 3 of the CFE Flank Document.

(3) FACILITATION OF NEGOTIATIONS.—

(A) UNITED STATES ACTION.—

(i) IN GENERAL.—The United States, in entering into any negotiation described in clause (ii) involving the government of Moldova, Ukraine, Azerbaijan, or Georgia, including the support of United States intermediaries in the negotiation, will limit its diplomatic activities to—

(I) achieving the equal and unreserved application by all States Parties of the principles of the Helsinki Final Act, including, in particular, the principle that ''States will respect each other's sovereign equality and individuality as well as all the rights inherent in and concompassed by its sovereignty, including a particular, the right of every State to juridical equality, to territorial integrity, and to freedom and political independence.'';

(II) ensuring that Moldova, Ukraine, Azerbaijan, and Georgia retain the right under the Treaty to reject, or accept conditionally, any request by another State Party to temporarily deploy conventional armaments and equipment limited by the Treaty on its territory; and

(III) ensuring the right of Moldova, Ukraine, Azerbaijan, and Georgia to reject, or to accept conditionally, any request by another State Party to reallocate the current quotas of Moldova, Ukraine, Azerbaijan, and Georgia, as the case may be, applicable to conventional armaments and equipment limited by the Treaty and as established under the Tashkent Agreement.

(ii) NEGOTIATIONS COVERED.—A negotiation described in this clause is any negotiation conducted pursuant to paragraph (2) or (3) of Section IV of the CFE Flank Document or pursuant to any side statement or agreement related to the CFE Flank Document concluded between the United States and the Russian Federation.

(B) OTHER AGREEMENTS.—Nothing in the CFR Flank Document shall be construed as providing additional rights to any State Party to temporarily deploy forces or to reallocate quotas for conventional armaments and equipment limited by the Treaty beyond the rights accorded to all States Parties under the original Treaty and as established under the Tashkent Agreement.

(4) NONCOMPLIANCE.—

(A) IN GENERAL.—If the President determines that persuasive information exists that a State Party is in violation of the Treaty or the CFE Flank Document in a manner which threatens the national security interests of the United States, then the President shall—

(i) consult with the Senate and promptly submit to the Senate a report detailing the effect of such actions;

(ii) seek on an urgent basis an inspection of the relevant State Party in accordance with the provisions of the Treaty or the CFE Flank Document with the objective of demonstrating to the international community the act of noncompliance;

(iii) seek, or encourage, on an urgent basis, a meeting at the highest diplomatic level with the relevant State Party with the objective of bringing the noncompliant State Party into compliance;

(iv) implement prohibitions and sanctions against the relevant State Party as required by law;

(v) if noncompliance has been determined, seek on an urgent basis the multilateral imposition of sanctions against the noncompliant State Party for the purposes of bringing the noncompliant State Party into compliance; and

(vi) in the event that noncompliance persists for a period longer than one year after the date of the determination made pursuant to this subparagraph, promptly consult with the Senate for the purposes of obtaining a resolution of support for continued adherence to the Treaty, notwithstanding the changed circumstances affecting the object and purpose of the Treaty.

(B) AUTHORITY OF DIRECTOR OF CENTRAL INTELLIGENCE.—Nothing in this section may be construed to impair or otherwise affect the authority of the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure pursuant to section 103(c)(5) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(5)).

(C) PRESIDENTIAL DETERMINATIONS.—If the President determines that an action otherwise required under subparagraph (A) would impair or otherwise affect the authority of the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure, the President shall report that determination, together with a detailed written explanation of the basis for that determination, to the chairmen of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives not later than 15 days after making such determination.

(5) MONITORING AND VERIFICATION OF COMPLIANCE.—

(A) DECLARATION.—The Senate declares that—

(i) the Treaty is in the interests of the United States only if all parties to the Treaty are in strict compliance with the terms of the Treaty as submitted to the Senate for its advice and consent to ratification, such compliance being measured by performance and not by efforts, intentions, or commitments to comply; and

(ii) the Senate expects all parties to the Treaty, including the Russian Federation, to be in strict compliance with their obligations under the terms of the Treaty, as submitted to the Senate for its advice and consent to ratification.

(B) BRIEFINGS ON COMPLIANCE.—Given its concern about ongoing violations of the Treaty by the Russian Federation and other States Parties, the Senate expects the executive branch of Government to offer briefings not less than four times a year to the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives on compliance issues related to the Treaty. Each such briefing shall include a description of all United States efforts in bilateral and multilateral diplomatic channels and forums to resolve compliance issues relating to the Treaty, including a complete description of—

(i) any compliance issues the United States plans to raise at meetings of the Joint Consultative Group under the Treaty;

(ii) any compliance issues raised at meetings of the Joint Consultative Group under the Treaty; and

(iii) any determination by the President that a State Party is in noncompliance with or is otherwise acting in a manner inconsistent with the object or purpose of the Treaty, within 30 days of such a determination.

(C) ANNUAL REPORTS ON COMPLIANCE.—Beginning January 1, 1998, and annually thereafter, the President shall submit to the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives a full and complete classified and unclassified report setting forth—

(i) certification of those States Parties that are determined to be in compliance with the Treaty, on a country-by-country basis;

(ii) for those countries not certified pursuant to clause (i), an identification and assessment of all compliance issues arising with regard to the adherence of the country to its obligations under the Treaty;

(iii) for those countries not certified pursuant to clause (i), the steps the United States has taken, either unilaterally or in conjunction with another State Party—

(I) to initiate inspections of the noncompliant State Party with the objective of demonstrating to the international community the act of noncompliance;

(II) to call attention publicly to the activity in question; and

(III) to seek on an urgent basis a meeting at the highest diplomatic level with the noncompliant State Party with the objective of bringing the noncompliant State Party into compliance;

(iv) a determination of the military significance of and border security risks arising from any compliance issue identified pursuant to clause (ii); and

(v) a detailed assessment of the responses of the noncompliant State Party in question to actions undertaken by the United States described in clause (iii).

(D) ANNUAL REPORT ON WITHDRAWAL OF RUSSIAN ARMED FORCES AND MILITARY EQUIPMENT.—Beginning January 1, 1998, and annually thereafter, the Secretary of State shall submit a report to the Committee on Foreign Relations of the Senate and to the Speaker of the House of Representative on the results of discussions undertaken pursuant to subparagraph (B) of paragraph (2), plans for future such discussions, and measures agreed to secure the immediate withdrawal of all armed forces and military equipment in question.

(E) ANNUAL REPORT ON UNCONTROLLED TREATY-LIMITED EQUIPMENT.—Beginning January 1, 1998, and annually thereafter, the Director of Central Intelligence shall submit to the Committees on Foreign Relations, Armed Services, and the Select Committee on Intelligence of the Senate and to the Speaker of the House of Representatives a full and complete classified and unclassified report regarding—

(i) the status of uncontrolled conventional armament and equipment limited by the Treaty, on a region-by-region basis within the Treaty's area of application;

(ii) the status of uncontrolled conventional armaments and equipment subject to the Treaty, on a region-by-region basis within the Treaty's area of application; and

(iii) any information made available to the United States Government concerning the transfer of conventional armaments and equipment subject to the Treaty within the Treaty's area of application made by any country to any subnational group, including any secessionist movement or any terrorist or paramilitary organization.

(F) COMPLIANCE REPORT ON ARMENIA AND OTHER PARTIES IN THE CAUCASUS REGION.—Not later than August 1, 1997, the President shall submit to the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives a full and complete classified and unclassified report regarding—

(i) whether Armenia was in compliance with the Treaty in allowing the transfer of conventional armaments and equipment limited by the Treaty through Armenia territory to the secessionist movement in Azerbaijan;

(ii) whether other States Parties located in the Caucasus region are in compliance with the Treaty; and

(iii) if Armenia is found not to have been in compliance under clause (i), or, if any other State Party is found not to be in compliance under clause (ii), what actions the President has taken to implement sanctions as required by chapter 11 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2295 et seq.; relating to assistance to the independent states of the former Soviet Union) or other provisions of law.

(G) REPORT ON DESTRUCTION OF EQUIPMENT EAST OF THE URALS.—Not later than January 1, 1998, the President shall submit to the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives a full and complete classified and unclassified report regarding—

(i) whether the Russian Federation is fully implementing on schedule all agreements requiring the destruction of conventional armaments and equipment subject to the Treaty but for the withdrawal of such armaments and equipment by the Soviet Union from the Treaty's area of application prior to the Soviet Union's deposit of its instrument of ratification of the Treaty; and

(ii) whether any of the armaments and equipment described under clause (i) have been redeployed, reintroduced, or transferred into the Treaty's area of application and, if so, the location of such armaments and equipment.

(H) DEFINITIONS.—

(i) UNCONTROLLED CONVENTIONAL ARMAMENTS AND EQUIPMENT LIMITED BY THE TREATY.—The term ''uncontrolled conventional armaments and equipment limited by the Treaty'' means all conventional armaments and equipment limited by the Treaty not under the control of a State Party that would be subject to the numerical limitations set forth in the Treaty if such armaments and equipment were directly under the control of a State Party.

(ii) UNCONTROLLED CONVENTIONAL ARMAMENTS AND EQUIPMENT SUBJECT TO THE TREATY.—The term ''uncontrolled conventional armaments and equipment subject to the Treaty'' means all conventional armaments and equipment described in Article II(1)(Q) of the Treaty not under the control of a State Party that would be subject to information exchange in accordance with the Protocol on Information Exchange if such armaments and equipment were directly under the control of a State Party.

(6) APPLICATION AND EFFECTIVENESS OF SENATE ADVICE AND CONSENT.—

(A) IN GENERAL.—The advice and consent of the Senate in this resolution shall apply only to the CFE Flank Document and the documents described in subparagraph (D).

(B) PRESIDENTIAL CERTIFICATION.—Prior to the deposit of the United States instrument of ratification, the President shall certify to the Senate that, in the course of diplomatic negotiations to secure accession to, or ratification of, the CFE Flank Document by any other State Party, the United States will vigorously reject any effort by a State Party to—

(i) modify, amend, or alter a United States right or obligation under the Treaty or the CFE Flank Document, unless such modification, amendment, or alternation is solely an extension of the period of provisional application of the CFE Flank Document or a change of a minor administrative or technical nature;

(ii) secure the adoption of a new United States obligation under, or in relation to, the Treaty or the CFE Flank Document, unless such obligation is solely of a minor administrative or technical nature; or

(iii) secure the provision of assurances, or endorsement of a course of action or a diplomatic position, inconsistent with the principles and policies established under conditions (1), (2), and (3) of this resolution.

(C) SUBSTANTIVE MODIFICATIONS.—Any subsequent agreement to modify, amend, or alter the CFE Flank Document shall require the complete resubmission of the CFE Flank Document, together with any modification, amendment, or alteration made thereto, to the Senate for advice and consent to ratification, if such modification, amendment, or alteration is not solely of a minor administrative or technical nature.

(D) STATUS OF OTHER DOCUMENTS.—

(i) IN GENERAL.—The following documents are of the same force and effect as the provisions of the CFE Flank Document:

(I) Understanding on Details of the CFE Flank Document of 31 May 1996 in Order to Facilitate its Implementation.

(II) Exchange of letters between the United States Chief Delegate to the CFE Joint Consultative Group and the Head of Delegation of the Russian Federation to the Joint Consultative Group, dated July 25, 1996.

(ii) STATUS OF INCONSISTENT ACTIONS.—The United States shall regard all actions inconsistent with obligations under those documents as equivalent under international law to actions inconsistent with the CFE Flank Document or the Treaty, or both, as the case may be.

(7) MODIFICATIONS OF THE CFE FLANK ZONE.—Prior to the deposit of the United States instrument of ratification, the President shall certify to Congress that any subsequent agreement to modify, revise, amend, or alter the boundaries of the CFE flank zone, as delineated by the map entitled ''Revised CFE Flank Zone'' submitted by the President to the Senate on April 7, 1997, shall require the submission of such agreement to the Senate for its advice and consent to ratification, if such changes are not solely of a minor administrative or technical nature.

(8) TREATY INTERPRETATION.—

(A) PRINCIPLES OF TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in condition (1) in the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988.

(B) CONSTRUCTION OF SENATE RESOLUTION OF RATIFICATION.—Nothing in condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, shall be construed as authorizing the President to obtain legislative approval for modifications or amendments to treaties through majority approval of both Houses.

(C) DEFINITION.—As used in this paragraph, the term ''INF Treaty'' refers to the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-Range and Shorter Range Missiles, together with the related memorandum of understanding and protocols, done at Washington on December 8, 1987.

(9) SENATE PREROGATIVES ON MULTILATERALIZATION OF THE ABM TREATY.—

(A) FINDINGS.—The Senate makes the following findings:

(i) Section 232 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337) states that ''the United States shall not be bound by any international agreement entered into by the President that would substantively modify the ABM Treaty unless the agreement is entered pursuant to the treaty making power of the President under the Constitution''.

(ii) The conference report accompanying the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201) states ''. . . the accord on ABM Treaty succession, tentatively agreed to by the administration, would constitute a substantive change to the ABM Treaty, which may only be entered into pursuant to the treaty making power of the President under the Constitution''.

(B) CERTIFICATION REQUIRED.—Prior to the deposit of the United States instrument of ratification, the President shall certify to the Senate that he will submit for Senate advice and consent to ratification any international agreement—

(i) that would add one or more countries as States Parties to the ABM Treaty, or otherwise convert the ABM Treaty from a bilateral treaty to a multilateral treaty; or

(ii) that would change the geographic scope or coverage of the ABM Treaty, or otherwise modify the meaning of the term ''national territory'' as used in Article VI and Article IX of the ABM Treaty.

(C) ABM TREATY DEFINED.—For the purposes of this resolution, the term ''ABM Treaty'' means the Treaty Between the United States of America and the Union of Soviet

Socialist Republics on the Limitation of Anti-Ballistic Missile Systems, signed in Moscow on May 26, 1972, with related protocol, signed in Moscow on July 3, 1974.

(10) ACCESSION TO THE CFE TREATY.—The Senate urges the President to support a request to become a State Party to the Treaty by—

(A) any state within the territory of the Treaty's area of application as of the date of signature of the Treaty, including Lithuania, Estonia, and Latvia; and

(B) the Republic of Slovenia.

(11) TEMPORARY DEPLOYMENTS.—Prior to the deposit of the United States instrument of ratification, the President shall certify to the Senate that the United States has informed all other States Parties to the Treaty that the United States—

(A) will continue to interpret the term ''temporary deployment'', as used in the Treaty, to mean a deployment of severely limited duration measured in days or weeks or, at most, but not years;

(B) will pursue measures designed to ensure that any State Party seeking to utilize the temporary deployments provision of the Treaty will be required to furnish the Joint Consultative Group established by the Treaty with a statement of the purpose and intended duration of the deployment, together with a description of the object of verification and the location of origin and destination of the relevant conventional armaments and equipment limited by the Treaty; and

(C) will vigorously reject any effort by a State Party to use the right of temporary deployment under the Treaty—

(i) to justify military deployments on a permanent basis; or

(ii) to justify military deployments without the full and complete agreement of the State Party upon whose territory the armed forces or military equipment of another State Party are to be deployed.

(12) MILITARY ACTS OF INTIMIDATION.—It is the policy of the United States to treat with the utmost seriousness all acts of intimidation carried out against any State Party by any other State Party using any conventional armament or equipment limited by the Treaty.

(13) SUPPLEMENTARY INSPECTIONS.—The Senate understands that additional supplementary declared site inspections may be conducted in the Russian Federation in accordance with Section V of the CFE Flank Document at any object of verification under paragraph 3(A) or paragraph 3(B) of Section V of the CFE Flank Document, without regard to whether a declared site passive quota inspection pursuant to paragraph 10(D) of Section II of the Protocol on Inspection has been specifically conducted at such object of verification in the course of the same year.

(14) DESIGNATED PERMANENT STORAGE SITES.—

(A) FINDING.—The Senate finds that removal of the constraints of the Treaty on designated permanent storage sites pursuant to paragraph 1 of Section IV of the CFE Flank Document could introduce into active military units within the Treaty's area of application as many as 7,000 additional battle tanks, 3,400 armored combat vehicles, and 6,000 pieces of artillery, which would constitute a significant change in the conventional capabilities of States Parties within the Treaty's area of application.

(B) SPECIFIC REPORT.—Prior to the agreement or acceptance by the United States of any proposal to alter the constraints of the Treaty on designated permanent storage sites, but not later than January 1, 1998, the President shall submit to the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives a full and complete classified and unclassified report setting forth—

(i) a detailed explanation of how additional Treaty-limited equipment will be allocated among States Parties;

(ii) a detailed assessment of the location and uses to which the Russian Federation will put additional Treaty-limited equipment; and

(iii) a detailed and comprehensive justification of the means by which introduction of additional battle tanks, armored combat vehicles, and pieces of artillery into the Treaty's area of application furthers United States national security interests.

SEC. 3. DEFINITIONS.

As used in this resolution:

(1) AREA OF APPLICATION.—The term ''area of application'' has the same meaning as set forth in subparagraph (B) of paragraph 1 of Article II of the Treaty.

(2) CFE FLANK DOCUMENT.—The term ''CFE Flank Document'' means the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe (CFE) of November 19, 1990, adopted at Vienna on May 31, 1996 (Treaty Doc. 105–5).

(3) CONVENTIONAL ARMAMENTS AND EQUIPMENT LIMITED BY THE TREATY; TREATY-LIMITED EQUIPMENT.—The terms ''conventional armament and equipment limited by the Treaty'' and ''Treaty-limited equipment'' have the meaning set forth in subparagraph (J) of paragraph 1 of Article II of the Treaty.

(4) FLANK REGION.—The term ''flank region'' means that portion of the Treaty's area of application defined as the flank zone by the map depicting the territory of the former Soviet Union within the Treaty's area of application that was provided by the former Soviet Union upon the date of signature of the Treaty.

(5) FULL AND COMPLETE AGREEMENT.—The term ''full and complete agreement'' means agreement achieved through free negotiations between the respective States Parties with full respect for the sovereignty of the State Party upon whose territory the armed forces or military equipment under the control of another State Party is deployed.

(6) FREE NEGOTIATIONS.—The term ''free negotiations'' means negotiations with a party that are free from coercion or intimidation.

(7) HELSINKI FINAL ACT.—The term ''Helsinki Final Act'' refers to the Final Act of the Helsinki Conference on Security and Cooperation in Europe of August 1, 1975.

(8) PROTOCOL ON INFORMATION EXCHANGE.—The term ''Protocol on Information Exchange'' means the Protocol on Notification and Exchange of Information of the CFE Treaty, together with the Annex on the Format for the Exchange of Information of the CFE Treaty.

(9) STATE PARTY.—Except as otherwise expressly provided, the term ''State Party'' means any nation that is a party to the Treaty.

(10) TASHKENT AGREEMENT.—The term ''Tashkent Agreement'' means the agreement between Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Moldova, Russia, and Ukraine establishing themselves as successor states to the Soviet Union under the CFE Treaty, concluded at Tashkent on may 15, 1992.

(11) TREATY.—The term ''Treaty'' means the Treaty on Conventional Armed Forces in Europe, done at Paris on November 19, 1990.

(12) UNITED STATES INSTRUMENT OF RATIFICATION.—The term ''United States instrument of ratification'' means the instrument of ratification of the United States of the CFE Flank Document.

Mr. LOTT. Madam President, I move to reconsider the vote by which the resolution of ratification was agreed to and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now resume legislative session.

ORDER OF PROCEDURE

Mr. LOTT. Madam President, I remind Senators still in the Chamber, that was the last vote for the day, and that we do have a dinner that we all need to adjourn to.

We will resume consideration in the morning. I believe there will be a cloture vote at 10 o'clock in the morning.

MORNING BUSINESS

Mr. LOTT. Madam President, I ask unanimous consent that the period for morning business be extended and Senators permitted to speak for up to 10 minutes each.

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

REMOVE CONTROVERSIAL RIDERS FROM THE SUPPLEMENTAL APPROPRIATIONS BILL

Mr. DASCHLE. Mr. President, on May 14 the Senate approved vitally important legislation to provide sorely needed aid to victims of the recent weather-related disasters throughout the country, including South Dakota. It is critical that this legislation be enacted as soon as possible so that residents of disaster-stricken States can get on with the process of recovering from the loss of property and livestock.

I am concerned that controversial riders on this bill, including the automatic continuing resolution and the provision related to the implementation of R.S. 2477 by the Interior Department, could, if included in the final conference report, make enactment of the bill impossible and thus delay needed aid to disaster victims.

The controversial Interior provision, over which Secretary Babbitt has said he will recommend a veto, blocks recent efforts by the administration to close a loophole in the mining laws that allow roads to be constructed in national parks and other sensitive Federal lands. Many Senators have gone on record that the administration should have the ability to protect our public lands from unnecessary and environmentally destructive road construction, and an amendment offered by Senator BUMPERS to strip the R.S. 2477 provision from the supplemental lost by a vote of only 49–51, drawing considerable bipartisan support. I urge the conferees to drop this and other controversial provisions from the bill during the House-Senate conference.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT

Mr. ROCKEFELLER. Mr. President, I want to commend my colleagues, Senators JEFFORDS, FRIST, HARKIN, and KENNEDY, and all the others that worked so long and hard to develop this bipartisan legislation. This is a carefully crafted compromise to balance the rights and concerns of school administrators and teachers as well as students and parents.

Because of attending a family memorial service in New York City, I could not be here for the final votes. Had I been in Washington, I would have supported the leadership and voted for final passage of the reauthorization of the Individuals With Disabilities Education Act, IDEA.

Our country should be proud of our efforts to provide education and opportunities to individuals with disabilities. Thanks to the IDEA, we opened schools to disabled children over 20 years ago and everyone in our society benefits from such inclusion and education.

In forging this legislation, leaders had to deal with difficult issues, including discipline problems sometimes involving weapons or drugs. Groups worked long and hard to develop an approach that would ensure that our schools are safe but that a disabled student's rights and education are are also protected. Classroom teachers will now be included in the planning and process which is a major change and important improvement.

Federal funding and leadership on IDEA is crucial, but this program is a partnership with States and local schools. West Virginia, like other States, assumes the lion share of education funding but Federal funding provides incentives and leadership. As always with a comprehensive reauthorization package, there are some lingering issues and questions. On balance, this legislation is a tremendous achievement that continues our Federal commitment to help disabled students in West Virginia and every State in our country.

U.S. FOREIGN OIL CONSUMPTION FOR WEEK ENDING MAY 9TH

Mr. HELMS. Mr. President, the American Petroleum Institute reports that for the week ending May 9, the United States imported 7,566,000 barrels of oil each day, 1,057,000 barrels less than the 8,623,000 imported during the same week a year ago.

While this is one of the few weeks that Americans imported less oil than the same week a year ago, Americans still relied on foreign oil for 53.9 percent of their needs last week, and there are no signs that the upward spiral will abate. Before the Persian Gulf war, the United States obtained approximately 45 percent of its oil supply from foreign countries. During the Arab oil embargo in the 1970's, foreign oil accounted for only 35 percent of America's oil supply.

Anybody else interested in restoring domestic production of oil—by U.S. producers using American workers? Politicians had better ponder the economic calamity sure to occur in America if and when foreign producers shut off our supply—or double the already enormous cost of imported oil flowing into the United States—now 7,566,000 barrels a day.

MESSAGES FROM THE HOUSE

At 12:06 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 49. Concurrent resolution authorizing the use of the Capitol Grounds for the Greater Washington Soap Box Derby.

H. Con. Res. 67. Concurrent resolution authorizing the 1977 Special Olympics Torch Relay to be run through the Capitol Grounds.

H. Con. Res. 73. Concurrent resolution concerning the death of Chaim Herzog.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 914) to make certain technical corrections in the Higher Education Act of 1965 relating to graduation data disclosures; with amendments, in which it requests the concurrence of the Senate.

MEASURES REFERRED

The following concurrent resolution was read and referred as indicated:

H. Con. Res. 73. Concurrent resolution concerning the death of Chaim Herzog; to the Committee on Foreign Relations.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources: Elizabeth Anne Moler, of Virginia, to be Deputy Secretary of Energy.

(The above nomination was reported with the recommendation that she be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

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 Mrs. HUTCHISON:

S. 738. A bill to reform the statutes relating to Amtrak, to authorize appropriations for Amtrak, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. BRYAN (for himself and Mr. REID):

S. 739. A bill to validate conveyances of certain lands in the State of Nevada that form part of the right-of-way granted by the United States to the Central Pacific Railway Company; to the Committee on Energy and Natural Resources.

By Mr. DASCHLE:

S. 740. A bill to provide a 1-year delay in the imposition of penalties on small businesses failing to make electronic fund transfers of business taxes; to the Committee on Finance.

By Mr. BREAUX:

S. 741. A bill to amend the Communications Act of 1934 to enable the Federal Communications Commission to enhance its spectrum management program capabilities through the collection of lease fees for new spectrum for radio services that are statutorily excluded from competitive bidding, and to enhance law enforcement and public safety radio communications; to the Committee on Commerce, Science, and Transportation.

By Mr. DEWINE:

S. 742. A bill to promote the adoption of children in foster care; to the Committee on Finance.

By Ms. SNOWE (for herself, Mr. REID, Mr. WARNER, Ms. MIKULSKI, Mr. CHAFEE, Mr. DURBIN, Ms. COLLINS, Mrs. MURRAY, and Mr. JEFFORDS):

S. 743. A bill to require equitable coverage of prescription contraceptive drugs and devices, and contraceptive services under health plans; to the Committee on Finance.

By Mr. JOHNSON (for himself and Mr. DASCHLE):

S. 744. A bill to authorize the construction of the Fall River Water Users District Rural Water System and authorize financial assistance to the Fall River Water Users District, a non-profit corporation, in the planning and construction of the water supply system, and for other purposes; to the Committee on Energy and Natural Resources.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. HUTCHISON:

S. 738. A bill to reform the statutes relating to Amtrak, to authorize appropriations for Amtrak, and for other purposes; to the Committee on Commerce, Science, and Transportation.

AMTRAK REFORM AND ACCOUNTABILITY ACT OF 1997

Mrs. HUTCHISON. Mr. President, I think it is very important in this country that we have a national rail passenger system. Rail is a viable alternative transportation. We now have a bus system that is feeding into Amtrak stations so people can come from small communities on the bus, into the Amtrak station, and go anywhere in the country as long as we keep our national system. You can go from Marshall, TX, to Chicago, IL, or to San Antonio and then to Los Angeles or all the way to Florida. It is really an exciting opportunity.

However, Mr. President, the national rail passenger service that we have now is really just an experiment. It really does not work very well, through no fault of the people who run it. Tom Downs is actually doing a terrific job. But we in Congress have put so many constraints and mandates on him that he cannot possibly compete to survive.

So, in fact, it is time to get the railroad back on track. It is time to get

this railroad right. We can do it if Congress will correct some of the problems that we have put on this rail passenger train and let them compete. We have told them, ''Run a good railroad,'' but we have tied one arm behind their back. So now it is time to let them compete, with the help of the bill I am introducing, most of which passed out of the Commerce Committee last year.

I am chairman of the Surface Transportation Subcommittee. It is in my purview to reauthorize Amtrak, and I want to reauthorize it and reform it so that it can compete and, hopefully, by the year 2002, there will not have to be operational subsidies from the taxpayers of America. But there is no question this will fail unless we have these reforms that will allow Amtrak to operate more like a business.

So, what are we trying to do? We are trying to have a system that is up and going without operational subsidies by the year 2002. Many of my friends say, ''I do not know why we should help Amtrak. Why should we have taxpayer subsidies of Amtrak when all the other transportation modes do not need taxpayer subsidies?'' Every transportation mode has taxpayer subsidies. Part of the reason we have mobility in our country is because we subsidize highways, we subsidize airports, we now also subsidize trains, and it does provide mobility.

I want to try to get Amtrak back on track, get it to run right, and see if we can have a passenger rail system that is dependable, that provides good service and viable transportation options to all the people of our country, whether they are elderly and do not want to drive, whether they just cannot drive, whether they do not like to fly, whether they live in a small community that does not have any kind of passenger service. We want people to have this mobility.

How are we going to do it? The Amtrak reform bill, first, will repeal two laws that have been very expensive. One is the 6-year termination provisions for anyone who is employed at Amtrak, if a line is shut down. Now, I am sure there are a lot of people in America that would like to have a 6-year termination agreement that says if you lose your job, you get 6 years full pay. That would be nice, but it is not realistic, and it certainly does not meet today's standards. Even many Amtrak employees tell me that they realize this is out of line. It is a congressional mandate that they have a 6-year termination agreement, but they know that Amtrak cannot compete with that kind of agreement in place. It is just much too expensive. They would rather keep their jobs. They love what they are doing. They want to keep their jobs rather than have a 6-year termination agreement.

So we want to require Amtrak to have free and open bargaining with its unions in the absence of a Government mandate of a 6-year termination agreement. In fact, it would be free and open like every other union negotiation is in this country. That is fair, and I think most Amtrak employees agree that is fair. Let them sit at the bargaining table with open and fair negotiations, and they will be able to get the best that the market can bear while still having a good job, a viable job, and doing a service for the people of our country.

This bill will also extinguish the prohibition on contracting out. One of the things that Tom Downs tells me they need is the ability to make the decision if they want to contract out in order to save costs, because if we are going to tell Mr. Downs that he has to run a tight ship, we cannot put mandates on him that are not anywhere else in any other competitive system in our country and expect him to do a good job. We have to take the shackles off.

We also must give him the ability to have some liability reform. He says one of the most expensive things he has to deal with is liability and not being able to have the right of indemnification with the people that own the tracks Amtrak uses. We need to have liability reform, and, in fact, this was passed out of the Commerce Committee last year. Like last year's bill, the liability reform in my bill would have caps on punitive damages for two times compensatory damages or $250,000, whichever is greater.

In fact, these kinds of liability limits, I think, are quite reasonable. Many States are enacting these kinds of liability limits, in particular for publicly assisted transportation services. It allows a person who has been wrongly injured to have compensation for that, but it puts some limitation so there will be a budget on it, so that there will be some reliability about how much you have to put in the budget for that kind of occurrence. It also confirms the right of passenger rail operators and owners of rights-of-way to contractually indemnify each other for liability arising out of an accident.

In addition to the reforms, we have accountability. We have an independent audit of Amtrak that will commence as soon as the bill is passed and signed by the President that will provide a basis upon which to judge what we can do better in Amtrak.

Like last year's bill, we also have an Amtrak reform council that is designed to monitor Amtrak's progress and viability and to make independent recommendations. We want overseers who are saying to Amtrak, is what you are doing what's best, and also to tell Congress that if we are not going to be able to make this work, we are not going to keep throwing money at Amtrak if it does not have a chance to survive.

So we have told this independent council if you make a determination that Amtrak just cannot make it, even with the reforms that we are giving them, then tell us. We will pull the plug and we will say it was a great effort but it just did not work.

Mr. President, what we are trying to do is give Amtrak a chance. We are trying to get it right. It is time to get this railroad right. In fact, it is time to get it back on track. We have had 26 years of experiments. We have not gotten it right yet. Most of that is at the feet of Congress. We have to give them a chance to compete if, in fact, we are going to have by the year 2002 a national rail passenger train opportunity—real mobility for people that live in small towns, people who are elderly, people who do not want to fly, and who can't fly or simply want more transportation options. We want mobility in our country. And we have made huge investments in infrastructure in our country in highways and airports. I think rail is a component part of that system.

We want a passenger rail opportunity in this country. But we don't want taxpayers subsidizing the operations of trains for the passengers who do not choose to use this route.

So we believe that this is the fairest way—reauthorize, reform, tell them to get their act together, and give them the tools to do it. That is the mandate of this bill.

So, Mr. President, I thank you and ask unanimous consent that this legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 738

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

SECTION 1. SHORT TITLE; TABLE OF SECTIONS.

(a) SHORT TITLE.—This Act may be cited as the ''Amtrak Reform and Accountability Act of 1997''.

(b) TABLE OF SECTIONS.—The table of sections for this Act is as follows:

SEC. 2. FINDINGS.

The Congress finds that—

(1) intercity rail passenger service is an essential component of a national intermodal passenger transportation system;

(2) Amtrak is facing a financial crisis, with growing and substantial debt obligations severely limiting its ability to cover operating costs and jeopardizing its long-term viability;

(3) immediate action is required to improve Amtrak's financial condition if Amtrak is to survive;

(4) all of Amtrak's stakeholders, including labor, management, and the Federal government, must participate in efforts to reduce Amtrak's costs and increase its revenues;

(5) additional flexibility is needed to allow Amtrak to operate in a businesslike manner in order to manage costs and maximize revenues;

(6) Amtrak should ensure that new management flexibility produces cost savings without compromising safety;

(7) Amtrak's management should be held accountable to ensure that all investment by the Federal Government and State governments is used effectively to improve the quality of service and the long-term financial health of Amtrak;

(8) Amtrak and its employees should proceed quickly with proposals to modify collective bargaining agreements to make more efficient use of manpower and to realize cost savings which are necessary to reduce Federal financial assistance;

(9) Amtrak and intercity bus service providers should work cooperatively and develop coordinated intermodal relationships promoting seamless transportation services which enhance travel options and increase operating efficiencies; and

(10) Federal financial assistance to cover operating losses incurred by Amtrak should be eliminated by the year 2002.

TITLE I—REFORMS

SUBTITLE A—OPERATIONAL REFORMS

SEC. 101. BASIC SYSTEM.

(a) OPERATION OF BASIC SYSTEM.—Section 24701 of title 49, United States Code, is amended to read as follows:

"§ 24701. Operation of basic system

''Amtrak shall provide intercity rail passenger transportation within the basic system. Amtrak shall strive to operate as a national rail passenger transportation system which provides access to all areas of the country and ties together existing and emergent regional rail passenger corridors and other intermodal passenger service.''.

(b) IMPROVING RAIL PASSENGER TRANSPORTATION.—Section 24702 of title 49, United States Code, and the item relating thereto in the table of sections of chapter 247 of such title, are repealed.

(c) DISCONTINUANCE.—Section 24706 of title 49, United States Code, is amended—

(1) by striking ''90 days'' and inserting ''180 days'' in subsection (a)(1);

(2) by striking ''a discontinuance under section 24707(a) or (b) of this title'' in subsection (a)(1) and inserting ''discontinuing service over a route'';

(3) by inserting ''or assume'' after ''agree to share'' in subsection (a)(1); and

(4) by striking ''section 24707(a) or (b) of this title'' in subsections (a)(2) and (b)(1) and inserting ''paragraph (1)''.

(d) COST AND PERFORMANCE REVIEW.—Section 24707 of title 49, United States Code, and the item relating thereto in the table of sections of chapter 247 of such title, are repealed.

(e) SPECIAL COMMUTER TRANSPORTATION.—Section 24708 of title 49, United States Code, and the item relating thereto in the table of sections of chapter 247 of such title, are repealed.

(f) CONFORMING AMENDMENT.—Section 24312(a)(1) of title 49, United States Code, is amended by striking '', 24701(a),''.

SEC. 102. MAIL, EXPRESS, AND AUTO-FERRY TRANSPORTATION.

(a) REPEAL.—Section 24306 of title 49, United States Code, is amended—

(1) by striking the last sentence of subsection (a);

(2) by striking paragraphs (1) and (2) of subsection (b); and

(3) by striking ''(3) State'' and inserting ''State''.

SEC. 103. ROUTE AND SERVICE CRITERIA.

Section 24703 of title 49, United States Code, and the item relating thereto in the table of sections of chapter 247 of such title, are repealed.

SEC. 104. ADDITIONAL QUALIFYING ROUTES.

Section 24705 of title 49, United States Code, and the item relating thereto in the table of sections of chapter 247 of such title, are repealed.

SEC. 105. TRANSPORTATION REQUESTED BY STATES, AUTHORITIES, AND OTHER PERSONS.

Section 24101(c)(2) of title 49, United States Code, is amended by inserting '', separately or in combination,'' after ''and the private sector''.

SEC. 106. AMTRAK COMMUTER.

(a) REPEAL OF CHAPTER 245.—Chapter 245 of title 49, United States Code, and the item relating thereto in the table of chapters of subtitle V of such title, are repealed.

(b) CONFORMING AMENDMENT.—Section 24301(f) of title 49, United States Code, is amended to read as follows:

''(f) TAX EXEMPTION FOR CERTAIN COMMUTER AUTHORITIES.—A commuter authority that was eligible to make a contract with Amtrak Commuter to provide commuter rail passenger transportation but which decided to provide its own rail passenger transportation beginning January 1, 1983, is exempt, effective October 1, 1981, from paying a tax or fee to the same extent Amtrak is exempt.''.

(c) TRACKAGE RIGHTS NOT AFFECTED.—The repeal of chapter 245 of title 49, United States Code, by subsection (a) of this section is without prejudice to the retention of trackage rights over property owned or leased by commuter authorities.

SEC. 107. THROUGH SERVICE IN CONJUNCTION WITH INTERCITY BUS OPERATIONS.

(a) IN GENERAL.—Section 24305(a) of title 49, United States Code, is amended by adding at the end the following new paragraph:

''(3)(A) Except as provided in subsection (d)(2), Amtrak may enter into a contract with a motor carrier of passengers for the intercity transportation of passengers by motor carrier over regular routes only—

''(i) if the motor carrier is not a public recipient of governmental assistance, as such term is defined in section 10922(d)(1)(F)(i) of this title, other than a recipient of funds under section 18 of the Federal Transit Act;

''(ii) for passengers who have had prior movement by rail or will have subsequent movement by rail; and

''(iii) if the buses, when used in the provision of such transportation, are used exclusively for the transportation of passengers described in clause (ii).

''(B) Subparagraph (A) shall not apply to transportation funded predominantly by a State or local government, or to ticket selling agreements.''.

(b) POLICY STATEMENT.—Section 24305(d) of title 49, United States Code, is amended by adding at the end the following new paragraph:

''(3) Congress encourages Amtrak and motor common carriers of passengers to use the authority conferred in section 11342(a) of this title for the purpose of providing improved service to the public and economy of operation.''.

SEC. 108. RAIL AND MOTOR CARRIER PASSENGER SERVICE.

(a) IN GENERAL.—Notwithstanding any other provision of law (other than section 24305(a) of title 49, United States Code), Amtrak and motor carriers of passengers are authorized—

(1) to combine or package their respective services and facilities to the public as a means of increasing revenues; and

(2) to coordinate schedules, routes, rates, reservations, and ticketing to provide for enhanced intermodal surface transportation.

(b) REVIEW.—The authority granted by subsection (a) is subject to review by the Surface Transportation Board and may be modified or revoked by the Board if modification or revocation is in the public interest.

SEC. 109. PASSENGER CHOICE.

Federal employees are authorized to travel on Amtrak for official business where total travel cost from office to office is competitive on a total trip or time basis.

SEC. 110. APPLICATION OF CERTAIN LAWS.

(a) APPLICATION OF FOIA.—Section 24301(e) of title 49, United States Code, is amended by adding at the end thereof the following: ''Section 552 of title 5, United States Code, applies to Amtrak for any fiscal year in which Amtrak receives a Federal subsidy.''.

(b) APPLICATION OF FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT.—Section 304A(m) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b) applies to a proposal in the possession or control of Amtrak.''.

SUBTITLE B—PROCUREMENT

SEC. 121. CONTRACTING OUT.

(a) CONTRACTING OUT REFORM.—Effective 180 days after the date of enactment of this Act, section 24312 of title 49, United States Code, is amended—

(1) by striking the paragraph designation for paragraph (1) of subsection (a);

(2) by striking ''(2)'' in subsection (a)(2) and inserting ''(b)''; and

(3) by striking subsection (b).

The amendment made by paragraph (3) is without prejudice to the power of Amtrak to contract out the provision of food and beverage services on board Amtrak trains or to contract out work not resulting in the layoff of Amtrak employees.

(b) NOTICES.— Notwithstanding any arrangement in effect before the date of the enactment of this Act, notices under section 6 of the Railway Labor Act (45 U.S.C. 156) with respect to all issues relating to contracting out by Amtrak of work normally performed by an employee in a bargaining unit covered by a contract between Amtrak and a labor organization representing Amtrak employees, which are applicable to employees of Amtrak shall be deemed served

and effective on the date which is 45 days after the date of the enactment of this Act. Amtrak, and each affected labor organization representing Amtrak employees, shall promptly supply specific information and proposals with respect to each such notice. This subsection shall not apply to issues relating to provisions defining the scope or classification of work performed by an Amtrak employee. The issue for negotiation under this paragraph does not include the contracting out of work involving food and beverage services provided on Amtrak trains or the contracting out of work not resulting in the layoff of Amtrak employees.

(c) NATIONAL MEDIATION BOARD EFFORTS.—Except as provided in subsection (d), the National Mediation Board shall complete all efforts, with respect to the dispute described in subsection (b), under section 5 of the Railway Labor Act (45 U.S.C. 155) not later than 120 days after the date of the enactment of this Act.

(d) RAILWAY LABOR ACT ARBITRATION.—The parties to the dispute described in subsection (b) may agree to submit the dispute to arbitration under section 7 of the Railway Labor Act (45 U.S.C. 157), and any award resulting therefrom shall be retroactive to the date which is 120 days after the date of the enactment of this Act.

(e) DISPUTE RESOLUTION.—

(1) With respect to the dispute described in subsection (b) which—

(A) is unresolved as of the date which is 120 days after the date of the enactment of this Act; and

(B) is not submitted to arbitration as described in subsection (d),

Amtrak shall, and the labor organizations that are parties to such dispute shall, within 127 days after the date of the enactment of this Act, each select an individual from the entire roster of arbitrators maintained by the National Mediation Board. Within 134 days after the date of the enactment of this Act, the individuals selected under the preceding sentence shall jointly select an individual from such roster to make recommendations with respect to such dispute under this subsection. If the National Mediation Board is not informed of the selection of the individual under the preceding sentence 134 days after the date of enactment of this Act, the Board will immediately select such individual.

(2) No individual shall be selected under paragraph (1) who is pecuniarily or otherwise interested in any organization of employees or any railroad or who is selected pursuant to section 141(d) of this Act.

(3) The compensation of individuals selected under paragraph (1) shall be fixed by the National Mediation Board. The second paragraph of section 10 of the Railway Labor Act (45 U.S.C. 160) shall apply to the expenses of such individuals as if such individuals were members of a board created under such section 10.

(4) If the parties to a dispute described in subsection (b) fail to reach agreement within 150 days after the date of the enactment of this Act, the individual selected under paragraph (1) with respect to such dispute shall make recommendations to the parties proposing contract terms to resolve the dispute.

(5) If the parties to a dispute described in subsection (b) fail to reach agreement, no change shall be made by either of the parties in the conditions out of which the dispute arose for 30 days after recommendations are made under paragraph (4).

(6) Section 10 of the Railway Labor Act (45 U.S.C. 160) shall not apply to a dispute described in subsection (b).

(f) NO PRECEDENT FOR FREIGHT.—Nothing in this section shall be a precedent for the resolution of any dispute between a freight railroad and any labor organization representing that railroad's employees.

SUBTITLE C—EMPLOYEE PROTECTION REFORMS

SEC. 141. RAILWAY LABOR ACT PROCEDURES.

(a) NOTICES.—Notwithstanding any arrangement in effect before the date of the enactment of this Act, notices under section 6 of the Railway Labor Act (45 U.S.C. 156) with respect to all issues relating to employee protective arrangements and severance benefits which are applicable to employees of Amtrak, including all provisions of Appendix C-2 to the National Railroad Passenger Corporation Agreement, signed July 5, 1973, shall be deemed served and effective on the date which is 45 days after the date of the enactment of this Act. Amtrak, and each affected labor organization representing Amtrak employees, shall promptly supply specific information and proposals with respect to each such notice.

(b) NATIONAL MEDIATION BOARD EFFORTS.—Except as provided in subsection (c), the National Mediation Board shall complete all efforts, with respect to the dispute described in subsection (a), under section 5 of the Railway Labor Act (45 U.S.C. 155) not later than 120 days after the date of the enactment of this Act.

(c) RAILWAY LABOR ACT ARBITRATION.—The parties to the dispute described in subsection (a) may agree to submit the dispute to arbitration under section 7 of the Railway Labor Act (45 U.S.C. 157), and any award resulting therefrom shall be retroactive to the date which is 120 days after the date of the enactment of this Act.

(d) DISPUTE RESOLUTION.—

(1) With respect to the dispute described in subsection (a) which

(A) is unresolved as of the date which is 120 days after the date of the enactment of this Act; and

(B) is not submitted to arbitration as described in subsection (c), Amtrak shall, and the labor organization parties to such dispute shall, within 127 days after the date of the enactment of this Act, each select an individual from the entire roster of arbitrators maintained by the National Mediation Board. Within 134 days after the date of the enactment of this Act, the individuals selected under the preceding sentence shall jointly select an individual from such roster to make recommendations with respect to such dispute under this subsection. If the National Mediation Board is not informed of the selection under the preceding sentence 134 days after the date of enactment of this Act, the Board will immediately select such individual.

(2) No individual shall be selected under paragraph (1) who is pecuniarily or otherwise interested in any organization of employees or any railroad or who is selected pursuant to section 121(e) of this Act.

(3) The compensation of individuals selected under paragraph (1) shall be fixed by the National Mediation Board. The second paragraph of section 10 of the Railway Labor Act shall apply to the expenses of such individuals as if such individuals were members of a board created under such section 10.

(4) If the parties to a dispute described in subsection (a) fail to reach agreement within 150 days after the date of the enactment of this Act, the individual selected under paragraph (1) with respect to such dispute shall make recommendations to the parties proposing contract terms to resolve the dispute.

(5) If the parties to a dispute described in subsection (a) fail to reach agreement, no change shall be made by either of the parties in the conditions out of which the dispute arose for 30 days after recommendations are made under paragraph (4).

(6) Section 10 of the Railway Labor Act (45 U.S.C. 160) shall not apply to a dispute described in subsection (a).

SEC. 142. SERVICE DISCONTINUANCE.

(a) REPEAL.—Section 24706(c) of title 49, United States Code, is repealed.

(b) EXISTING CONTRACTS.—Any provision of a contract entered into before the date of the enactment of this Act between Amtrak and a labor organization representing Amtrak employees relating to employee protective arrangements and severance benefits applicable to employees of Amtrak is extinguished, including all provisions of Appendix C-2 to the National Railroad Passenger Corporation Agreement, signed July 5, 1973.

(c) SPECIAL EFFECTIVE DATE.—Subsections (a) and (b) of this section shall take effect 180 days after the date of the enactment of this Act.

(d) NONAPPLICATION OF BANKRUPTCY LAW PROVISION.—Section 1172(c) of title 11, United States Code, shall not apply to Amtrak and its employees.

SUBTITLE D—USE OF RAILROAD FACILITIES

SEC. 161. LIABILITY LIMITATION.

(a) AMENDMENT.—Chapter 281 of title 49, United States Code, is amended by adding at the end the following new section:

"§ 28103. Limitations on rail passenger transportation liability

''(a) LIMITATIONS.—

''(1) Notwithstanding any other statutory or common law or public policy, or the nature of the conduct giving rise to damages or liability, a contract between Amtrak and its passengers, the Alaska Railroad and its passengers, or private railroad car operators and their passengers regarding claims for personal injury, death, or damage to property arising from or in connection with the provision of rail passenger transportation, or from or in connection with any operations over or use of right-of-way or facilities owned, leased, or maintained by Amtrak or the Alaska Railroad, or from or in connection with any rail passenger transportation operations over or rail passenger transportation use of right-of-way or facilities owned, leased, or maintained by any high-speed railroad authority or operator, any commuter authority or operator, or any rail carrier shall be enforceable if—

''(A) punitive or exemplary damages, where permitted, are not limited to less than 2 times compensatory damages awarded to any claimant by any State or Federal court or administrative agency, or in any arbitration proceeding, or in any other forum or $250,000, whichever is greater; and

''(B) passengers are provided adequate notice of any such contractual limitation or waiver or choice of forum.

''(2) For purposes of this subsection, the term 'claim' means a claim made directly or indirectly—

''(A) against Amtrak, any high-speed railroad authority or operator, any commuter authority or operator, or any rail carrier including the Alaska Railroad or private rail car operators; or

''(B) against an affiliate engaged in railroad operations, officer, employee, or agent of, Amtrak, any high-speed railroad authority or operator, any commuter authority or operator, or any rail carrier.

''(3) Notwithstanding paragraph (1)(A), if, in any case in which death was caused, the law of the place where the act or omission complained of occurred provides, or has been construed to provide, for damages only punitive in nature, a claimant may recover in a claim limited by this subsection for actual or compensatory damages measured by the pecuniary injuries, resulting from such death, to the persons for whose benefit the

action was brought, subject to the provisions of paragraph (1).

(b) INDEMNIFICATION OBLIGATION.—Obligations of any party, however arising, including obligations arising under leases or contracts or pursuant to orders of an administrative agency, to indemnify against damages or liability for personal injury, death, or damage to property described in subsesction (a), incurred after the death of the enactment of the Amtrak Reform and Accountability Act of 1997, shall be enforceable, notwithstanding any other statuatory or common law or public policy, or the nature of the conduct giving rise to the damages or liability.

(b) CONFORMING AMENDMENT.—The table of sections of chapter 281 of title 49, United States Code, is amended by adding at the end the following new item:

''28103. Limitations on rail passenger transportation liability.''.

TITLE II—FISCAL ACCOUNTABILITY

SEC. 201. AMTRAK FINANCIAL GOALS.

Section 24101(d) of title 49, United States Code, is amended by adding at the end thereof the following: ''Amtrak shall prepare a financial plan to operate within the funding levels authorized by section 24104 of this chapter, including budgetary goals for fiscal years 1998 through 2002. Commencing no later than the fiscal year following the fifth anniversary of the Amtrak Reform and Accountability Act of 1997, Amtrak shall operate without Federal operating grant funds appropriated for its benefit.''.

SEC. 202. INDEPENDENT ASSESSMENT.

(a) INITIATION.—Not later than 15 days after the date of enactment of this Act, the Secretary of Transportation shall contract with an entity independent of Amtrak and not in any contractual relationship with Amtrak and of the Department of Transportation to conduct a complete independent assessment of the financial requirements of Amtrak through fiscal year 2002. The entity shall have demonstrated knowledge about railroad industry accounting requirements, including the uniqueness of the industry and of Surface Transportation Board accounting requirements.

(b) ASSESSMENT CRITERIA.—The Secretary and Amtrak shall provide to the independent entity estimates of the financial requirements of Amtrak for the period described above, using as a base the fiscal year 1997 appropriation levels established by the Congress. The independent assessment shall be based on an objective analysis of Amtrak's funding needs.

(c) CERTAIN FACTORS TO BE TAKEN INTO ACCOUNT.—The independent assessment shall take into account all relevant factors, including Amtrak's—

(1) cost allocation process and procedures;

(2) expenses related to intercity rail passenger service, commuter service, and any other service Amtrak provides;

(3) Strategic Business Plan, including Amtrak's projected expenses, capital needs, ridership, and revenue forecasts; and

(4) Amtrak's debt obligations.

(d) DEADLINE.—The independent assessment shall be completed not later than 90 days after the contract is awarded, and shall be submitted to the Council established under section 203, the Secretary of Transportation, the Committee on Commerce, Science, and Transportation of the United States Senate, and the Committee on Transportation and Infrastructure of the United States House of Representatives.

SEC. 203. AMTRAK REFORM COUNCIL.

(a) ESTABLISHMENT.—There is established an independent commission to be known as the Amtrak Reform Council.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Council shall consist of 9 members, as follows:

(A) The Secretary of Transportation.

(B) Two individuals appointed by the President, of which—

(i) one shall be a representative of a rail labor organization; and

(ii) one shall be a representative of rail management.

(C) Two individuals appointed by the Majority Leader of the United States Senate.

(D) One individual appointed by the Minority Leader of the United States Senate.

(E) Two individuals appointed by the Speaker of the United States House of Representatives.

(F) One individual appointed by the Minority Leader of the United States House of Representatives.

(2) APPOINTMENT CRITERIA.—

(A) TIME FOR INITIAL APPOINTMENTS.—Appointments under paragraph (1) shall be made within 30 days after the date of enactment of this Act.

(B) EXPERTISE.—Individuals appointed under subparagraphs (C) through (F) of paragraph (1)—

(i) may not be employees of the United States;

(ii) may not be board members or employees of Amtrak;

(iii) may not be representatives of rail labor organizations or rail management; and

(iv) shall have technical qualifications, professional standing, and demonstrated expertise in the field of corporate management, finance, rail or other transportation operations, labor, economics, or the law, or other areas of expertise relevant to the Council.

(3) TERM.—Members shall serve for terms of 5 years. If a vacancy occurs other than by the expiration of a term, the individual appointed to fill the vacancy shall be appointed in the same manner as, and shall serve only for the unexpired portion of the term for which, that individual's predecessor was appointed.

(4) CHAIRMAN.—The Council shall elect a chairman from among its membership within 15 days after the earlier of—

(A) the date on which all members of the Council have been appointed under paragraph (2)(A); or

(B) 45 days after the date of enactment of this Act.

(4) MAJORITY REQUIRED FOR ACTION.—A majority of the members of the Council present and voting is required for the Council to take action. No person shall be elected chairman of the Council who receives fewer than 5 votes.

(c) ADMINISTRATIVE SUPPORT.—The Secretary of Transportation shall provide such administrative support to the Council as it needs in order to carry out its duties under this section.

(d) TRAVEL EXPENSES.—Each member of the Council shall serve without pay, but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with section 5702 and 5703 of title 5, United States Code.

(e) MEETINGS.—Each meeting of the Council, other than a meeting at which proprietary information is to be discussed, shall be open to the public.

(f) ACCESS TO INFORMATION.—Amtrak shall make available to the Council all information the Council requires to carry out its duties under this section. The Council shall establish appropriate procedures to ensure against the public disclosure of any information obtained under this subsection that is a trade secret or commercial or financial information that is privileged or confidential.

(g) DUTIES.—

(1) EVALUATION AND RECOMMENDATION.—The Council—

(A) shall evaluate Amtrak's performance; and

(B) make recommendations to Amtrak for achieving further cost containment and productivity improvements, and financial reforms.

(2) SPECIFIC CONSIDERATIONS.—In making its evaluation and recommendations under paragraph (1), the Council take consider all relevant performance factors, including—

(A) Amtrak's operation as a national passenger rail system which provides access to all regions of the country and ties together existing and emerging rail passenger corridors;

(B) appropriate methods for adoption of uniform cost and accounting procedures throughout the Amtrak system, based on generally accepted accounting principles; and

(C) management efficiencies and revenue enhancements, including savings achieved through labor and contracting negotiations.

(h) ANNUAL REPORT.—Each year before the fifth anniversary of the date of enactment of this Act, the Council shall submit to the Congress a report that includes an assessment of Amtrak's progress on the resolution or status of productivity issues; and makes recommendations for improvements and for any changes in law it believes to be necessary or appropriate.

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Council such sums as may be necessary to enable the Council to carry out its duties.

SEC. 204. SUNSET TRIGGER.

(a) IN GENERAL.—If at any time the Amtrak Reform Council finds that—

(1) Amtrak's business performance will prevent it from meeting the financial goals set forth in section 201; or

(2) Amtrak will require operating grant funds after the fifth anniversary of the date of enactment of this Act, then

the Council shall immediately notify the President, the Committee on Commerce, Science, and Transportation of the United States Senate; and the Committee on Transportation and Infrastructure of the United States House of Representatives.

(b) FACTORS CONSIDERED.—In making a finding under subsection (a), the Council shall take into account—

(1) Amtrak's performance;

(2) the findings of the independent assessment conducted under section 202; and

(3) Acts of God, national emergencies, and other events beyond the reasonable control of Amtrak.

(c) ACTION PLAN.—Within 90 days after the Council makes a finding under subsection (a), it shall develop and submit to the Congress—

(1) an action plan for a restructured and rationalized intercity rail passenger system; and

(2) an action plan for the complete liquidation of Amtrak.

If the Congress does not approve by concurrent resolution the implementation of the plan submitted under paragraph (1) within 90 calendar days after it is submitted to the Congress, then the Secretary of Transportation and Amtrak shall implement the plan submitted under paragraph (2).

SEC. 205. ACCESS TO RECORDS AND ACCOUNTS.

Section 24315 of title 49, United States Code, is amended by adding at the end the following new subsection:

''(h) ACCESS TO RECORDS AND ACCOUNTS.—A State shall have access to Amtrak's records, accounts, and other necessary documents used to determine the amount of any payment to Amtrak required of the State.''.

SEC. 206. OFFICERS' PAY.

Section 24303(b) of title 49, United States Code, is amended by adding at the end the following: ''The preceding sentence shall not apply for any fiscal year for which no Federal assistance is provided to Amtrak.''.

SEC. 207. EXEMPTION FROM TAXES.

(a) IN GENERAL.—Subsection (l) of section 24301 of title 49, United States Code, is amended—

(1) by striking so much of the subsection as precedes ''or a rail carrier'' in paragraph (1) and inserting the following:

''(l) EXEMPTION FROM TAXES LEVIED AFTER SEPTEMBER 30, 1981.—

''(1) IN GENERAL.—Amtrak'';

(2) by inserting '', and any passenger or other customer of Amtrak or such subsidiary,'' in paragraph (1) after ''subsidiary of Amtrak'';

(3) by striking ''or fee imposed''in paragraph (1) and all that follows through ''levied on it'' and inserting '', fee, head charge, or other charge, imposed or levied by a State, political subdivision, or local taxing authority on Amtrak, a rail carrier subsidiary of Amtrak, or on persons traveling in intercity rail passenger transportation or on mail or express transportation provided by Amtrak or such a subsidiary, or on the carriage of such persons, mail, or express, or on the sale of any such transportation, or on the gross receipts derived therefrom'';

(4) by striking the last sentence of paragraph (1);

(5) by striking ''(2) The'' in paragraph (2) and inserting ''(3) JURISDICTION OF UNITED STATES DISTRICT COURTS.—The''; and

(6) by inserting after paragraph (1) the following:

''(2) PHASE-IN OF EXEMPTION FOR CERTAIN EXISTING TAXES AND FEES.—

''(A) YEARS BEFORE 2000.—Notwithstanding paragraph (1), Amtrak is exempt from a tax or fee referred to in paragraph (1) that Amtrak was required to pay as of September 10, 1982, during calendar years 1997 through 1999, only to the extent specified in the following table:

PHASE-IN OF EXEMPTION

Year of assessment	Percentage of exemption
1997	40
1998	60
1999	80
2000 and later years	100

''(B) TAXES ASSESSED AFTER MARCH, 1999.—Amtrak shall be exempt from any tax or fee referred to in subparagraph (A) that is assessed on or after April 1, 1999.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) do not apply to sales taxes imposed on intrastate travel as of the date of enactment of this Act.

TITLE III—AUTHORIZATION OF APPROPRIATIONS

SEC. 301. AUTHORIZATION OF APPROPRIATIONS.

Section 24104(a) of title 49, United States Code, is amended to read as follows:

''(a) IN GENERAL.—There are authorized to be appropriated to the Secretary of Transportation—

''(1) $1,138,000,000 for fiscal year 1998;

''(2) $1,058,000,000 for fiscal year 1999;

''(3) $1,023,000,000 for fiscal year 2000;

''(4) $989,000,000 for fiscal year 2001; and

''(5) $955,000,000 for fiscal year 2002,

for the benefit of Amtrak for capital expenditures under chapters 243 and 247 of this title, operating expenses, and payments described in subsection (c)(1)(A) through (C). In fiscal years following the fifth anniversary of the enactment of the Amtrak Reform and Accountability Act of 1997 no funds authorized for Amtrak shall be used for operating expenses other than those prescribed for tax liabilities under section 3221 of the Internal Revenue Code of 1986 that are more than the amount needed for benefits of individuals who retire from Amtrak and for their beneficiaries.''.

TITLE IV—MISCELLANEOUS

SEC. 401. STATUS AND APPLICABLE LAWS.

Section 24301 of title 49, United States Code, is amended—

(1) by striking ''rail carrier under section 10102'' in subsection (a)(1) and inserting ''railroad carrier under section 20102(2) and chapters 261 and 281''; and

(2) by amending subsection (c) to read as follows:

''(c) APPLICATION OF SUBTITLE IV.—Subtitle IV of this title shall not apply to Amtrak, except for sections 11303, 11342(a), 11504(a) and (d), and 11707. Notwithstanding the preceding sentence, Amtrak shall continue to be considered an employer under the Railroad Retirement Act of 1974, the Railroad Unemployment Insurance Act, and the Railroad Retirement Tax Act.''.

SEC. 402. WASTE DISPOSAL.

Section 24301(m)(1)(A) of title 49, United States Code, is amended by striking ''1996'' and inserting ''2001''.

SEC. 403. ASSISTANCE FOR UPGRADING FACILITIES.

Section 24310 of title 49, United States Code, and the item relating thereto in the table of sections of chapter 243 of such title, are repealed.

SEC. 404. DEMONSTRATION OF NEW TECHNOLOGY.

Section 24314 of title 49, United States Code, and the item relating thereto in the table of sections for chapter 243 of that title, are repealed.

SEC. 405. PROGRAM MASTER PLAN FOR BOSTON-NEW YORK MAIN LINE.

(a) REPEAL.—Section 24903 of title 49, United States Code, is repealed and the table of sections for chapter 249 of such title is amended by striking the item relating to that section.

(b) CONFORMING AMENDMENTS.—

(1) Section 24902 of title 49, United States Code, is amended by striking subsections (a), (c), and (d) and redesignating subsection (b) as subsection (a) and subsections (e) through (m) as subsections (b) through (j), respectively.

(2) Section 24904(a)(8) is amended by striking ''the high-speed rail passenger transportation area specified in section 24902(a)(1) and (2)'' and inserting ''a high-speed rail passenger transportation area''.

SEC. 406. AMERICANS WITH DISABILITIES ACT OF 1990.

(a) APPLICATION TO AMTRAK.—

(1) ACCESS IMPROVEMENTS AT CERTAIN SHARED STATIONS.—Amtrak is responsible for its share, if any, of the costs of accessibility improvements at any station jointly used by Amtrak and a commuter authority.

(2) CERTAIN REQUIREMENTS NOT TO APPLY UNTIL 1998.—Amtrak shall not be subject to any requirement under subsection (a)(1), (a)(3), or (e)(2) of section 242 of the Americans With Disabilities Act of 1990 (42 U.S.C. 12162) until January 1, 1998.

(b) CONFORMING AMENDMENT.—Section 24307 of title 49, United States Code, is amended—

(1) by striking subsection (b); and

(2) by redesignating subsection (c) as subsection (b).

SEC. 407. DEFINITIONS.

Section 24102 of title 49, United States Code, is amended—

(1) by striking paragraphs (2) and (11);

(2) by redesignating paragraphs (3) through (8) as paragraphs (2) through (7), respectively;

(3) by inserting '', including a unit of State or local government,'' after ''means a person'' in paragraph (7), as so redesignated; and

(4) by inserting after paragraph (7), as so redesignated, the following new paragraph:

''(8) 'rail passenger transportation' means the interstate, intrastate, or international transportation of passengers by rail, including mail and express.''.

SEC. 408. NORTHEAST CORRIDOR COST DISPUTE.

Section 1163 of the Northeast Rail Service Act of 1981 (45 U.S.C. 1111) is repealed.

SEC. 409. INSPECTOR GENERAL ACT OF 1978 AMENDMENT.

(a) AMENDMENT.—

(1) IN GENERAL.—Section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking ''Amtrak,''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) takes effect in the first fiscal year for which Amtrak receives no Federal subsidy.

(b) AMTRAK NOT FEDERAL ENTITY.—Amtrak shall not be considered a Federal entity for purposes of the Inspector General Act of 1978. The preceding sentence shall apply for any fiscal year for which Amtrak receives no Federal subsidy.

SEC. 410. INTERSTATE RAIL COMPACTS.

(a) CONSENT TO COMPACTS.—Congress grants consent to States with an interest in a specific form, route, or corridor of intercity passenger rail service (including high speed rail service) to enter into interstate compacts to promote the provision of the service, including—

(1) retaining an existing service or commencing a new service;

(2) assembling rights-of-way; and

(3) performing capital improvements, including—

(A) the construction and rehabilitation of maintenance facilities;

(B) the purchase of locomotives; and

(C) operational improvements, including communications, signals, and other systems.

(b) FINANCING.—An interstate compact established by States under subsection (a) may provide that, in order to carry out the compact, the States may—

(1) accept contributions from a unit of State or local government or a person;

(2) use any Federal or State funds made available for intercity passenger rail service (except funds made available for the National Railroad Passenger Corporation);

(3) on such terms and conditions as the States consider advisable—

(A) borrow money on a short-term basis and issue notes for the borrowing; and

(B) issue bonds; and

(4) obtain financing by other means permitted under Federal or State law.

(c) ELIGIBLE PROJECTS.—Section 133(b) of title 23, United States Code, is amended by striking ''and publicly owned intracity or intercity bus terminals and facilities'' in paragraph (2) and inserting a comma and ''including vehicles and facilities, publicly or privately owned, that are used to provide intercity passenger service by bus or rail, or a combination of both''.

(d) ELIGIBILITY OF PASSENGER RAIL UNDER CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.—The first sentence of section 149(b) of title 23, United States Code, is amended—

(1) by striking ''or'' at the end of paragraph (3);

(2) by striking the period at the end of paragraph (4); and

(3) by adding at the end thereof the following:

''(5) if the project or program will have air quality benefits through construction of and operational improvements for intercity passenger rail facilities, operation of intercity

passenger rail trains, and acquisition of rolling stock for intercity passenger rail service, except that not more than 50 percent of the amount received by a State for a fiscal year under this paragraph may be obligated for operating support.''.

(e) ELIGIBILITY OF PASSENGER RAIL AS NATIONAL HIGHWAY SYSTEM PROJECT.—Section 103(i) of title 23, United States Code, is amended by adding at the end thereof the following:

''(14) Construction, reconstruction, and rehabilitation of, and operational improvements for, intercity rail passenger facilities (including facilities owned by the National Railroad Passenger Corporation), operation of intercity rail passenger trains, and acquisition or reconstruction of rolling stock for intercity rail passenger service, except that not more than 50 percent of the amount received by a State for a fiscal year under this paragraph may be obligated for operation.''.

SEC. 411. COMPOSITION OF AMTRAK BOARD OF DIRECTORS.

Section 24302(a) of title 49, United States Code, is amended—

(1) by striking ''3'' in paragraph (1)(C) and inserting ''4'';

(2) by striking clauses (i) and (ii) of paragraph (1)(C) and inserting the following:

''(i) one individual selected as a representative of rail labor in consultation with affected labor organizations.

''(ii) one chief executive officer of a State, and one chief executive officer of a municipality, selected from among the chief executive officers of State and municipalities with an interest in rail transportation, each of whom may select an individual to act as the officer's representative at board meetings.'';

(4) striking subparagraphs (D) and (E) of paragraph (1);

(5) inserting after subparagraph (C) the following:

''(D) 3 individuals appointed by the President of the United States, as follows:

''(i) one individual selected as a representative of a commuter authority, (as defined in section 102 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702) that provides its own commuter rail passenger transportation or makes a contract with an operator, in consultation with affected commuter authorities.

''(ii) one individual with technical expertise in finance and accounting principles.

''(iii) one individual selected as a representative of the general public.''; and

(6) by striking paragraph (6) and inserting the following:

''(6) The Secretary may be represented at a meeting of the board only by the Administrator of the Federal Railroad Administration.''.

By Mr. DASCHLE:

S. 740. A bill to provide a 1-year delay in the imposition of penalties on small businesses failing to make electronic fund transfers of business taxes; to the Committee on Finance.

THE ELECTRONIC FUNDS TRANSFER TAX PAYMENTS BY SMALL BUSINESSES ACT OF 1997

Mr. DASCHLE. Mr. President, today I am introducing legislation that would waive for 1 year penalties on small businesses that fail to pay their taxes to the Internal Revenue Service [IRS] electronically.

Last July, millions of small business owners received a letter from the IRS announcing that, beginning January 1, 1997, business tax payments would have to be made via electronic funds transfer. This letter sent shock waves through the small business community in South Dakota. The letter was vague and provided little information on how the new deposit requirement would work.

In meetings, letters, and phone calls, South Dakotans posed many questions to me that the IRS letter did not answer: ''How much will this cost my business?''; ''Will I have to purchase new equipment to make these electronic transfers?''; and ''Will the IRS be taking the money directly out of my account?''

As you may recall, this new requirement was adopted as part of a package of revenue offsets for the North American Free-Trade Agreement. The Treasury Department was directed to draw up regulations phasing in the requirement, which will raise money by eliminating the float banks accrue on the delay between the time they receive tax deposits from businesses and the time they transfer this money to the Treasury.

All businesses with $47 million or more in annual payroll taxes are already required to pay by electronic funds transfer. The new, lower threshold is estimated to bring 1.3 million small- and medium-sized businesses into the program for the first time.

As a result of protests registered by many small businesses, the IRS decided to delay for 6 months the 10-percent penalty on firms failing to begin making deposits electronically by January 1, 1997. Not satisfied with this step, Congress recently passed an outright 6-month delay in the electronic filing requirement as part of the Small Business Job Protection Act of 1996.

I strongly supported this amendment. However, I believe that these 1.3 million businesses should be given further time to comply without the threat of financial penalties. Electronic funds transfer may well prove to be the most efficient system of payment for all concerned, including small businesses. Once they learn the advantages of the new system, these firms may well come to prefer it to the existing one, which requires a special kind of coupon and a lot of paperwork. But this is a new procedure, and many small employers are not sure what it will entail. A recent hearing in the House of Representatives documented a series of uncertainties and potential problems accompanying an extension of the electronic funds transfer mandate to smaller firms.

The bill I am introducing today would suspend penalties for noncompliance for 1 year, until July 1, 1998. I believe this step is necessary to provide time for small businesses to be properly educated about the easiest, least burdensome, and most cost-efficient way to comply. In my view, whenever possible, the IRS should avoid taking an adversarial approach toward the small business community or, for that matter, any taxpayer. At every opportunity, the IRS should seek to help taxpayers comply with their obligations. I believe that, by removing the threat of penalties for a short while longer, my bill will help the IRS fulfill this important part of its mission.

Mr. President, I ask unanimous consent that 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. 740

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

SECTION 1. WAIVER OF PENALTY ON SMALL BUSINESSES FAILING TO MAKE ELECTRONIC FUND TRANSFERS OF TAXES.

No penalty shall be imposed under the Internal Revenue Code of 1986 solely by reason of a failure by a person to use the electronic fund transfer system established under section 6302(h) of such Code if—

(1) such person is a member of a class of taxpayers first required to use such system on or after July 1, 1997, and

(2) such failure occurs during the 1-year period beginning on July 1, 1997.

By Mr. BREAUX:

S. 741. A bill to amend the Communications Act of 1934 to enable the Federal Communications Commission to enhance its spectrum management program capabilities through the collection of lease fees for new spectrum for radio services that are statutorily excluded from competitive bidding, and to enhance law enforcement and public safety radio communications; to the Committee on Commerce, Science, and Transportation.

THE PRIVATE WIRELESS SPECTRUM AVAILABILITY ACT

● Mr. BREAUX. Mr. President, I introduce the Private Wireless Spectrum Availability Act of 1997. This legislation will help the more than 300,000 U.S. companies, both large and small, that have invested $25 billion in internally owned and operated wireless communications systems. It will provide these companies with critically needed spectrum and will do so through an equitable lease fee system.

The private wireless communications community includes industrial, land transportation, business, educational, and philanthropic organizations that own and operate communications systems for their internal use. The top 10 U.S. industrial companies have more than 6,000 private wireless licenses. Private wireless systems also serve America's small businesses in the utility, contracting, taxi, and livery industries.

These internal-use communications facilities greatly enhance public safety and the quality of American life. They also support global competitiveness for American firms. For example, private wireless systems support: the efficient production of goods and services; the safe transportation of passengers and products by land and air; the exploration, production, and distribution of energy; agricultural enhancement and production; the maintenance and development of America's infrastructure;

and compliance with various local, State, and Federal operational government statutes.

Current regulatory policy inadequately recognizes the public interest benefits that private wireless licensees provide to the American public. Consequently, allocations of spectrum to these private wireless users has been deficient. Private wireless entities received spectrum in 1974 and 1986 when the FCC allocated channels in the 800 megahertz and 900 megahertz bands. Over time, however, the FCC has significantly reduced the number of channels available to industrial and business entities in those allocations. Private wireless entities now have access to only 299 channels, or 32 percent of the channels of the original allocation.

Spectrum auctions have done a great job of speeding up the licensing of interpersonal communications services and have generated significant revenues for the U.S. Treasury. They have also unfortunately skewed the spectrum allocation process toward subscriber-based services and away from critical radio services such as private wireless which are exempted from auctions. Nearly 200 megahertz of spectrum has been allocated for the provision of commercial telecommunications services, virtually all of which has been assigned by the FCC through competitive bidding.

Competitive bidding is not the proper assignment methodology for private wireless telecommunications users. Private wireless operations are site-specific systems which vary in size based on that user's particular needs, and are seldom mutually exclusive from other private wireless applicants. Auctions, which depend on mutually exclusive applications and use market areas based on population, simply cannot be designed for private wireless systems.

This legislation mandates that the FCC allocate no less than 12 megahertz of new spectrum for private wireless use as a measure to maintain our industrial and business competitiveness in the global arena, as well as to protect the welfare of the employees in the American workplace. Research indicates that private wireless companies are willing to pay a reasonable fee in return for use of spectrum. They recognize that their access to spectrum increases with their willingness to pay fair value for the use of this national asset.

My bill grants the FCC legislative authority to charge efficiency-based spectrum lease fees in this new spectrum allocation. These lease fees should encourage the efficient use of spectrum by the private wireless industry, generate recurring annual revenues as compensation for the use of spectrum, and retain spectrum ownership by the public. Furthermore, the fees should be easy for private frequency advisory committees to calculate and collect.

Mr. President, I am mindful that some peripheral concerns expressed by small businesses that service private wireless users are not addressed in this bill. I assure these companies that I will work with them through the legislative process to address these issues. I urge my colleagues to join me in supporting this bill and ask unanimous consent that the full 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. 741

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 ''Private Wireless Spectrum Availability Act''.

SEC. 2. DEFINITIONS.

As used in this Act—

(1) COMMISSION.—The term ''Commission'' means the Federal Communications Commission.

(2) PUBLIC SAFETY.—The term ''public safety'' means fire, police, or emergency medical service including critical care medical telemetry, and such other services related to public safety as the Commission may include within the definition of public safety for purposes of this Act.

(3) PRIVATE WIRELESS.—The term ''private wireless'' encompasses all land mobile telecommunications systems operated by or through industrial, business, transportation, educational, philanthropic or ecclesiastical organizations where these systems, the operation of which may be shared, are for the licensees' internal use, rather than subscriber-based Commercial Mobile Radio Services (CMRS) systems.

(4) SPECTRUM LEASE FEE.—The term ''spectrum lease fee'' means a periodic payment for the use of a given amount of electromagnetic spectrum in a given area in consideration of which the user is granted a license for such use.

SEC. 3. FINDINGS.

The Congress finds that:

(1) Private wireless communications systems enhance the competitiveness of American industry and business in international commerce, promote the development of national infrastructure, improve the delivery of products and services to consumers in the United States and abroad, and contribute to the economic and social welfare of citizens of the United States.

(2) The highly specialized telecommunications requirements of licensees in the private wireless services would be served, and a more favorable climate would be created for the allocation of additional electromagnetic spectrum for those services if an alternative license administration methodology, in addition to the existing competitive bidding process, were made available to the Commission.

SEC. 4. SPECTRUM LEASING FEES.

Title I of the Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended by adding at the end thereof the following:

''SEC. 12. SPECTRUM LEASE FEE PROGRAM.

''(a) SPECTRUM LEASE FEES.—

''(1) IN GENERAL.—Within 6 months after the date of enactment of the Private Wireless Spectrum Availability Act, the Commission shall by rule—

''(A) implement a system of spectrum lease fees applicable to newly allocated frequency bands, as described in section 5 of the Private Wireless Spectrum Availability Act, assigned to systems (other than public safety systems (as defined in section 2(2) of the Private Wireless Spectrum Availability Act)) in private wireless service;

''(B) provide appropriate incentives for licensees to confine their radio communication to the area of operation actually required for that communications; and

''(C) permit private land mobile frequency advisory committees certified by the Commission to assist in the computation, assessment, collection, and processing of amounts received under the system of spectrum lease fees.

''(2) FORMULA.—The Commission shall include as a part of the rulemaking carried out under paragraph (1)—

''(A) a formula to be used by private wireless licensees and certified frequency advisory committees to compute spectrum lease fees; and

''(B) an explanation of the technical factors included in the spectrum lease fee formula, including the relative weight given to each factor.

''(b) FEE BASIS.—

''(1) INITIAL FEES.—Fees assessed under the spectrum lease fee system established under subsection (a) shall be based on the approximate value of the assigned frequencies to the licensees. In assessing the value of the assigned frequencies to licensees under this subsection, the Commission shall take into account all relevant factors, including the amount of assigned bandwidth, the coverage area of a system, the geographic location of the system, and the degree of frequency sharing with other licensees in the same area. These factors shall be incorporated in the formula described in subsection (a)(2).

''(2) ADJUSTMENT OF FEES.—The Commission may adjust the formula developed under subsection (a)(2) whenever it determines that adjustment is necessary in order to calculate the lease fees more accurately or fairly.

''(3) FEE CAP.—The spectrum lease fees shall be set so that, over a 10-year license term, the amount of revenues generated will not exceed the revenues generated from the auction of comparable spectrum. For purposes of this paragraph, the 'comparable spectrum' shall mean spectrum located within 500 megahertz of that spectrum licensed in a concluded auction for mobile radio communication licenses.

''(c) APPLICATION TO PRIVATE WIRELESS SYSTEMS.—After the Commission has implemented the spectrum leasing fee system under subsection (a) and provided licensees access to new spectrum as defined in section 5(c)(2) of the Private Wireless Spectrum Availability Act, it shall assess the fees established for that system against all licensees authorized in any new frequency bands allocated for private wireless use.''.

SEC. 5. SPECTRUM LEASE FEE PROGRAM INITIATION.

(a) IN GENERAL.—The Commission shall allocate for use in the spectrum lease fee program under section 12 of the Communications Act of 1934 (47 U.S.C. 162) not less than 12 megahertz of electromagnetic spectrum, previously unallocated to private wireless, located between 150 megahertz and 1000 megahertz on a nationwide basis.

(b) EXISTING INCUMBENTS.—In allocating electromagnetic spectrum under subsection (a), the Commission shall ensure that existing incumbencies do not inhibit effective access to use of newly allocated spectrum to the detriment of the spectrum lease fee program.

(c) TIMEFRAME.—

(1) ALLOCATION.—The Commission shall allocate electromagnetic spectrum under subsection (a) within 6 months after the date of enactment of this Act.

(2) ACCESS.—The Commission shall take such reasonable action as may be necessary to ensure that initial access to electromagnetic spectrum allocated under subsection (a) commences not later than 12

months after the date of enactment of this Act.

SEC. 6. DELEGATION OF AUTHORITY.

Section 5 of the Communications Act of 1934 (47 U.S.C. 155) is amended by adding at the end thereof the following:

''(f) DELEGATION TO CERTIFIED FREQUENCY ADVISORY COMMITTEES.—

''(1) IN GENERAL.—The Commission may, by published rule or order, utilize the services of certified private land mobile frequency advisory committees to assist in the computation, assessment, collection, and processing of funds generated through the spectrum lease fee program under section 12 of this Act. Except as provided in paragraph (3), a decision or order made or taken pursuant to such delegation shall have the same force and effect, and shall be made, evidenced, and enforced in the same manner, as decisions or orders of the Commission.

''(2) PROCESSING AND DEPOSITING OF FEES.—A frequency advisory committee shall deposit any spectrum lease fees collected by it under Commission authority with a banking agent designated by the Commission in the same manner as it deposits application filing fees collected under section 8 of this Act.

''(3) REVIEW OF ACTIONS.—A decision or order under paragraph (1) is subject to review in the same manner, and to the same extent, as decisions or orders under subsection (c)(1) are subject to review under paragraphs (4) through (7) of subsection (c).

SEC. 7. PROHIBITION OF USE OF COMPETITIVE BIDDING.

Section 309(j)(6) of the Communications Act of 1934 (47 U.S.C. 309(j)(6)) is amended—

(1) by striking ''or'' at the end of subparagraph (G);

(2) by striking the period at the end of subparagraph (H) and inserting a semicolon and ''or''; and

(3) by adding at the end thereof the following:

''(I) preclude the Commission from considering the public interest benefits of private wireless communications systems (as defined in section 2(3) of the Spectrum Efficiency Reform Act of 1977) and making allocations in circumstances in which—

''(i) the pre-defined geographic market areas required for competitive bidding processes are incompatible with the needs of radio services for site-specific system deployment;

''(ii) the unique operating characteristics and requirements of Federal agency spectrum users demand, as a prerequisite for sharing of Federal spectrum, that nongovernment access to the spectrum be restricted to radio systems that are non subscriber-based;

''(iii) licensee concern for operational safety, security, and productivity are of paramount importance and, as a consequence, there is no incentive, interest, or intent to use the assigned frequency for producing subscriber-based revenue; or

''(iv) the Commission, in its discretion, deems competitive bidding processes to be incompatible with the public interest, convenience, and necessity.''.

SEC. 8. USE OF PROCEEDS FROM SPECTRUM LEASE FEES.

(a) ESTABLISHMENT OF ACCOUNT.—There is hereby established on the books of the Treasury an account for the spectrum license fees generated by the spectrum license fee system established under section 12 of the Communications Act of 1934 (47 U.S.C. 162). Except as provided in subsections (b) and (c), all proceeds from spectrum lease fees shall be deposited in the Treasury in accordance with chapter 33 of title 31, United States Code, and credited to the account established by this subsection.

(b) ADMINISTRATIVE EXPENSES.—Out of amounts received from spectrum lease payments a fair and reasonable amount, as determined by the Commission, may be retained by a certified frequency advisory committee acting under section 5(f) of the Communications Act of 1934 (47 U.S.C. 155(f)) to cover costs incurred by it in administering the spectrum lease fee program.

SEC. 9. LEASING NOT TO AFFECT COMMISSION'S DUTY TO ALLOCATE.

The implementation of spectrum lease fees as a license administration mechanism is not a substitute for effective spectrum allocation procedures. The Commission shall continue to allocate spectrum to various services on the basis of fulfilling the needs of these services, and shall not use fees or auctions as an allocation mechanism.●

By Ms. SNOWE (for herself, Mr. REID, Mr. WARNER, Ms. MIKULSKI, Mr. CHAFEE, Mr. DURBIN, Ms. COLLINS, Mrs. MURRAY, and Mr. JEFFORDS):

S. 743. A bill to require equitable coverage of prescription contraceptive drugs and devices, and contraceptive services under health plans; to the Committee on Finance.

THE EQUITY IN PRESCRIPTION INSURANCE AND CONTRACEPTIVE COVERAGE ACT

Ms. SNOWE. Mr. President, nowhere is the middle ground in American politics harder to find than in the debate over abortion. It is clear that the apparent inability of pro-choice and pro-life members to find common ground is one of the most divisive issues we face today. In debate after debate, it often appears that there is no middle ground. Well, I am extremely pleased that my colleague from Nevada, Senator REID, is joining me today to introduce legislation that will prove this statement untrue.

Too often, pro-choice leaders do too little to convey that they are not pro-abortion. Likewise, abortion opponents too often fail to work constructively toward reducing the need for abortion. The failure of pro-choice and pro-life members to stake out common ground weakens our Nation immeasurably.

Today that's going to change. The cosponsors of this bill come from different parties, and have very different views on abortion. Our voting records are clear: I am firmly pro-choice; Senators REID is firmly pro-life. Yet, despite these fundamental differences, we agree that something can and must be done to reduce the rates of unintended pregnancy and abortion in this country. That is why we are joining forces and introducing bipartisan, landmark legislation to make contraceptives more affordable for Americans. And I am pleased that a number of my colleagues, including Senators WARNER, MIKULSKI, CHAFEE, DURBIN, COLLINS, MURRAY, and JEFFORDS are joining us as original cosponsors.

The need is clear. This year, there will be 3.6 million unintended pregnancies—over 56 percent of all pregnancies in America—and half will end in abortion. These are staggering statistics. But what's even more staggering is that it doesn't have to be this way. If prescription contraceptives were covered like other prescription drugs, a lot more Americans could afford to use safe, effective means to prevent unintended pregnancies.

The fact is, under many of today's health insurance plans, a woman can afford a prescription to alleviate allergy symptoms but not a prescription to prevent an unintended and life-altering pregnancy. It is simply not right that while the vast majority of insurers cover prescription drugs, half of large group plans exclude coverage of prescription contraceptives. And only one-third cover oral contraceptives—the most popular form of birth control.

Is it any wonder that women spend 68 percent more than men in out-of-pocket health care costs—68 percent. It does not make sense that, at a time when we want to reduce unintended pregnancies, so many otherwise insured woman can't afford access to the most effective contraceptives because of the disparity in coverage.

The lack of contraceptive coverage in health insurance is not news to most women. Countless American women have been shocked to learn that their insurance does not cover contraceptives, one of their most basic health care needs, even though other prescriptions drugs which are equally valuable to their lives are routinely covered. But until today, women could do little more than feel silent outrage at a practice that disadvantages both their health and their pocketbook.

Now, the Equity in Prescription Insurance and Contraceptive Coverage Act gives voice to that outrage. EPICC sends a message that we can no longer tolerate policies that disadvantage women and disadvantage our nation. When our bill is passed, women will finally be assured of equity in prescription drug coverage and health care services. And America's unacceptably high rates of unintended pregnancies and abortions will be reduced in the process.

This EPICC approach is simple. It says that if insurers already cover prescription drugs and devices, they must also cover FDA-approved prescription contraceptives. And it takes the commonsense approach of requiring health plans which already cover basic health care services to also cover medical and counseling services to promote the effective use of those contraceptives. The bill does not require insurance companies to cover prescription drugs—it simply says that if insurers cover prescription drugs, they cannot treat prescription contraceptives any differently. Similarly, it says that insurers which cover outpatient health care services cannot limit or exclude coverage of the medical and counseling services necessary for effective contraceptive use in order to prevent unintended pregnancies.

This bill is not only good policy, it also makes good economic sense. We know that contraceptives are cost-effective: in the public sector, for every

dollar invested in family planning, $4 to $14 is saved in health care and related costs. And we also know that by helping families to adequately space their pregnancies, contraceptives contribute to healthy pregnancies and healthy births, reducing rates of maternal complications, and low-birth weight.

Time and time again Americans have expressed the desire for their leaders to come together to work on the problems that face us. This bill exemplifies that spirit of cooperation. It crosses some very wide gulfs and makes some very meaningful changes in policy that will benefit countless Americans.

As someone who is pro-choice, I firmly believe that abortions should be safe, legal, and rare. Through this bill, I invite both my pro-choice and pro-life colleagues to join with me in emphasizing the rare. And I invite all who believe in sound public policy to join our alliance. Because we as a nation must be truly committed to reducing rates of unintended pregnancy and abortion. We must come together despite our differences. We must pass this EPICC bill into law.

Mr. REID. Mr. President, I am proud to introduce today, with Senator SNOWE, the Equity in Prescription and Contraception Coverage Act of 1997. I have said time and time again that if men suffered from the same illnesses as women, the biomedical research community would be much closer to eliminating diseases that strike women. I believe this is a similar type of issue. If men had to pay for contraceptive drugs and devices, the insurance industry would cover them.

The health industry has done a poor job of responding to women's health needs. Women spend 68 percent more in out-of-pocket costs for health care than men. Reproductive health care services account for much of this difference. According to a study done by the Alan Guttmacher Institute, 49 percent of all large-group health care plans do not routinely cover any contraceptive method at all, and only 15 percent cover all five of the most common contraceptive methods. Women are forced to use disposable income to pay for family planning services not covered by their health insurance—the pill—one of the most common birth control methods, can cost cover $300 a year. Therefore, women who lack disposable income are forced to use less reliable methods of contraception and risk an unintended pregnancy.

The legislation we introduce today would require insurers, HMO's, and employee health benefit plans that offer prescription drug benefits to cover contraceptive drugs and devices approved by the FDA. Further, it would require these insurers to cover outpatient contraceptive services if a plan covers other outpatient services. Lastly, it would prohibit the imposition of copays and deductibles for prescription contraceptives or outpatient services that are greater than those for other prescription drugs.

Each year approximately 3,600,000 pregnancies, or 60 percent of all pregnancies, in this country are unintended. Of these unintended pregnancies, 44 percent end in abortion. Reliable family planning methods must be made available if we wish to reduce this disturbing number. Further, a reduction in unintended pregnancies will also lead to a reduction in infant mortality, low-birth weight, and maternal morbidity. In fact, the National Commission to Prevent Infant Mortality determined that ''infant mortality could be reduced by 10 percent if all women not desiring pregnancy used contraception.''

Ironically, abortion is routinely covered by 66 percent of indemnity plans, 67 percent of preferred provider organizations, and 70 percent of HMO's. Sterilization and tubal ligation are also routinely covered. It does not make sense financially for insurance companies to cover these more expensive services, rather than contraception. Studies indicate that for every dollar of public funds invested in family planning, $4 to $14 of public funds is saved in pregnancy and health care-related costs. According to one recent study in the American Journal of Public Health, by increasing the number of women who use oral contraceptives by 15 percent, health plans would accrue enough savings in pregnancy care costs to cover oral contraceptives for all users under the plan.

It is vitally important to the health of our country that quality contraception is not beyond the financial reach of women. Providing access to contraception will bring down the unintended pregnancy rate, insure good reproductive health for women, and reduce the number of abortions.

It is a significant step, in my opinion, to have support from both pro-life and pro-choice Senators for this bill. Prevention is the common ground on which we can all stand. Let's begin to attack the problem of unintended pregnancies at its root.

By Mr. JOHNSON (for himself and Mr. DASCHLE):

S. 744. A bill to authorize the construction of the Fall River Water Users District Rural Water System and authorize financial assistance to the Fall River Water Users District, a nonprofit corporation, in the planning and construction of the water supply system, and for other purposes; to the Committee on Energy and Natural Resources.

THE FALL RIVER WATER USERS DISTRICT RURAL WATER SYSTEM ACT OF 1997

● Mr. JOHNSON. Mr. President, today I am proud to introduce legislation to authorize a critically important rural water system in South Dakota, the Fall River Water Users District Rural Water System Act of 1997. This legislation is strongly supported by local project sponsors who have demonstrated that support by agreeing to substantial financial contributions from the local level. I am pleased to introduce this legislation today, along with my colleague from South Dakota, Senate Minority Leader TOM DASCHLE. Both Senator DASCHLE and I were sponsors of similar legislation in the 104th Congress, and we will work together to enact this necessary rural water legislation in the 105th Congress.

Like many parts of South Dakota, Fall River County has insufficient water supplies of reasonable quality available, and the water supplies that are available do not meet the minimum health and safety standards. In addition to improving the health of residents in the region, I strongly believe that these rural drinking water delivery projects will help to stabilize the rural economy in both regions. Water is a basic commodity and is essential if we are to foster rural development in many parts of rural South Dakota, including the Fall River County area.

Past cycles of severe drought in the southeastern area of Fall River County have left local residents without a satisfactory water supply and during 1990, many homeowners and ranchers were forced to haul water to sustain their water needs.

Currently, many residents are either using bottled water for human consumption or they are using distillers due to the poor quality of the water supplies available. After conducting a feasibility study and preliminary engineering report, the best available, reliable, and safe rural and municipal water supply to serve the needs of the Fall River Water Users District consists of a Madison Aquifer well, three separate water storage reservoirs, three pumping stations, and approximately 200 miles of pipeline. The legislation I am introducing today authorizes the Bureau of Reclamation to construct a rural water system in Fall River County as described above. The Fall River system will serve rural residents, as well as the community of Oelrichs and the Angostura State Recreation Area.

Mr. President, South Dakota is plagued by water of exceedingly poor quality, and the Fall River County rural water project is an effort to help provide clean water—a commodity most of us take for granted—to the people of South Dakota. I am a strong believer in the role of the Federal Government to help in the delivery of rural water, and I hope to continue to advance that agenda both in South Dakota and around the country. I urge my colleagues to support this legislation, and I look forward to working with my colleagues on the Energy and Natural Resources Committee to move forward on enactment as quickly as possible.

Mr. President, I 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. 744

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 ''Fall River Water Users District Rural Water System Act of 1997''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) there are insufficient water supplies of reasonable quality available to the members of the Fall River Water Users District Rural Water System located in Fall River County, South Dakota, and the water supplies that are available are of poor quality and do not meet minimum health and safety standards, thereby posing a threat to public health and safety;

(2) past cycles of severe drought in the southeastern area of Fall River County have left residents without a satisfactory water supply, and, during 1990, many home owners and ranchers were forced to haul water to sustain their water needs;

(3) because of the poor quality of water supplies, most members of the Fall River Water Users District are forced to either haul bottled water for human consumption or use distillers;

(4) the Fall River Water Users District Rural Water System has been recognized by the State of South Dakota; and

(5) the best available, reliable, and safe rural and municipal water supply to serve the needs of the Fall River Water Users District Rural Water System members consists of a Madison Aquifer well, 3 separate water storage reservoirs, 3 pumping stations, and approximately 200 miles of pipeline.

(b) PURPOSES.—The purposes of this Act are—

(1) to ensure a safe and adequate municipal, rural, and industrial water supply for the members of the Fall River Water Users District Rural Water System in Fall River County, South Dakota;

(2) to assist the members of the Fall River Water Users District in developing safe and adequate municipal, rural, and industrial water supplies; and

(3) to promote the implementation of water conservation programs by the Fall River Water Users District Rural Water System.

SEC. 3. DEFINITIONS.

In this Act:

(1) ENGINEERING REPORT.—The term ''engineering report'' means the study entitled ''Supplemental Preliminary Engineering Report for Fall River Water Users District'' published in August 1995.

(2) PROJECT CONSTRUCTION BUDGET.—The term ''project construction budget'' means the description of the total amount of funds that are needed for the construction of the water supply system, as described in the engineering report.

(3) PUMPING AND INCIDENTAL OPERATIONAL REQUIREMENTS.—The term ''pumping and incidental operational requirements'' means all power requirements that are incidental to the operation of intake facilities, pumping stations, water treatment facilities, cooling facilities, reservoirs, and pipelines to the point of delivery of water by the Fall River Water Users District Rural Water System to each entity that distributes water at retail to individual users.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Director of the Bureau of Reclamation.

(5) WATER SUPPLY SYSTEM.—The term ''water supply system'' means the Fall River Water Users District Rural Water System, a nonprofit corporation, established and operated substantially in accordance with the engineering report.

SEC. 4. FEDERAL ASSISTANCE FOR WATER SUPPLY SYSTEM.

(a) IN GENERAL.—The Secretary shall make grants to the water supply system for the Federal share of the costs of the planning and construction of the water supply system.

(b) SERVICE AREA.—The water supply system shall provide for safe and adequate municipal, rural, and industrial water supplies, mitigation of wetlands areas, and water conservation within the boundaries of the Fall River Water Users District, described as follows: bounded on the north by the Angostura Reservoir, the Cheyenne River, and the line between Fall River and Custer Counties, bounded on the east by the line between Fall River and Shannon Counties, bounded on the south by the line between South Dakota and Nebraska, and bounded on the west by the Igloo-Provo Water Project District.

(c) AMOUNT OF GRANTS.—Grants made available under subsection (a) to the water supply system shall not exceed the Federal share under section 9.

(d) LIMITATION ON AVAILABILITY OF CONSTRUCTION FUNDS.—The Secretary shall not obligate funds for the construction of the water supply system until—

(1) the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) are met with respect to the water supply system; and

(2) a final engineering report has been prepared and submitted to Congress for a period of not less than 90 days before the commencement of construction of the system.

SEC. 5. MITIGATION OF FISH AND WILDLIFE LOSSES.

Mitigation of fish and wildlife losses incurred as a result of the construction and operation of the water supply system shall be on an acre-for-acre basis, based on ecological equivalency, concurrent with project construction, as provided in the engineering report.

SEC. 6. USE OF PICK-SLOAN POWER.

(a) IN GENERAL.—From power designated for future irrigation and drainage pumping for the Pick-Sloan Missouri River Basin Program, the Western Area Power Administration shall make available the capacity and energy required to meet the pumping and incidental operational requirements of the water supply system during the period beginning May 1 and ending October 31 of each year.

(b) CONDITIONS.—The capacity and energy described in subsection (a) shall be made available on the following conditions:

(1) The water supply system shall be operated on a not-for-profit basis.

(2) The water supply system shall contract to purchase its entire electric service requirements, including the capacity and energy made available under subsection (a), from a qualified preference power supplier that itself purchases power from the Western Area Power Administration.

(3) The rate schedule applicable to the capacity and energy made available under subsection (a) shall be the firm power rate schedule of the Pick-Sloan Eastern Division of the Western Area Power Administration in effect when the power is delivered by the Administration.

(4) It shall be agreed by contract among—

(A) the Western Area Power Administration;

(B) the power supplier with which the water supply system contracts under paragraph (2);

(C) the power supplier of the entity described in subparagraph (B); and

(D) the Fall River Water Users District;

that in the case of the capacity and energy made available under subsection (a), the benefit of the rate schedule described in paragraph (3) shall be passed through to the water supply system, except that the power supplier of the water supply system shall not be precluded from including, in the charges of the supplier to the water system for the electric service, the other usual and customary charges of the supplier.

SEC. 7. NO LIMITATION ON WATER PROJECTS IN STATE.

This Act does not limit the authorization for water projects in South Dakota under law in effect on or after the date of enactment of this Act.

SEC. 8. WATER RIGHTS.

Nothing in this Act—

(1) invalidates or preempts State water law or an interstate compact governing water;

(2) alters the rights of any State to any appropriated share of the waters of any body of surface or ground water, whether determined by past or future interstate compacts or by past or future legislative or final judicial allocations;

(3) preempts or modifies any Federal or State law, or interstate compact, dealing with water quality or disposal; or

(4) confers on any non-Federal entity the ability to exercise any Federal right to the waters of any stream or to any ground water resource.

SEC. 9. FEDERAL SHARE.

The Federal share under section 4 shall be 80 percent of—

(1) the amount allocated in the total project construction budget for the planning and construction of the water supply system under section 4; and

(2) such sums as are necessary to defray increases in development costs reflected in appropriate engineering cost indices after August 1, 1995.

SEC. 10. NON-FEDERAL SHARE.

The non-Federal share under section 4 shall be 20 percent of—

(1) the amount allocated in the total project construction budget for the planning and construction of the water supply system under section 4; and

(2) such sums as are necessary to defray increases in development costs reflected in appropriate engineering cost indices after August 1, 1995.

SEC. 11. CONSTRUCTION OVERSIGHT.

(a) AUTHORIZATION.—The Secretary may provide construction oversight to the water supply system for areas of the water supply system.

(b) PROJECT OVERSIGHT ADMINISTRATION.—The amount of funds used by the Secretary for planning and construction of the water supply system may not exceed an amount equal to 3 percent of the amount provided in the total project construction budget for the portion of the project to be constructed in Fall River County, South Dakota.

SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated—

(1) $3,600,000 for the planning and construction of the water system under section 4; and

(2) such sums as are necessary to defray increases in development costs reflected in appropriate engineering cost indices after August 1, 1995.

ADDITIONAL COSPONSORS

S. 63

At the request of Mr. FEINGOLD, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of S. 63, a bill to amend certain Federal civil rights statutes to prevent the involuntary application of arbitration to claims that arise from unlawful

employment discrimination based on race, color, religion, sex, national origin, age, or disability, and for other purposes.

S. 114

At the request of Mr. INOUYE, the names of the Senator from Arkansas [Mr. HUTCHINSON], and the Senator from Nevada [Mr. REID] were added as cosponsors of S. 114, a bill to repeal the reduction in the deductible portion of expenses for business meals and entertainment.

S. 364

At the request of Mr. LIEBERMAN, the name of the Senator from Minnesota [Mr. GRAMS] was added as a cosponsor of S. 364, a bill to provide legal standards and procedures for suppliers of raw materials and component parts for medical devices.

S. 394

At the request of Mr. LEAHY, the name of the Senator from New Mexico [Mr. BINGAMAN] was added as a cosponsor of S. 394, a bill to partially restore compensation levels to their past equivalent in terms of real income and establish the procedure for adjusting future compensation of justices and judges of the United States.

S. 498

At the request of Mr. CHAFEE, the name of the Senator from Illinois [Ms. MOSELEY-BRAUN] was added as a cosponsor of S. 498, a bill to amend the Internal Revenue Code of 1986 to allow an employee to elect to receive taxable cash compensation on lieu of nontaxable parking benefits, and for other purposes.

S. 499

At the request of Mr. CHAFEE, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 499, a bill to amend the Internal Revenue Code of 1986 to provide an election to exclude from the gross estate of a decedent the value of certain land subject to a qualified conservation easement, and to make technical changes to alternative valuation rules.

S. 511

At the request of Mr. CHAFEE, the names of the Senator from Maryland [Ms. MIKULSKI], the Senator from Hawaii [Mr. INOUYE], and the Senator from Michigan [Mr. LEVIN] were added as cosponsors of S. 511, a bill to require that the health and safety of a child be considered in any foster care or adoption placement, to eliminate barriers to the termination of parental rights in appropriate cases, to promote the adoption of children with special needs, and for other purposes.

S. 518

At the request of Mr. ABRAHAM, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of S. 518, a bill to control crime by requiring mandatory victim restitution.

S. 575

At the request of Mr. DURBIN, the name of the Senator from Rhode Island [Mr. REED] was added as a cosponsor of S. 575, a bill to amend the Internal Revenue Code of 1986 to increase the deduction for health insurance costs of self-employed individuals.

S. 597

At the request of Mr. BINGAMAN, the names of the Senator from Vermont [Mr. LEAHY], the Senator from North Carolina [Mr. FAIRCLOTH], and the Senator from Kentucky [Mr. FORD] were added as cosponsors of S. 597, a bill to amend title XVIII of the Social Security Act to provide for coverage under part B of the medicare program of medical nutrition therapy services furnished by registered dietitians and nutrition professionals.

S. 648

At the request of Mr. GORTON, the name of the Senator from Wyoming [Mr. ENZI] was added as a cosponsor of S. 648, a bill to establish legal standards and procedures for product liability litigation, and for other purposes.

S. 664

At the request of Mr. KENNEDY, the names of the Senator from New Jersey [Mr. LAUTENBERG], and the Senator from Rhode Island [Mr. REED] were added as cosponsors of S. 664, a bill to establish tutoring assistance programs to help children learn to read well.

S. 674

At the request of Mr. CHAFEE, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of S. 674, a bill to amend title XIX of the Social Security Act to encourage States to expand health coverage of low income children and pregnant women and to provide funds to promote outreach efforts to enroll eligible children under health insurance programs.

S. 716

At the request of Mr. CRAIG, the name of the Senator from Washington [Mrs. MURRAY] was added as a cosponsor of S. 716, a bill to establish a Joint United States-Canada Commission on Cattle and Beef to identify, and recommend means of resolving, national, regional, and provincial trade-distorting differences between the countries with respect to the production, processing, and sale of cattle and beef, and for other purposes.

S. 717

At the request of Mr. KENNEDY, the name of the Senator from Virginia [Mr. ROBB] 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.

S. 732

At the request of Mr. FAIRCLOTH, the names of the Senator from Georgia [Mr. COVERDELL], the Senator from Oklahoma [Mr. INHOFE], the Senator from New Hampshire [Mr. GREGG], the Senator from Alabama [Mr. SESSIONS], the Senator from Missouri [Mr. ASHCROFT], the Senator from Nebraska [Mr. HAGEL], the Senator from South Carolina [Mr. THURMOND], the Senator from Alabama [Mr. SHELBY], the Senator from Idaho [Mr. CRAIG], the Senator from Kentucky [Mr. MCCONNELL], the Senator from Mississippi [Mr. LOTT], the Senator from Montana [Mr. BURNS], the Senator from Washington [Mr. GORTON], the Senator from New Hampshire [Mr. SMITH], the Senator from Minnesota [Mr. GRAMS], the Senator from Kansas [Mr. BROWNBACK], the Senator from Arkansas [Mr. HUTCHINSON], and the Senator from Texas [Mr. GRAMM] were added as cosponsors of S. 732, a bill to require the Secretary of the Treasury to mint and issue coins in commemoration of the centennial anniversary of the first manned flight of Orville and Wilbur Wright in Kitty Hawk, North Carolina, on December 17, 1903.

SENATE JOINT RESOLUTION 6

At the request of Mr. KYL, the names of the Senator from North Carolina [Mr. HELMS], the Senator from North Carolina [Mr. FAIRCLOTH], and the Senator from Alaska [Mr. MURKOWSKI] were added as cosponsors of Senate Joint Resolution 6, a joint resolution proposing an amendment to the Constitution of the United States to protect the rights of crime victims.

SENATE CONCURRENT RESOLUTION 7

At the request of Mr. SARBANES, the name of the Senator from North Dakota [Mr. DORGAN] was added as a cosponsor of Senate Concurrent Resolution 7, a concurrent resolution expressing the sense of Congress that Federal retirement cost-of-living adjustments should not be delayed.

SENATE CONCURRENT RESOLUTION 21

At the request of Mr. MOYNIHAN, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor 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 76

At the request of Mr. THURMOND, the names of the Senator from Hawaii [Mr. INOUYE], the Senator from North Carolina [Mr. HELMS], the Senator from Idaho [Mr. KEMPTHORNE], the Senator from Ohio [Mr. GLENN], the Senator from Alaska [Mr. STEVENS], the Senator from Connecticut [Mr. DODD], the Senator from New Mexico [Mr. BINGAMAN], the Senator from Maine [Ms. COLLINS], the Senator from Alabama [Mr. SHELBY], the Senator from North Carolina [Mr. FAIRCLOTH], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Montana [Mr. BURNS], the Senator from Connecticut [Mr. LIEBERMAN], and the Senator from Nebraska [Mr. KERREY] were added as cosponsors of Senate Resolution 76, a resolution proclaiming a nationwide moment of remembrance, to be observed on Memorial Day, May 26, 1997, in order to appropriately honor American patriots lost in the pursuit of peace of liberty around the world.

AMENDMENTS SUBMITTED

THE FAMILY FRIENDLY WORKPLACE ACT OF 1997

ABRAHAM AMENDMENTS NOS. 254–255

(Ordered to lie on the table.)

Mr. ABRAHAM submitted two amendments intended to be proposed by him 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:

AMENDMENT NO. 254

On page 26, strike lines 2 through 9 and insert 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 twice 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.''.

AMENDMENT NO. 255

On page 8, strike lines 6 through 14 and insert the following:

''(A) twice 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, twice the product of—''.

GRASSLEY AMENDMENT NO. 256

(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:

At the end of the bill, add the following:

SEC. 4. APPLICATION OF LAWS TO LEGISLATIVE BRANCH.

(a) DEFINITIONS.—In this section, the terms ''Board'', ''covered employee'', and ''employing office'' have the meanings given the terms in sections 101 and 203 of Public Law 104–1.

(b) BIWEEKLY WORK PROGRAMS; FLEXIBLE CREDIT HOUR PROGRAMS; EXEMPTIONS.—

(1) IN GENERAL.—The rights and protections established by sections 13(m) and 13A of the Fair Labor Standards Act of 1938, as added by section 3, shall apply to covered employees.

(2) REMEDY.—The remedy for a violation of paragraph (1) shall be such remedy, including liquidated damages, as would be appropriate if awarded under section 16(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(b)), and (in the case of a violation concerning section 13A(d) of such Act), section 16(g)(1) of such Act (29 U.S.C. 216(g)(1)).

(3) ADMINISTRATION.—The Office of Compliance shall exercise the same authorities and perform the same duties with respect to the rights and protections described in paragraph (1) as the Office exercises and performs under title III of Public Law 104–1 with respect to the rights and protections described in section 203 of such law.

(4) PROCEDURES.—Title IV and section 225 of Public Law 104–1 shall apply with respect to violations of paragraph (1).

(5) REGULATIONS.—

(A) IN GENERAL.—The Board shall, pursuant to section 304 of Public Law 104–1, issue regulations to implement this subsection.

(B) AGENCY REGULATIONS.—The regulations issued under subparagraph (A) shall be the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in paragraph (1) except insofar as the Board may determine, for good cause shown and stated together with the regulation, that a modification of the regulations would be more effective for the implementation of the rights and protections under this subsection.

(c) COMPENSATORY TIME OFF.—

(1) REGULATIONS.—The Board shall, pursuant to paragraphs (1) and (2) of section 203(c), and section 304, of Public Law 104–1, issue regulations to implement section 203 of such law with respect to section 7(r) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(r)), as added by section 3(a).

(2) REMEDY.—The remedy for a violation of section 203(a) of Public Law 104–1 shall be such remedy, including liquidated damages, as would be appropriate if awarded under section 16(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(b)), and (in the case of a violation concerning section 7(r)(6)(A) of such Act (29 U.S.C. 207(r)(6)(A)), section 16(f)(1) of such Act (29 U.S.C. 216(f)(1)).

(3) EFFECTIVE DATE.—Subsection (a)(3), and paragraphs (3) and (4) of subsection (c), of section 203 of Public Law 104–1 cease to be effective on the date of enactment of this Act.

(d) RULES OF APPLICATION.—For purposes of the application under this section of sections 7(r) and 13A of the Fair Labor Standards Act of 1938 to covered employees of an employing office, a reference in such sections—

(1) to a statement of an employee that is made, kept, and preserved in accordance with section 11(c) of such Act shall be considered to be a reference to a statement that is made, kept in the records of the employing office, and preserved until 1 year after the last day on which—

(A) the employing office has a policy offering compensatory time off, a biweekly work program, or a flexible credit hour program in effect under section 7(r) or 13A of such Act, as appropriate; and

(B) the employee is subject to an agreement described in section 7(r)(3) of such Act or subsection (b)(2)(A) or (c)(2)(A) of section 13A of such Act, as appropriate; and

(2) to section 9(a) of the National Labor Relations Act (29 U.S.C. 159(a)) shall be considered to be a reference to subchapter II of chapter 71 of title 5, United States Code.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—This section shall take effect, with respect to the application of section 7(r), 13(m), or 13A of the Fair Labor Standards Act of 1938 to covered employees, on the earlier of—

(A) the effective date of regulations promulgated by the Secretary of Labor to implement such section; and

(B) the effective date of regulations issued by the Board as described in subsection (b)(5) or (c)(1) to implement such section.

(2) CONSTRUCTION.—A regulation promulgated by the Secretary of Labor to implement section 7(r), 13(m), or 13A of such Act shall be considered to be the most relevant substantive executive agency regulation promulgated to implement such section, for purposes of carrying out section 411 of Public Law 104–1.

WELLSTONE AMENDMENTS NOS. 257–264

(Ordered to lie on the table.)

Mr. WELLSTONE submitted eight amendments intended to be proposed by him to the bill, S. 4, supra; as follows:

AMENDMENT NO. 257

Beginning on page 9, strike line 19 and all that follows through page 10, line 3 and insert the following:

''(9)(A) An employee shall be permitted by an employer to use any compensatory time off provided under paragraph (2)—

''(i) for any reason that qualifies for leave under—

''(I) section 102(a) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2612(a)), irrespective of whether the employer is covered, or the employee is eligible, under such Act; or

''(II) an applicable State law that provides greater family or medical leave rights than does the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.);

''(ii) for any reason after providing notice to the employer not later than 2 weeks prior to the date on which the compensatory time off is to be used, except that an employee may not be permitted to use compensatory time off under this clause if the use of the compensatory time off will cause substantial and grievous injury to the operations of the employer; or

''(iii) for any reason after providing notice to the employer later than 2 weeks prior to the date on which the compensatory time off is to be used, except that an employee may not be permitted to use compensatory time off under this clause if the use of the compensatory time off will unduly disrupt the operations of the employer.''

AMENDMENT NO. 258

On page 28, after line 16, add the following:

SEC. 4. COMMISSION ON WORKPLACE FLEXIBILITY.

(a) ESTABLISHMENT.—There is established a Commission on Workplace Flexibility (referred to in this section as the ''Commission'').

(b) MEMBERSHIP.—The Commission shall be composed, and the members of the Commission shall be appointed, in accordance with paragraphs (1) and (2) of subsection (a), and subsection (b), of section 303 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2633(a) (1) and (2), and (b)).

(c) DUTIES.—

(1) STUDY.—The Commission shall conduct a comprehensive study of the impact of this Act, and the amendments made by this Act, on public and private sector employees, including the impact of this Act, and the amendments made by this Act—

(A) on the average earnings of employees, the hours of work of employees, the work schedules of employees, and the flexibility of scheduling work to accommodate family needs; and

(B) on the ability of employees to obtain the compensation to which the employees are entitled.

(2) REPORT.—

(A) IN GENERAL.—Not later than 1 year prior to the termination date of the Commission prescribed by subsection (e), the Commission shall prepare and submit to the appropriate committees of Congress and the

Secretary of Labor, a report concerning the findings of the study described in paragraph (1).

(B) RECOMMENDATIONS.—The report described in subparagraph (A) shall include recommendations on whether—

(i) the compensatory time provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) should be modified or extended, including—

(I) a recommendation on whether particular classes of employees or industries should be exempted or otherwise provided special treatment under the provisions; and

(II) a recommendation on whether additional protections should be provided, including additional protections for employees of public agencies.

(C) SPECIAL RULE.—The Commission shall have no obligation to conduct a study and issue a report pursuant to this section if funds are not authorized and appropriated for that purpose.

(d) COMPENSATION AND POWERS.—The compensation and powers of the Commission shall be as prescribed by sections 304 and 305, respectively, of the Family and Medical Leave Act of 1993 (29 U.S.C. 2634 and 2635).

(e) TRAVEL EXPENSES.—The members of the Commission shall be allowed reasonable travel expenses in accordance with section 304(b) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2634(b)).

(f) TERMINATION.—The Commission shall terminate 4 years after the date of enactment of this Act.

SEC. 5. CESSATION OF EFFECTIVENESS.

This Act, and the amendments made by this Act, cease to be effective 4 years after the date of enactment of this Act.

AMENDMENT NO. 259

On page 10, strike lines 4 through 7 and insert the following:

''(10) In a case in which an employee uses accrued compensatory time off under this subsection, the accrued compensatory time off used shall be considered as hours worked during the applicable workweek or other work period for the purposes of overtime compensation and calculation of entitlement to employment benefits.

''(11)(A) The term 'compensatory time off' means the hours during which an employee is not working and for which the employee is compensated in accordance with this subsection in lieu of monetary overtime compensation.

''(B) The term 'monetary overtime compensation' means the compensation required by subsection (a).''.

AMENDMENT NO. 260

On page 10, strike line 4, and insert the following:

''(10) The entire liquidated value of an employee's accumulated compensatory time, calculated as provided for in this subsection, shall, for purposes of proceedings in bankruptcy under title 11, United States Code, be treated as unpaid wages earned by the individual as of—

''(A) the date the employer was or becomes legally or contractually obligated to provide monetary compensation to the employee for the compensatory time; or

''(B) if the employer was not legally or contractually obligated to provide such monetary compensation prior to ceasing to do business, the date of ceasing to do business.

''(11) The terms 'monetary overtime compensation'''.

AMENDMENT NO. 261

Beginning on page 3, strike lines 15 through 23 and insert the following:

''(B) In this subsection:

''(i) The term 'employee' does not include—

''(I) an employee of a public agency;

''(II) an employee who is a part-time employee;

''(III) an employee who is a temporary employee; and

''(IV) an employee who is a seasonal employee.

''(ii) The term 'employer' does not include—

''(I) a public agency; and

''(II) an employer in the garment industry.

''(iii) The term 'employer in the garment industry' means an employer who is involved in the manufacture of apparel.

''(iv) The term 'part-time employee' means an employee whose regular workweek for the employer involved is less than 35 hours per week.

''(v) The term 'seasonal employee' means an employee in—

''(I) the construction industry;

''(II) agricultural employment (as defined by section 3(3) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802(3))); or

''(III) any other industry that the Secretary by regulation determines is a seasonal industry.

''(vi) The term 'temporary employee' means an employee who is employed by an employer for a season or other term of less than 12 months, or is otherwise treated by the employer as not a permanent employee of the employer.''

AMENDMENT NO. 262

Beginning on page 10, strike line 17 and all that follows through page 26, line 18.

AMENDMENT NO. 263

On page 28, after line 16, add the following:

SEC. 4. EFFECTIVE DATE.

This Act shall not take effect until the Secretary of Labor—

(1) makes a written determination that the aggregate number of complaints that are subject to investigation by the Wage and Hour Division of the Employment Standards Administration of the Department of Labor and unresolved by the Secretary of Labor for the year involved is less than 10 percent of the aggregate number of all complaints that are subject to investigation by the Wage and Hour Division of the Employment Standards Administration of the Department of Labor for the preceding calendar year; and

(2) submits the determination to the appropriate committees of Congress.

AMENDMENT NO. 264

At the appropriate place, insert the following:

SEC. ___. BATTERED WOMEN'S FAMILY LEAVE AND SAFETY.

(a) REFERENCE.—whenever in this section an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.).

(b) FINDINGS AND PURPOSES.—

(1) FINDINGS.—Congress finds that—

(A) violence against women is the leading cause of physical injury to women, and the department of justice estimates that intimate partners commit more than 1,000,000 violent crimes against women every year;

(B) approximately 95 percent of the victims of domestic violence are women;

(C) in the united states, a woman is more likely to be assaulted, injured, raped, or killed by a male partner than by any other type of assailant;

(D) the bureau of labor statistics predicts that women will account for two-thirds of all new entrants into the workforce between now and the year 2000;

(E) violence against women dramatically affects women's workforce participation, insofar as one-quarter of the battered women surveyed had lost a job due at least in part to the effects of domestic violence, and over one-half had been harassed by their abuser at work;

(F) a study by Domestic Violence Intervention Services, Inc found that 96 percent of employed domestic violence victims had some type of problem in the workplace as a direct result of their abuse or abuser;

(G) the availability of economic support is a critical factor in a women's ability to leave abusive situations that threaten them and their children, and over one-half of the battered women surveyed stayed with their batterers because they lacked resources to support themselves and their children;

(H) a report by the New York City victims services agency found that abusive spouses and lovers harass 74 percent of battered women at work, 54 percent of battering victims miss at least 3 days of work per month, 56 percent are late for work at least 5 times per month, and a University of Minnesota study found that 24 percent of women in support groups for battered women had lost a job partly because of being abused;

(I) 49 percent of senior executives recently surveyed said domestic violence has a harmful effect on their company's productivity, 47 percent said domestic violence negatively affects attendance, and 44 percent said domestic violence increases health care costs, and the bureau of national affairs estimates that domestic violence costs employers between $3,000,000,000 and $5,000,000,000 per year; and

(J) existing federal and state legislation does not expressly authorize battered women to take leave from work to seek legal assistance and redress, counseling, or assistance with safety planning and activities.

(2) PURPOSES.—Pursuant to the affirmative power of congress to enact this section under section 5 of the Fourteenth Amendment to the Constitution, as well as under clause 1 of section 8 of article I of the Constitution and clause 3 of section 8 of article I of the Constitution, the purposes of this section are—

(A) to promote the national interest in reducing domestic violence by enabling victims of domestic violence to maintain the financial independence necessary to leave abusive situations, to achieve safety and minimize the physical and emotional injuries from domestic violence, and to reduce the devastating economic consequences of domestic violence to employers and employees, by entitling employed victims of domestic violence to take reasonable leave under the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.) to seek medical help, legal assistance, counseling, and safety planning and assistance without penalty from their employer;

(B) to promote the purposes of the Fourteenth Amendment by protecting the civil and economic rights of victims of domestic violence and by furthering the equal opportunity of women to employment and economic self-sufficiency;

(C) to minimize the negative impact on interstate commerce from dislocations of employees and harmful effects on productivity, health care costs, and employer costs from domestic violence; and

(D) to accomplish the purposes described in subparagraphs (A) , (B) and (C) in a manner that accommodates the legitimate interests of employers.

(c) ENTITLEMENT TO LEAVE FOR DOMESTIC VIOLENCE.—

(1) AUTHORITY FOR LEAVE.—Section 102(a)(1) (29 U.S.C. 2612(a)(1)) is amended by adding at the end the following:

''(A) In order to care for the child or parent of the employee, if such child or parent is addressing domestic violence and its effects.

''(B) Because the employee is addressing domestic violence and its effects, the employee is unable to perform any of the functions of the position of such employee.''.

(2) DEFINITION.—section 101 (29 U.S.C. 2611) is amended by adding at the end the following:

''(14) ADDRESSING DOMESTIC VIOLENCE AND ITS EFFECTS.—The term 'addressing domestic violence and its effects' means—

''(A) experiencing domestic violence;

''(B) seeking medical attention for or recovering from injuries caused by domestic violence;

''(C) seeking legal assistance or remedies, including communicating with the police or an attorney, or participating in any legal proceeding related to domestic violence;

''(D) attending support groups for victims of domestic violence;

''(E) obtaining psychological counseling related to experiences of domestic violence;

''(F) participating in safety planning and other actions to increase safety from future domestic violence, including temporary or permanent relocation; and

''(G) any other activity necessitated by domestic violence which must be undertaken during hours of employment.''.

(3) INTERMITTENT OR REDUCED LEAVE.—Section 102(b) (29 U.S.C. 2612(b)) is amended by adding at the end the following:

''(3) DOMESTIC VIOLENCE.—Leave under subparagraph (E) or (F) of subsection (a)(1) may be taken by an employee intermittently or on a reduced leave schedule. The taking of leave intermittently or on a reduced leave schedule pursuant to this paragraph shall not result in a reduction in the total amount of leave to which the employee is entitled under subsection (a) beyond the amount of leave actually taken.''.

(4) PAID LEAVE.—Section 102(d)(2)(B) (29 U.S.C. 2612(d)(2)(B)) is amended by striking ''(C) or (D)'' and inserting ''(C), (D), (E), or (F)''.

(5) CERTIFICATION.—section 103 (29 U.S.C. 2613) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following:

''(e) DOMESTIC VIOLENCE.—In determining if an employee meets the requirements of subparagraph (E) or (F) of section 102(a)(1), the employer of an employee may require the employee to provide—

''(1) documentation of the domestic violence, such as police or court records, or documentation of the domestic violence from a shelter worker, attorney, clergy, or medical or other professional from whom the employee has sought assistance in addressing domestic violence and its effects; or

''(2) other corroborating evidence, such as a statement from any other individual with knowledge of the circumstances which provide the basis for the claim, or physical evidence of domestic violence, such as photographs, torn or bloody clothes, etc.''.

(6) CONFIDENTIALITY.—section 103 (29 U.S.C. 2613), as amended by subsection (e), is amended—

(A) in the title by adding before the period the following: **''; CONFIDENTIALITY''**; and

(B) by adding at the end the following:

''(f) CONFIDENTIALITY.—all evidence of domestic violence experienced by an employee or the employee's child or parent, including an employee's statement, any corroborating evidence, and the fact that an employee has requested leave for the purpose of addressing domestic violence and its effects, shall be retained in the strictest confidence by the employer, except to the extent consented to by the employee where disclosure is necessary to protect the employee's safety.''.

(d) ENTITLEMENT TO LEAVE FOR FEDERAL EMPLOYEES FOR DOMESTIC VIOLENCE.—

(1) AUTHORITY FOR LEAVE.—Section 6382 of title 5, United States Code is amended by adding at the end the following:

''(E) In order to care for the child or parent of the employee, if such child or parent is addressing domestic violence and its effects.

''(F) Because the employee is addressing domestic violence and its effects, the employee is unable to perform any of the functions of the position of such employee.''.

(2) DEFINITION.—section 6381 of title 5, united states code is amended—

(A) by striking ''and'' at the end of paragraph (5);

(B) by striking the period at the end of paragraph (6) and inserting ''; and''; and

(C) by adding at the end the following:

''(7) the term 'addressing domestic violence and its effects' means—

''(A) experiencing domestic violence;

''(B) seeking medical attention for or recovering from injuries caused by domestic violence;

''(C) seeking legal assistance or remedies, including communicating with the police or an attorney, or participating in any legal proceeding related to domestic violence;

''(D) attending support groups for victims of domestic violence;

''(E) obtaining psychological counseling related to experiences of domestic violence;

''(F) participating in safety planning and other actions to increase safety from future domestic violence, including temporary or permanent relocation; and

''(G) any other activity necessitated by domestic violence which must be undertaken during hours of employment.''.

(3) INTERMITTENT OR REDUCED LEAVE.—Section 6382(b) of title 5, United States Code, is amended by adding at the end the following:

''(3) Leave under subparagraph (E) or (F) of subsection (a)(1) may be taken by an employee intermittently or on a reduced leave schedule. The taking of leave intermittently or on a reduced leave schedule pursuant to this paragraph shall not result in a reduction in the total amount of leave to which the employee is entitled under subsection (a) beyond the amount of leave actually taken.''.

(4) OTHER LEAVE.—Section 6382(d) of title 5, United States Code, is amended by striking ''(C) or (D)'' and inserting ''(C), (D), (E), or (F)''.

(5) CERTIFICATION.—section 6383 of title 5, united states code, is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following:

''(e) DOMESTIC VIOLENCE.—In determining if an employee meets the requirements of subparagraph (E) or (F) of section 6382(a)(1), the employer of an employee may require the employee to provide—

''(1) documentation of the domestic violence, such as police or court records, or documentation of the domestic violence from a shelter worker, attorney, clergy, or medical or other professional from whom the employee has sought assistance in addressing domestic violence and its effects; or

''(2) other corroborating evidence, such as a statement from any other individual with knowledge of the circumstances which provide the basis for the claim, or physical evidence of domestic violence, such as photographs, torn or bloody clothes, etc.''.

(6) CONFIDENTIALITY.—section 6383 of title 5, united states code, as amended by subsection (e), is amended—

(A) in the title by adding before the period the following: **''; confidentiality''**, and

(B) by adding at the end the following:

''(g) CONFIDENTIALITY.—All evidence of domestic violence experienced by an employee or the employee's child or parent, including an employee's statement, any corroborating evidence, and the fact that an employee has requested leave for the purpose of addressing domestic violence and its effects, shall be retained in the strictest confidence by the employer, except to the extent consented to by the employee where disclosure is necessary to protect the employee's safety.''.

(e) EFFECT ON OTHER LAWS AND EMPLOYMENT BENEFITS.—

(1) MORE PROTECTIVE.—Nothing in this section or the amendments made by this section shall be construed to supersede any provision of any Federal, State or local law, collective bargaining agreement, or other employment benefit program which provides leave benefits for employed victims of domestic violence than the rights established under this section or such amendments.

(2) LESS PROTECTIVE.—The rights established for employees under this section or the amendments made by this section shall not be diminished by any collective bargaining agreement, any employment benefit program or plan, or any State or local law.

(f) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect upon the expiration of 180 days from the date of the enactment of this section.

GORTON AMENDMENT NO. 265

(Ordered to lie on the table.)

Mr. GORTON submitted an amendment intended to be proposed by him to the bill, S. 4, supra; as follows:

Beginning on page 10, strike line 8 and all that follows through page 10, line 6 and insert the following: ''subsection (o)(8).''.

(4) APPLICATION OF THE COERCION AND REMEDIES PROVISIONS TO EMPLOYEES OF STATE AGENCIES.—Section 7(o) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(o)) is amended—

(A) in paragraph (7), by striking ''(7) For'' and inserting ''(8) For''; and

(B) by inserting after paragraph (6), the following:

''(7)(A) The provisions relating to the prohibition of coercion under subsection (r)(6)(A) shall apply to an employee and employer described in this subsection to the same extent the provisions apply to an employee and employer described in subsection (r).

''(B)(i) Except as provided in clause (ii), the remedies under section 16(f) shall be made available to an employee described in this subsection to the same extent the remedies are made available to an employee described in subsection (r).

''(ii) In calculating the amount an employer described in this subsection would be liable for under section 16(f) to an employee described in this subsection, the Secretary shall, in lieu of applying the rate of compensation in the formula described in section 16(f), apply the rate of compensation described in paragraph (3)(B).''.

(5) 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.

BAUCUS (AND OTHERS) AMENDMENT NO. 266

(Ordered to lie on the table.)

Mr. BAUCUS (for himself, Mr. KERREY, and Ms. LANDRIEU) submitted an amendment intended to be proposed by them to the bill, S. 4, supra; as follows:

Beginning on page 1, strike line 3 and all that follows through page 28, line 16 and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Family-Friendly Workplace Act of 1997''.

SEC. 2. APPLICATION TO CERTAIN EMPLOYEES IN THE PRIVATE SECTOR.

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) An employee who is not a part-time, temporary, or seasonal employee (as defined in paragraph (13)(C)), who is not an employee of a public agency or of an employer in the garment industry, and who is not otherwise exempted from this subsection by regulations promulgated by the Secretary under paragraph (3)(D), may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time at a rate not less than 1½ hours for each hour of employment for which overtime compensation is required by this section.

''(2) An employer may provide compensatory time to an eligible employee under paragraph (1) only—

''(A) pursuant to—

''(i) applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other written agreement between the employer and the representative of the employee; or

''(ii) in the case of an employee who is not represented by a collective bargaining agent or other representative designated by the employee, a plan adopted by the employer and provided in writing to the employees of the employer which provides employees with a voluntary option to receive compensatory time in lieu of overtime compensation for overtime work where there is an express, voluntary written request by an individual employee for compensatory time in lieu of overtime compensation, provided to the employer prior to the performance of any overtime assignment;

''(B) if the employee has not earned compensatory time in excess of the applicable limit prescribed by paragraph (3)(A) or in regulations issued by the Secretary under paragraph (3)(D);

''(C) if the employee is not required as a condition of employment to accept or request compensatory time; and

''(D) if the agreement or plan complies with the requirements of this subsection and the regulations promulgated by the Secretary thereunder, including the availability of compensatory time to similarly situated employees on an equal basis.

''(3)(A) An employee may earn not more than a total of 80 hours of compensatory time in any year or alternative 12-month period designated pursuant to subparagraph (C). The employer shall regularly report to the employee on the number of compensatory hours earned by the employee and the total amount of the employee's earned and unused compensatory time, in accordance with regulations issued by the Secretary of Labor.

''(B) Upon the request of an employee who has earned compensatory time, the employer shall, within 15 days after the request, provide monetary compensation for any such compensatory time at a rate not less than the regular rate earned by the employee at the time the employee performed the overtime work or the employee's regular rate at the time such monetary compensation is paid, whichever is higher.

''(C) Not later than January 31 of each calendar year, an employer shall provide monetary compensation to each employee of the employer for any compensatory time earned during the preceding calendar year for which the employee has not already received monetary compensation (either through compensatory time or cash payment) at a rate not less than the regular rate earned by the employee at the time the employee performed the overtime work or the employee's regular rate at the time such monetary compensation is paid, whichever is higher. An agreement or plan under paragraph (2) may designate a 12-month period other than the calendar year, in which case such monetary compensation shall be provided not later than 31 days after the end of such 12-month period. An employee may voluntarily, at the employee's own initiative, request in writing that such end-of-year payment of monetary compensation for earned compensatory time be delayed for a period not to exceed 3 months. This subparagraph shall have no effect on the limit on earned compensatory time set forth in subparagraph (A) or in regulations issued by the Secretary pursuant to subparagraph (D).

''(D) The Secretary may promulgate regulations regarding classes of employees, including but not limited to all employees in particular occupations or industries, to—

''(i) exempt such employees from the provisions of this subsection;

''(ii) limit the number of compensatory hours that such employees may earn to less than the number provided in subparagraph (A); or

''(iii) require employers to provide such employees with monetary compensation for earned compensatory time at more frequent intervals than specified in subparagraph (C);

where the Secretary has determined that such regulations are necessary or appropriate to protect vulnerable employees, where a pattern of violations of this Act may exist, or to ensure that employees receive the compensation due them.

''(4) An employee who has earned compensatory time authorized to be provided under paragraph (1) shall, upon the voluntary or involuntary termination of employment or upon expiration of this subsection, be paid for unused compensatory time at a rate of compensation not less than the regular rate earned by the employee at the time the employee performed the overtime work or the employee's regular rate at the time such monetary compensation is paid, whichever is higher. A terminated employee's receipt of, or eligibility to receive, monetary compensation for earned compensatory time shall not be used—

''(A) by the employer to oppose an application of the employee for unemployment compensation; or

''(B) by a State to deny unemployment compensation or diminish the entitlement of the employee to unemployment compensation benefits.

''(5) An employee shall be permitted to use any compensatory time earned pursuant to paragraph (1)—

''(A) for any reason that would qualify for leave under section 102(a) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2612(a)), or any comparable State law, irrespective of whether the employer is covered or the employee is eligible under such Act or law; or

''(B) for any other purpose—

''(i) upon notice to the employer at least 2 weeks prior to the date on which the compensatory time is to be used, unless use of the compensatory time at that time will cause substantial and grievous injury to the operations of the employer; or

''(ii) upon notice to the employer within the 2 weeks prior to the date on which the compensatory time is to be used, unless use of the compensatory time at that time will unduly disrupt the operations of the employer.

An employee's use of earned compensatory time may not be substituted by the employer for any other paid or unpaid leave or time off to which the employee otherwise is or would be entitled or has or would earn, nor satisfy any legal obligation of the employer to the employee pursuant to any law or contract.

''(6) An employee shall not be required by the employer to use any compensatory time earned pursuant to paragraph (1).

''(7)(A) When an employee receives monetary compensation for earned compensatory time, the monetary compensation shall be treated as compensation for hours worked for purposes of calculation of entitlement to employment benefits.

''(B) When an employee uses earned compensatory time, the employee shall be paid for the compensatory time at the employee's regular rate at the time the employee performed the overtime work or at the regular rate earned by the employee when the compensatory time is used, whichever is higher, and the hours for which the employee is so compensated shall be treated as hours worked during the applicable workweek or other work period for purposes of overtime compensation and calculation of entitlement to employment benefits.

''(8) Except in a case of a collective bargaining agreement, an employer may modify or terminate a compensatory time plan described in paragraph (2)(A)(ii) upon not less than 60 days' notice to the employees of the employer.

''(9) An employer may not pay monetary compensation in lieu of earned compensatory time except as expressly prescribed in this subsection.

''(10) It shall be an unlawful act of discrimination, within the meaning of section 15(a)(3), for an employer—

''(A) to discharge, or in any other manner penalize, discriminate against, or interfere with, any employee because such employee may refuse or has refused to request or accept compensatory time in lieu of overtime compensation, or because such employee may request to use or has used compensatory time in lieu of receiving overtime compensation;

''(B)(i) to request, directly or indirectly, that an employee accept compensatory time in lieu of overtime compensation;

''(ii) to require an employee to request such compensatory time as a condition of employment or as a condition of employment rights or benefits; or

''(iii) to qualify the availability of work for which overtime compensation is required upon an employee's request for or acceptance of compensatory time in lieu of overtime compensation; or

''(C) to deny an employee the right to use, or force an employee to use, earned compensatory time in violation of this subsection.

''(11) An employer who violates any provision of this subsection shall be liable, in an action brought pursuant to subsection (b) or (c) of section 16, in the amount of overtime compensation that would have been paid for the overtime hours worked or overtime hours that would have been worked, plus an additional equal amount as liquidated damages, such other legal or equitable relief as may be appropriate to effectuate the purpose of this section, costs, and, in the case of an action filed under section 16(b), reasonable attorney's fees. Where an employee has used compensatory time or received monetary compensation for earned compensatory time for such overtime hours worked, the amount of such time used or monetary compensation paid to the employee shall be offset against the liability of the employer under this paragraph, but not against liquidated damages due.

''(12)(A) The entire liquidated value of an employee's accumulated compensatory time,

calculated as provided for in this subsection, shall, for purposes of proceedings in bankruptcy under title 11, United States Code, be treated as unpaid wages earned by the individual—

''(i) if the date the employer was or becomes legally or contractually obligated to provide monetary compensation to the employee for the compensatory time was more than 90 days before the cessation of business, as if such date was within 90 days before the cessation of business by the employer;

''(ii) if the date the employer was or becomes legally or contractually obligated to provide such monetary compensation was within 90 days before the cessation of business by the employer, as of such date; or

''(iii) if the employer was not legally or contractually obligated to provide such monetary compensation prior to ceasing to do business, as of the date of ceasing to do business.

''(B) The amount of such monetary compensation shall not be limited by any ceiling on the dollar amount of wage claims provided under Federal law for such proceedings.

''(13) In this subsection—

''(A) the term 'overtime compensation' means the compensation required by subsection (a);

''(B) the term 'compensatory time' means hours during which an employee is not working and for which the employee is compensated in accordance with this subsection in lieu of overtime compensation;

''(C) the term 'part-time, temporary, or seasonal employee' means—

''(i) an employee whose regular workweek for the employer is less than 35 hours per week;

''(ii) an employee who is employed by the employer for a season or other term of less than 12 months or is otherwise treated by the employer as not a permanent employee of the employer; or

''(iii) an employee in the construction industry, in agricultural employment (as defined in section 3(3) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802(3))), or in any other industry which the Secretary by regulation has determined is a seasonal industry; and

''(D) the term 'overtime assignment' means an assignment of hours for which overtime compensation is required under this section.

''(14) The Secretary may issue regulations as necessary and appropriate to implement this subsection including, but not limited to, regulations implementing recordkeeping requirements and prescribing the content of plans and employee notification.''.

SEC. 3. CIVIL MONEY PENALTIES.

Section 16(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(e)) is amended by striking the second sentence and inserting the following: ''Any person who violates section 6, 7, or 11(c) shall be subject to a civil penalty not to exceed $1,000 for each such violation.''.

SEC. 4. CONSTRUCTION.

Section 18 of the Fair Labor Standards Act of 1938 (29 U.S.C. 218) is amended by adding at the end the following:

''(c)(1) No provision of this Act or of any order thereunder shall be construed to—

''(A) supersede any provision of any State or local law that provides greater protection to employees who are provided compensatory time in lieu of overtime compensation;

''(B) diminish the obligation of an employer to comply with any collective bargaining agreement or any employment benefit program or plan that provides greater protection to employees provided compensatory time in lieu of overtime compensation; or

''(C) discourage employers from adopting or retaining compensatory time plans that provide more protection to employees.

''(2) Nothing in this subsection shall be construed to allow employers to provide compensatory time plans to classes of employees who are exempted from section 7(r), to allow employers to provide more compensatory time than allowed under subsection (o) or (r) of section 7, or to supersede any limitations placed by subsection (o) or (r) of section 7, including exemptions and limitations in regulations issued by the Secretary thereunder.''.

SEC. 5. COMMISSION ON WORKPLACE FLEXIBILITY.

(a) ESTABLISHMENT.—There is established a Commission on Workplace Flexibility (referred to in this section as the ''Commission'').

(b) MEMBERSHIP; COMPENSATION; POWERS; TRAVEL EXPENSES.—The Commission shall be composed, and the members of the Commission shall be appointed, in accordance with paragraphs (1) and (2) of subsection (a), and subsection (b) of section 303 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2633(a)(1) and (2) and (b)). The compensation and powers of the Commission shall be as prescribed by sections 304 and 305, respectively, of such Act (29 U.S.C. 2634 and 2635). The members of the Commission shall be allowed reasonable travel expenses in accordance with section 305(b) of such Act (29 U.S.C. 2635(b)).

(c) DUTIES.—

(1) STUDY.—The Commission shall conduct a comprehensive study of the impact of the provision of compensatory time on public and private sector employees, including the impact of this Act—

(A) on average earnings of employees, hours of work of employees, work schedules of employees, and flexibility of scheduling work to accommodate family needs; and

(B) on the ability of vulnerable employees or other employees to obtain the compensation to which the employees are entitled.

(2) REPORT.—

(A) IN GENERAL.—A report concerning the findings of the study described in paragraph (1) shall be prepared and submitted to the appropriate committees of Congress and to the Secretary not later than 1 year prior to the expiration of this title.

(B) RECOMMENDATIONS.—The report described in subparagraph (A) shall include recommendations on whether—

(i) the compensatory time provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et. seq.) should be modified or extended, including—

(I) a recommendation on whether particular classes of employees or industries should be exempted or otherwise given special treatment under the provisions;

(II) a recommendation on whether additional protections should be provided, including additional protections to employees of public agencies; and

(III) a recommendation on whether the provisions should be applied to any category of exempt employees.

(C) SPECIAL RULE.—The Commission shall have no obligation to conduct a study and prepare and submit a report pursuant to this section if funds are not authorized and appropriated for that purpose.

SEC. 6. EFFECTIVE DATE; CESSATION OF EFFECTIVENESS.

(a) EFFECTIVE DATE.—The provisions of this title, and the amendments made by this title, shall become effective 6 months after the date of enactment of this Act.

(b) CESSATION OF EFFECTIVENESS.—The provisions of this title, and the amendments made by this title, shall cease to be effective 4 years after the date of enactment of this Act.

KENNEDY AMENDMENTS NOS. 267–274

(Ordered to lie on the table.)

Mr. KENNEDY submitted eight amendments intended to be proposed by him to the bill, S. 4, supra; as follows:

AMENDMENT NO. 267

Beginning on page 9, strike line 19 and all that follows through page 10, line 3 and insert the following:

''(9)(A) An employee shall be permitted by an employer to use any compensatory time off provided under paragraph (2)—

''(i) for any reason that qualifies for leave under—

''(I) section 102(a) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2612(a)), irrespective of whether the employer is covered, or the employee is eligible, under such Act; or

''(II) an applicable State law that provides greater family or medical leave rights than does the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.);

''(ii) for any reason after providing notice to the employer not later than 2 weeks prior to the date on which the compensatory time off is to be used, except that an employee may not be permitted to use compensatory time off under this clause if the use of the compensatory time off will cause substantial and grievous injury to the operations of the employer; or

''(iii) for any reason after providing notice to the employer later than 2 weeks prior to the date on which the compensatory time off is to be used, except that an employee may not be permitted to use compensatory time off under this clause if the use of the compensatory time off will unduly disrupt the operations of the employer.''

AMENDMENT NO. 268

On page 28, after line 16, add the following:

SEC. 4. COMMISSION ON WORKPLACE FLEXIBILITY.

(a) ESTABLISHMENT.—There is established a Commission on Workplace Flexibility (referred to in this section as the ''Commission'').

(b) MEMBERSHIP.—The Commission shall be composed, and the members of the Commission shall be appointed, in accordance with paragraphs (1) and (2) of subsection (a), and subsection (b), of section 303 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2633(a) (1) and (2), and (b)).

(c) DUTIES.—

(1) STUDY.—The Commission shall conduct a comprehensive study of the impact of this Act, and the amendments made by this Act, on public and private sector employees, including the impact of this Act, and the amendments made by this Act—

(A) on the average earnings of employees, the hours of work of employees, the work schedules of employees, and the flexibility of scheduling work to accommodate family needs; and

(B) on the ability of employees to obtain the compensation to which the employees are entitled.

(2) REPORT.—

(A) IN GENERAL.—Not later than 1 year prior to the termination date of the Commission prescribed by subsection (e), the Commission shall prepare and submit to the appropriate committees of Congress and the Secretary of Labor, a report concerning the findings of the study described in paragraph (1).

(B) RECOMMENDATIONS.—The report described in subparagraph (A) shall include recommendations on whether—

(i) the compensatory time provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) should be modified or extended, including—

(I) a recommendation on whether particular classes of employees or industries should be exempted or otherwise provided special treatment under the provisions; and

(II) a recommendation on whether additional protections should be provided, including additional protections for employees of public agencies.

(C) SPECIAL RULE.—The Commission shall have no obligation to conduct a study and issue a report pursuant to this section if funds are not authorized and appropriated for that purpose.

(d) COMPENSATION AND POWERS.—The compensation and powers of the Commission shall be as prescribed by sections 304 and 305, respectively, of the Family and Medical Leave Act of 1993 (29 U.S.C. 2634 and 2635).

(e) TRAVEL EXPENSES.—The members of the Commission shall be allowed reasonable travel expenses in accordance with section 304(b) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2634(b)).

(f) TERMINATION.—The Commission shall terminate 4 years after the date of enactment of this Act.

SEC. 5. CESSATION OF EFFECTIVENESS.

This Act, and the amendments made by this Act, cease to be effective 4 years after the date of enactment of this Act.

AMENDMENT NO. 269

On page 10, strike lines 4 through 7 and insert the following:

''(10) In a case in which an employee uses accrued compensatory time off under this subsection, the accrued compensatory time off used shall be considered as hours worked during the applicable workweek or other work period for the purposes of overtime compensation and calculation of entitlement to employment benefits.

''(11)(A) The term 'compensatory time off' means the hours during which an employee is not working and for which the employee is compensated in accordance with this subsection in lieu of monetary overtime compensation.

''(B) The term 'monetary overtime compensation' means the compensation required by subsection (a).''.

AMENDMENT NO. 270

On page 10, strike line 4, and insert the following:

''(10) The entire liquidated value of an employee's accumulated compensatory time, calculated as provided for in this subsection, shall, for purposes of proceedings in bankruptcy under title 11, United States Code, be treated as unpaid wages earned by the individual as of—

''(A) the date the employer was or becomes legally or contractually obligated to provide monetary compensation to the employee for the compensatory time; or

''(B) if the employer was not legally or contractually obligated to provide such monetary compensation prior to ceasing to do business, the date of ceasing to do business.

''(11) The terms 'monetary overtime compensation'''.

AMENDMENT NO. 271

Beginning on page 10, strike line 17 and all that follows through page 26, line 18.

AMENDMENT NO. 272

Beginning on page 26, strike line 19 and all that follows through page 28, line 16.

AMENDMENT NO. 273

Beginning on page 3, strike lines 15 through 23 and insert the following:

''(B) In this subsection:

''(i) The term 'employee' does not include—

''(I) an employee of a public agency;

''(II) an employee who is a part-time employee;

''(III) an employee who is a temporary employee; and

''(IV) an employee who is a seasonal employee.

''(ii) The term 'employer' does not include—

''(I) a public agency; and

''(II) an employer in the garment industry.

''(iii) The term 'employer in the garment industry' means an employer who is involved in the manufacture of apparel.

''(iv) The term 'part-time employee' means an employee whose regular workweek for the employer involved is less than 35 hours per week.

''(v) The term 'seasonal employee' means an employee in—

''(I) the construction industry;

''(II) agricultural employment (as defined by section 3(3) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802(3))); or

''(III) any other industry that the Secretary by regulation determines is a seasonal industry.

''(vi) The term 'temporary employee' means an employee who is employed by an employer for a season or other term of less than 12 months, or is otherwise treated by the employer as not a permanent employee of the employer.''

AMENDMENT NO. 274

Beginning on page 10, strike line 17 and all that follows through page 26, line 18.

DODD AMENDMENTS NOS. 275–276

(Ordered to lie on the table.)

Mr. DODD submitted two amendments intended to be proposed by him to the bill, S. 4, supra; as follows:

AMENDMENT NO. 275

On page 5, line 12, strike ''240'' and insert ''80''.

AMENDMENT NO. 276

Beginning on page 10, strike line 17 and all that follows through page 26, line 18.

KENNEDY AMENDMENT NO. 277

(Ordered to lie on the table.)

Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill, S. 4, supra; as follows:

On page 7, strike line 13 and insert the following:

''(B) It shall be an unlawful act of discrimination, within the meaning of section 15(a)(3), for an employer—

''(i) to discharge or in any other manner penalize, discriminate against, or interfere with, any employee because—

''(I) the employee may refuse or has refused to request or accept compensatory time off in lieu of monetary overtime compensation;

''(II) the employee may request to use or has used compensatory time off in lieu of monetary overtime compensation; or

''(III) the employee has requested the use of compensatory time off at a specific time of the employee's choice;

''(ii) to request, directly or indirectly, that an employee accept compensatory time off in lieu of monetary overtime compensation;

''(iii) to require an employee to request compensatory time off in lieu of monetary overtime compensation as a condition of employment or as a condition of employment rights or benefits;

''(iv) to qualify the availability of work for which monetary overtime compensation is required upon the request of an employee for, or acceptance of, compensatory time off in lieu of monetary overtime compensation; or

''(v) to deny an employee the right to use, or coerce an employee to use, earned compensatory time off in violation of this subsection.

''(C) An agreement or understanding that is entered''.

SPECTER AMENDMENT NO. 278

(Ordered to lie on the table.)

Mr. SPECTER submitted an amendment intended to be proposed by him to the bill, S. 4, supra; as follows:

On page 7, after line 12, insert

''(iii) UNLAWFUL DISCRIMINATION.—It shall be an unlawful act of discrimination, within the meaning of section 15(a)(3), for an employer to request, directly or indirectly, that an employee accept compensatory time off in lieu of monetary overtime compensation, or to qualify the availability of work for which overtime compensation is required upon employee's request for or acceptance of compensatory time off in lieu of monetary overtime compensation.''.

THE FLANK DOCUMENT TO THE CONVENTIONAL FORCES IN EUROPE TREATY

KERRY (AND OTHERS) EXECUTIVE AMENDMENT NO. 279

Mr. KERRY (for himself, Mr. SARBANES, Mr. ABRAHAM, Mrs. FEINSTEIN, and Mr. BIDEN) proposed an executive amendment to condition No. 5 of the Resolution of Ratification (Treaty Doc. No. 105–5); as follows:

Strike subparagraph (F) of section 2(5) and insert the following:

(F) COMPLIANCE REPORT ON ARMENIA AND OTHER STATES PARTIES IN THE CAUCASUS REGION.—Not later than August 1, 1997, the President shall submit to the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives a full and complete classified and unclassified report regarding—

(i) whether Armenia was in compliance with the Treaty in allowing the transfer of conventional armaments and equipment limited by the Treaty through Armenian territory to the secessionist movement in Azerbaijan;

(ii) whether other States Parties located in the Caucasus region are in compliance with the Treaty; and

(iii) if Armenia is found not to have been in compliance under clause (i) or, if any other State Party is found not to be in compliance under clause (ii), what actions the President has taken to implement sanctions as required by chapter 11 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2295 et seq.; relating to assistance to the independent states of the former Soviet Union) or other provisions of law.

NOTICES OF HEARINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. CAMPBELL. Mr. President, I would like to announce that the Senate

Committee on Indian Affairs will meet on Wednesday, May 21, 1997, at 9:30 a.m. in room 485, Russell Senate Building to conduct an oversight hearing on programs designed to assist native American veterans.

Those wishing additional information should contact the Committee on Indian Affairs at 224–2251.

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. LUGAR. Mr. President, I would like to announce that the Senate Committee on Agriculture, Nutrition, and Forestry will hold a full committee hearing on Thursday, June 5, 1997, at 9 a.m. in SR–328A to receive testimony regarding contaminated strawberries in school lunches.

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. LUGAR. Mr. President, I would like to announce that the Senate Committee on Agriculture, Nutrition, and Forestry will hold a full committee hearing on Wednesday, June 18, 1997, at 9 a.m. in SR–328A to receive testimony from Secretary Glickman and U.S. Trade Representative Barshefsky regarding U.S. export trade.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Senate Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, May 14, 1997, at 9:30 a.m. on program efficiencies of the Department of Commerce and National Science Foundation.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. SANTORUM. 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 Wednesday, May 14, for purposes of conducting a full committee business meeting which is scheduled to begin at 9:30 a.m. The purpose of this business meeting is to consider pending calendar business.

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

COMMITTEE ON RULES AND ADMINISTRATION

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Wednesday, May 14, 1997, beginning at 9:30 a.m. until business is completed, to receive testimony on the Campaign Finance System for Presidential Elections: The Growth of Soft Money and Other Effects on Political Parties and Candidates.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, May 14, 1997, at 2:30 p.m. to hold a closed hearing on intelligence matters.

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

SUBCOMMITTEE ON OCEANS AND FISHERIES

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Oceans and Fisheries Subcommittee of the Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, May 14, 1997, at 2:30 p.m. on S. 39—International Dolphin Conservation Program Act.

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

CAUCUS ON INTERNATIONAL NARCOTICS CONTROL

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Caucus on International Narcotics Control be authorized to meet during the session of the Senate on Wednesday, May 14, starting at 9:30 a.m. in room G–50 of the Dirksen Office Building. The caucus will be receiving testimony on the threat to and effects of corruption on U.S. law enforcement personnel along the Southwest border.

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

ADDITIONAL STATEMENTS

TRIBUTE TO MISSOURI LAW ENFORCEMENT OFFICIALS WHO LOST THEIR LIVES IN ORDER TO PROTECT AND SERVE

● Mr. BOND. Mr. President, I rise today to pay tribute to those law enforcement officers who have given their lives while protecting the lives of so many others. When I was the Governor, with command of the Highway Patrol of the State of Missouri, the hardest part of my job was, without question, dealing with the loss of a law enforcement officer. Not only did these men and women faithfully serve their communities in life, they imparted the greatest sacrifice of all: they gave their lives.

In 1996, 117 law enforcement officers lost their lives in the line of duty, and 13,692 officers in total have been killed while protecting their communities. Every year 1 in 9 officers is attacked, 1 in 25 is injured, and 1 in 4,000 is killed while trying to preserve the peace and safety of the United States.

My sincerest condolences go out to the families of these men and women who have died in the line of duty. I can only be thankful that organizations such as Missouri Concerns of Police Survivors [MOCOP] exist to help in the aftermath of such tragedy. Every year, this nonprofit support group honors those men and women who have laid down their lives for Missouri. According to MOCOP any local, State, or Federal peace officer serving Missouri as an elected, appointed, deputized, temporary, or permanent officer who was killed or died of wounds or injuries received while performing an act to enforce the law and/or keep the peace from 1820 to the present is eligible to have his or her name inscribed on a monument in Jefferson City, MO.

Two men whose names will be added to the monument this year, Detective Willie Neal, Jr.—January 29, 1997—and Deputy Sheriff Christopher Lee Castetter—November 28, 1996—sacrificed their lives within the past 6 months. It saddens me to hear of these officers in the prime of their lives killed needlessly as they attempted to do their jobs. I can only hope that it is of some comfort to their families that they will forever be remembered as heroes by being etched into this historic monument.

The other six being honored this year include: B.H. Williamson, May 26, 1867; Horace E. Petts, August 3, 1868; Jasper Mitchell, August 3, 1868; George C. Walters, March 3, 1873; J. Milton Phillips, September 20, 1873; Ed Daniels, March 17, 1874; Anderson Coffman, February 14, 1878; and Hardin Harvey Vickery, March 8, 1879.

As Abraham Lincoln once said, ''It is rather for us to be here dedicated to the great task remaining before us * * * that from these honored dead we take increased devotion to that cause for which they gave their last full measure of devotion; that we were highly resolved that these dead shall not have died in vain.'' It is important that we remember why these men and women gave their lives and that we work to ensure that their sacrifice was not in vain. Law enforcement men and women risk their lives every day in order to protect ours. Each day we walk down the street safely or get a good night's sleep without fear of robbery or assault, we should thank those officers who protect us every day and remember the ones who lost their lives in the process.

CONSUMER PRODUCT SAFETY COMMISSION'S ''RECALL ROUNDUP'' STATEMENT

Ms. MIKULSKI. Mr. President, I would like to take this opportunity to commend the Consumer Product Safety Commission for the kick off of its Recall Round-up campaign. The Recall Roundup is a national effort to retrieve all hazardous products that have been recalled, but may still be in people's homes.

Each year the Commission coordinates approximately 300 recalls of defective or dangerous products. The task of getting these products out of American homes has been a difficult one.

The existence of faulty products has been the cause of serious injury and even death to children in the United States. This is unacceptable. That's why I am pleased to report that in my own State, Maryland Lt. Governor Kathleen Kennedy Townsend on April 16 announced the State's plans to join the Commission in the Recall Roundup.

Mr. President, as one of the Senators for Maryland, I would like to submit Lt. Governor Townsend's remarks for the RECORD. I commend the Commission and the State of Maryland on their partnership to protect American children from hazardous products.

The remarks of the Lt. Governor follow:

[Consumer Product Press Conference, April 16, 1997]

REMARKS OF THE LT. GOVERNOR

Good Morning. This is a very exciting day and it's great to be here with you. I want to thank Chairman Ann Brown for her leadership and hard work, as well as all of the men and women of the Consumer Product Safety Commission.

Everyday, you make our homes and communities safer for children. You are doing a tremendous job of identifying hazardous products and getting them off the market and out of our homes. I am grateful, not just as the Lt. Governor of Maryland, but as the mother of four daughters. Thank you.

You know that we need to do more than just identify dangerous items. Every year, scores of children die because of products that the Consumer Product Safety Commission has already recalled. But for one reason or another, they were never replaced with safer products. These children did not have to die. And if we do the job we know we must, and make sure these products are taken out of homes, we can save many, many lives in the future.

Governor Glendening and I are extremely proud that Maryland and the Commission are working so closely together to make this happen. The Recall Roundup is the quintessential example of how federal and state governments can work together for our shared goals.

The Commission's information about what products pose threats to children is vital to parents, and we're going to make sure that they get it. We will distribute a list of these products to local health departments, community organizations, local publications, to second-hand stores. At the State's Child Care Conference, at the State Fair, and training seminars for child care providers. We are going to blanket the State, and in case some parents cannot get to the information, we'll be coming to them.

Maryland's high school student volunteers will be helping to perform Recall Roundup Home Inspections to point out potential hazards to families. Parents have enough to worry about. The world today is already dangerous for children. But we can make a difference. With hard work and cooperation, we can make sure that every child's home is child-safe. Thank you.

TRIBUTE TO ''UGA V'' AMERICA'S NO. 1 MASCOT

Mr. CLELAND. Mr. President, I rise today to pay tribute to UGA V, the mascot for the University of Georgia, who, this month, was honored by Sports Illustrated magazine as ''America's No. 1 college mascot.'' The English Bulldog carries almost 100 years of tradition as the mascot for the university's athletic program and is one of the most recognizable figures in all of college sports. The current line of bulldogs can be traced back over 50 years to when the first UGA's grandfather guarded the sidelines for the football team during the 1943 Rose Bowl in Pasadena, CA. UGA V and his forefathers have helped lead the University of Georgia to build one of the most respected and successful athletic programs in the country. The UGA line has witnessed national championships in football, baseball, and gymnastics; final fours in men's and women's basketball; and countless Southeastern Conference championships in a variety of sports. UGA IV was even invited to be the first mascot to attend the presentation of the Heisman trophy to Hershel Walker in 1982.

I would also like to recognize the outstanding efforts and dedication of the Seiler family of Savannah, GA. Since 1956, Frank (Sonny) Seiler and his family have raised UGA and his descendants. They have also traveled across the country attending all of the University of Georgia football games. Their hard work has molded a tradition like no other in this country.

As did the mascots before him, UGA V gives frequently of his time to charitable organizations. UGA has appeared and raised money for such groups as the Humane Society, March of Dimes, Easter Seals, and the Heart Fund. In 1984 UGA IV was named ''Honorary Chairman for the Great American Smokeout'' campaign on behalf of the American Cancer Society. When not appearing in his official capacity as mascot, UGA has represented the State of Georgia at a number of State functions.

It is with great pride that I congratulate the University of Georgia for all of its academic and athletic accomplishments, and UGA, ''America's No. 1 mascot.''

HONORING DR. ALLAN E. STRAND

● Mr. LAUTENBERG. Mr. President, I rise to honor Dr. Allan Strand, who is retiring after 18 years of distinguished service as headmaster of Newark Academy in New Jersey.

During his tenure, Dr. Strand's scholarship and leadership set a magnificent example for his students, including two of my own children. Although all four of my children received an outstanding education at Newark Academy, my two youngest had the added good fortune of attending while Dr. Strand was headmaster. He was an educator, mentor, and friend.

Mr. President, I know that my children benefited from Dr. Strand's vision, integrity, energy, and academic excellence. But more than that, the entire Newark Academy community benefited from his presence. His list of accomplishments while headmaster is impressive.

During his tenure, the academy's educational mission was affirmed. The traditional college preparatory course was continued, but the program was enhanced by bold developments in computer science and the arts. Dr. Strand also worked to revitalize the board of trustees and to strengthen an already superb faculty. Committed to the principles of respect and integrity, he introduced the Honor Code and Honor Council. Even the physical plant was not neglected; it was so expanded that only the front foyer remains unchanged. The McGraw Arts Center was added to accommodate the burgeoning arts program, and the Morris Interactive Learning Center brought the latest in technology to the school's instructional program.

But through all the changes, one thing remained unchanged, Dr. Strand's commitment to his students and their education. It has been said that the only lasting legacy that any of us can have is to make a difference in the life of a child. If that is true, than Dr. Strand's legacy is definitely assured.

Mr. President, when Thomas Jefferson presented his credentials as United States minister to France, the French premier remarked, ''I see that you have come to replace Benjamin Franklin.'' Jefferson corrected him. ''No one can replace Dr. Franklin. I am only succeeding him.'' In much the same way, Allan Strand is also irreplaceable. Others may fill his position at Newark Academy, but no one will ever be able to fill his shoes.●

TRIBUTE TO GEORGE HEARN

●Mr. INOUYE. Mr. President, I rise today to pay tribute to George Hearn. George Hearn is an old and trusted friend who has rendered distinguished service to our country in peace and war. He has announced that he will soon be trimming his sails, and cutting back on his day to day activities on behalf of U.S. flag international shipping. I hasten to reassure his countless friends and those who rely on his good counsel and advice, George Hearn is not retiring completely from the world of international shipping.

For over 50 years George has been part of our Nation's maritime effort. He enlisted in the U.S. Navy, and served in the Pacific Theater aboard the U.S.S. *Iowa* from 1945 to 1946. Honorably discharged from the Navy, George practiced maritime law in New York City. During that time he was also elected to the New York City Council, and served from 1957 until his resignation in 1961. He resigned to join the Kennedy administration in Washington, DC, where he served in a senior staff position at the Civil Aeronautics Board, until President Johnson nominated him to the Federal Maritime Commission in 1964. George was reappointed to the Commission, once by President Johnson, and once by President Nixon. He resigned as Vice-Chairman of the Commission in 1975, to practice maritime law in New York City. In 1982 he joined Waterman Steamship Corp. as the executive vice-president. George will continue to serve Waterman as a consultant.

Mr. President, that in brief is the distinguished public career of my friend, George Hearn. Proud as he should be of

all he has accomplished, I know he is proudest of his family, his wife of 45 years, Anne, and their adult children, Annemarie, Peggy, and George, Jr.

George is the son of an immigrant Irish father. George has capitalized to the fullest the bounty which our great country has offered to us all. But what makes me proudest to call George my friend, is the way he has used his opportunity to help preserve and increase that bounty for the generations of Americans to come. So, I wish to say well done good friend, and you deserve the chance to take time to smell the roses.●

TRIBUTE TO THE LATE IGNAZIO M. ''CARLO'' CARLUCCIO

● Mr. SMITH of New Hampshire. Mr. President, I rise today to pay tribute to the late Ignazio M. ''Carlo'' Carluccio who passed away on April 22, 1997, 3 months to the day after celebrating his 100th birthday in Hampton, NH, with his entire family and his close friends.

I had the great honor and privilege to meet Mr. Carluccio on October 29, 1996, at his home in North Salisbury Beach, MA, just across the border from Seabrook, NH. I was attending a function at a lobster pound owned by Bruce Brown, a long-time mutual friend of both Mr. Carluccio and myself. While in the area, I wanted to pay my respects to Mr. Carluccio, especially since his grandson Dino has worked in my office for the last decade.

When I met Mr. Carluccio in his home, he was in excellent health, witty, and sharp as a tack. Indeed, it was hard to believe at the time that he would shortly be celebrating his 100th birthday. During my visit with him, I was fascinated to learn many details of his truly remarkable life, some of which I would like to share with my colleagues and the American people today.

Ignazio Carluccio was born in the small town of Benevento, Italy, in 1897. He was the son of Antonio Carluccio, and the grandson of Ignazio Carluccio. He had one brother and four sisters, three of whom still reside in southern Italy. His grandfather was the proprietor of the Gran Caffe dell'Unione, the most popular gathering place in the center of Benevento with regular outdoor musical entertainment. It was this experience as a young boy, growing up around his grandfather's cafe, that would eventually shape and inspire Mr. Carluccio's future in America as a talented musician and a proprietor of his own small business in a similar small community far away from his homeland.

Before leaving Italy in 1921 for America, young Ignazio Carluccio learned to play the violin at a conservatory in Milan, and would often perform his own solo concerts in the beautiful parks along the bay of Naples. At that point, Ignazio's family had moved from Benevento to Naples, where his father now operated his own local cafe. I am told that there are still a few people in Naples who remember his violin performances.

Ignazio Carluccio loved the challenges that life presented, and he knew a lot about taking risks. Whether it was simply entering the local bicycle races along the treacherous, yet scenic Amalfi Coast between Naples and Sorrento, or his service during World War I in an Italian aviation division, Mr. Carluccio was not deterred by the physical harm he encountered. He recovered only to take an even greater risk—the monumental adventure of leaving everything behind except for his violin and a few family mementos and heading for America, never turning back in the eight decades that followed.

Earlier this year, Mr. Carluccio reflected on those first few years following his arrival in Boston on a passenger ship from Naples. He said, ''Early on, I could not speak English, but I made it. It was a heckuva time.''

Mr. Carluccio was persistent and determined following his arrival in America—he worked as a haberdasher and became the first concert violinist for the People's Symphony in Boston. He selected a middle name for himself, something uncommon in his native Italy, but not in his new country. He chose ''Mario'' because he wanted to be known as ''I.M. Carluccio'' which sounded like ''I am Carluccio.'' How clever for someone trying to master the English language, Mr. President.

He met his wife, Alphonsine Giguere, backstage during one of his performances, and married her in 1928. In 1934, following the passing of his father-in-law, he took over the drugstore his father-in-law had operated in Leominster, MA, since 1903, earned a degree in pharmacy, and practiced pharmacy for the next six decades until his retirement in 1985. At its peak, Giguere Drug Stores encompassed three shops and represented the largest prescription business in Worcester County, MA. When you were sick and needed medicine, everyone knew that you needed to go see Mr. Carluccio at Giguere's.

The original corner store was also complete with soda fountains, booths, and peanut machines, and even had musical entertainment performed on the store's roof at one point. It was the local hangout for everyone from school children to local politicians to State police officials. Mr. Carluccio surely must have been proud of the tradition he had carried on from his own grandfather's popular cafe in Benevento, Italy.

Mr. President, I.M. Carluccio lived the American dream to the fullest. He worked hard, starting at 5 a.m. in his store each morning, finishing late at night, teaching violin on the side to students in the community, putting his five children through college, and simultaneously sending money on a regular basis back to his siblings in Italy. And if that was not enough, Mr. President, he even reminded me last fall that, although he was approaching age 50 during World War II, he wrote a letter at the time to the Secretary of what was then known as our War Department offering his services. What devotion, Mr. President.

I.M. Carluccio cherished his family and his close friends, and he enjoyed his classic cars, his homemade spaghetti sauce, his violin music, and his favorite cigars—the simple things for a man who lived such a rich, enduring, and multifaceted life. He was a true gentleman to all who knew him. He accomplished so much that we can only hope that, perhaps, he was able to reflect back with pride, in his own quiet, dignified way, as he puffed his final cigars earlier this year. He has left a wonderful legacy which continues to inspire all those who have known him.

When I met him last fall I, too, was inspired, not only by his longevity, but by his selfless devotion through the years to his Nation, the communities in which he made his home, and to his entire family—three sons, two daughters, nine grandchildren, seven great-grandchildren, nephews, and nieces. Let me say also say here that I am proud that Mr. Carluccio's three grandchildren who carry the Carluccio name—Carlo, Dino, and Mario—are all constituents of mine from New Hampshire. I am honored to represent them in the U.S. Senate.

Mr. President, I hope Mr. Carluccio's legacy will inspire all those who hear of it today. I am proud to do my part through this statement to ensure that the life of Mr. Carluccio is properly recognized as part of our American history. The story of this great Italian-American centenarian has already been recognized on many occasions at the State and local level, and through the countless birthday greetings Mr. Carluccio received through the years from Presidents, Senators, Congressmen, and State and local politicians. But it is appropriate and deserving that today, we make Mr. Carluccio's life story part of the official, permanent RECORD of the U.S. Congress. God bless Mr. Carluccio and his entire family.

Mr. President, I ask that a proclamation by Massachusetts Gov. William F. Weld issued earlier this year in honor of Mr. Carluccio's 100th birthday and a statement submitted to Fitchburg State College honoring Mr. Carluccio as one of ''100 Who Made a Difference'' be printed in the RECORD.

The proclamation and statement follows:

A PROCLAMATION BY HIS EXCELLENCY GOVERNOR WILLIAM F. WELD—1997

Whereas, Ignazio M. Carluccio was born on January 22, 1897, in Benevento, Italy; and

Whereas, after moving to the United States in 1921, Mr. Carluccio found a new home in the Commonwealth and married Alphonsine Giguere in 1928; and

Whereas, a talented violinist, Ignazio Carluccio has shared his musical inspiration with many through performance and instruction; and

Whereas, in 1934, Ignazio Carluccio succeeded his father-in-law as owner and operator of the family business, Giguere's Drug Store, in Leominster, Massachusetts; and

Whereas, having earned the tremendous respect of his community, Ignazio Carluccio received an award from the Eli Lilly Pharmaceutical Company in 1976, in recognition of the outstanding community health service provided by Gigurere's Drug Store; and

Whereas, as Ignazio Carluccio celebrates his One Hundredth Birthday, it is fitting to pay tribute to this fine individual who has touched the lives of many throughout the Commonwealth; now, therefore, I, William F. Weld, Governor of the Commonwealth of Massachusetts, do hereby proclaim January 22nd, 1997, to be Ignazio Carluccio Day and urge all the citizens of the Commonwealth to take cognizance of this event and participate fittingly in its observance.

100 WHO MADE A DIFFERENCE

IGNAZIO M. CARLUCCIO

Mr. Carluccio has been an integral part of this community since 1928 when he married Alphonsine A. Giguere. He was a concert violinist and teacher of the violin in this and the surrounding area, but he later became a pharmacist and took over the operation and ownership of Giguere Drug to continue the family business that his father-in-law started in 1903. He dedicated his life to his family and business and to serving the public.

In the 1950's and 60's his corner drugstore was known as the most complete prescription department in Worcester County. In 1976, the Eli Lilly Pharmaceutical Company presented Mr. Carluccio and his company an award in recognition of outstanding Community Health Service.

In 1983, Giguere Drug Stores was recognized for 80 years of service, and I.M. Carluccio was still managing and serving the public from his corner drugstore. At this point, his original business had expanded into a small 3-store chain.

Mr. Carluccio had a special recipe of old-fashioned customer service and modern health care products. Customers idolized him. Today, he is still a celebrity for anyone who knows him, sees him, and remembers the days of yesteryear. This man is a tribute to his community!●

A TRIBUTE TO TWO FRIENDS

● Mr. CLELAND. Mr. President, I rise today to mourn the recent loss of two constituents and good friends. Mrs. Frances Chapman and Mr. Bill Kelly were more than just constituents and good friends from my home town of Lithonia, GA. They were outstanding examples to their families and friends, and assets to their community.

Frances Chapman's accomplishments were many. She was dedicated to her community and its institutions. She was a member of the First Baptist Church of Lithonia. There she served as superintendent of the children's department, taught Sunday school and was a member of the choir. She taught for several years in the DeKalb County School System, and was a past president of the Lithonia High School Parent Teachers Association. Through her participation in community organizations she made Lithonia a place of pride in Georgia. She was a longtime member of the Lithonia Women's Club, and served twice as its president. Through her energies and activities she set an example for all of us.

William (Bill) Kelly served his country and his community all his life. During World War II, he served in the Combat Engineers and saw action in the North Africa campaign. During his life, Mr. Kelly was always involved in one activity or another in his community. He ran a successful paving contracting company, and also helped develop the Lithonia Industrial Park. He served with great distinction for 12 years as the mayor of Lithonia, and his leadership sought to bring a better quality of life to all of its citizens. He was a longtime member of the Lithonia Presbyterian Church, Masonic Lodge No. 84 and the Veterans of Foreign Wars. He was dedicated to his wife of 55 years, Anne, and very involved with his two daughters, grandchildren, and great-grandchildren.

Mr. President, today I commend the lives and lessons of my friends, Frances Chapman and Bill Kelly, and ask my colleagues to join me in saluting their memory and accomplishments.●

TRIBUTE TO BOB DEVANEY

● Mr. KERREY. Mr. President, I rise today to pay tribute to Bob Devaney, the former athletic director and head football coach of the University of Nebraska, who passed away last Friday.

It is impossible to overstate the impact that Bob Devaney had on the people of our State. And although he was born and raised in Saginaw, MI, he was the pride of all Nebraska.

In 1962, he came from Wyoming and took the helm of a football team that finished 3–6–1 the year before. In his first year as head coach, he turned them into a 9–1 winner—the best record at Nebraska since 1905.

By the time he left the head coaching job to become athletic director in 1972, he had won two national championships, boasted the winningest record in college football at the time, and built the third-largest city in the State—Memorial Stadium on a fall Saturday. He won eight Big Eight championships, six bowl games, and in 1982, a place in the College Football Hall of Fame.

Numbers alone cannot measure Bob Devaney's achievement. He brought pride to Nebraska and taught us what it took and what it felt like to be No. 1. He taught our children how to dream beyond the boundaries of the rural communities and urban neighborhoods in which they live, and he taught us all that with commitment and determination, our dreams could become realities.

But his most important legacy was that of sportsmanship. One of the many tributes to Bob Devaney in the wake of his death shared this story, and captures the greatness of the man:

In one game in 1970, after Nebraska trailed Kansas by 20–10, the Cornhuskers rallied for a 41–20 victory. ''You learned something today,'' Mr. Devaney told his players after the game. ''You learned you can come back. Remember that. That's the lesson of life.''

Bob Devaney taught all of us about the lessons of life. Bob was a source of inspiration, a great Nebraskan, and a friend to us all. Because of Bob Devaney, there is no place like Nebraska. He will be badly missed.

Mr. President, I ask that Bob Reeves' tribute from the May 10 Lincoln Journal-Star and an editorial from the May 11 Omaha World-Herald be printed into the RECORD.

The material follows:

[From the Lincoln Journal-Star, May 10, 1997]

DEVANEY AN 'INSPIRATION' TO STATE

(By Bob Reeves)

Nebraska lost more than a great football coach when Bob Devaney died Friday. The state lost a born motivational expert who helped give the state a real sense of self-esteem, current and former state and university leaders said Friday.

''Bob Devaney was an inspiration to Nebraska,'' Gov. Ben Nelson said. ''He made pride in football and pride in Nebraska the same. He helped Nebraskans believe that we could be No. 1 in football and in anything we did. He will be missed personally, and by the people who knew and loved him.''

''All of us who knew and worked for Bob Devaney feel a great sense of loss,'' said University of Nebraska-Lincoln head football coach Tom Osborne. ''It's an end of an era, so to speak. Bob always had great joy for the people who worked for him and was very supportive.''

James Moeser, UNL chancellor, said Devaney ''helped make the University of Nebraska synonymous with strength, a solid work ethic and people who strive to do their very best.''

Former Gov. Norbert Tiemann, who served from 1967 to 1971, described Devaney as ''a tremendous leader.''

Devaney ''turned the whole athletic program around (and) gave the state a sense of pride in itself,'' said Tiemann, who now lives in Dallas. ''I've got the greatest admiration for him, both from a professional and personal standpoint. It was a tremendous boost to the state's ego to have a winning football team.''

Those comments were echoed by former Gov. Frank Morrison, who served from 1961 through 1967. He was governor at the time then-chancellor Clifford Hardin hired Devaney to take over the football program.

''In many ways, he changed the psychological attitude of the state,'' Morrison said. ''The majority of people had an inferiority complex. It (Devaney's enthusiasm) was pervasive. He helped unify the state and improve our pride in Nebraska.''

Both Morrison and Tiemann talked about the positive impression Devaney made when he first arrived in the state from neighboring Wyoming. Tiemann was a banker in Wausa at the time and traveled throughout the state with a group introducing Devaney to various communities.

''Wherever we went, we didn't have to do much selling,'' because of Devaney's winning personality, Tiemann said. ''He made a great impression. He was a wonderful person to be around.''

He added that Devaney had such a likable personality that ''he could tell the dirtiest jokes in mixed company and get away with it. I could never do that.''

He also forged an intense loyalty from his players, said Morrison, who remained a close friend of Devaney's over the years. ''Johnny Rodgers (1972 Heisman Trophy winner) told me one time, 'I would have died for Bob Devaney.'''

Woody Varner, who was president of the university from 1970–77, during Nebraska's first two national championships, said he knew Devaney when he was an assistant coach at Michigan State.

''He came (here) with real devotion to Nebraska,'' Varner said.

''He was always a fighter for Nebraska. He never swallowed the story that Nebraska was second-class in any respect. He wanted Nebraskans to feel proud of themselves and of the state.''

Varner added that what Devaney did for athletics helped build the reputation of the university.

''It was easier to recruit students and faculty,'' he said. ''The state of Nebraska held its head high, thanks to Bob Devaney.''

Don Bryant, UNL associate athletic director and former longtime sports information director, said, ''I have lost a dear, personal friend and it results in a feeling of numbness and shock to realize that Bob Devaney no longer is a force in Nebraska and intercollegiate athletics.''

Bryant said Devaney's coaching ability and administrative leadership ''raised the standards of excellence and the visions of highest expectations for all Nebraskans.''

Osborne said that besides being a great coach, Devaney was ''a great friend.''

''He was the one who gave me a chance to be a graduate assistant, an assistant coach and a head coach at Nebraska,'' Osborne said. ''Most everything I know about coaching I learned from him. He was exceptional at handling players, always had a great sense of humor, and the players enjoyed playing for him because of the type of person he was. We will all miss him dearly.''

UNL Athletic Director Bill Byrne described Devaney as ''a giant in the world of college football, a dear friend and national leader.'' Devaney's leadership ''created a football dynasty and athletic program that is the best in America,'' he said. ''Our goal at Nebraska will be to continue the legacy created by Bob. We all will miss him very much.''

UNL sports historian Ben Rader described Devancy as ''a modern icon of success, in as much as his victories represented success for the entire state . . . He was also an example of a self-made man, who came from modest origins. Success is very difficult to measure in the world of bureaucracies, but an athletics or sports, it's very clear-cut.''

UNL volleyball coach Terry Pettit recalled that when Devancy came to Nebraska, he had two missions.

''First, he turned around an average football program and made it into the best in the nation. Then, as athletic director, he (took) a mediocre athletic department and built it into one of the best all-around athletic programs in the country.''

Petit credited Devaney with helping make Nebraska competitive in women's athletics.

''He gave me the resources and opportunity to succeed,'' Petiti said.

''He did have, and he will continue to have a lasting impact on the Nebraska athletic department and the entire state of Nebraska. His energy, enthusiasm and drive shaped our athletic department. For a lot of people, especially the coaches under him, he was a sort of father figure. We looked to him for guidance and support, and he always showed great loyalty to his staff.''

[From the Omaha World Herald, May 11, 1997]

BOB DEVANEY, BUILDER OF PRIDE

Bob Devaney.

The name unleashes a flood of symbols and memories.

Johnnie the Jet.

Gotham Bowl.

The Game of the Century.

Tagge-Brownson.

Back-to-back national football championships.

Tom Osborne.

Expansion after expansion of Memorial Stadium.

A sea of helium-filled red balloons, released by thousands of football fans on Nebraska's first touchdown of the game, hanging in the air above Lincoln on a brilliant fall day.

Even before Devaney's death on Friday, it has been an often-repeated cliche that Devaney's impact on Nebraska went far beyond football, that he brought Nebraskans together, east and west.

But like most other cliches, this one is backed by solid evidence.

A stumbling athletic program wasn't the only negative that greeted Devaney when he accepted the head coaching job in 1962. The state's spirit in general had been bruised by events of the previous five years. The Starkweather mass murders were still fresh in people's memories. A governor had recently died in office. Angry debates over tax policy and school financing, gathering steam since the 1940s, were dividing urban and rural Nebraska interests.

Nebraskans were ready for a little good news. Devaney gave it to them.

Under him, the Cornhuskers played with noticeably greater verve.

They won games that they would have lost in earlier years.

They began appearing in the national ratings. Then the Top 10.

Finally, in 1970 and 1971, they were national champions.

Interstate 80 was pushing westward across Nebraska in those days.

Westerners sometimes asked what good it was.

Devaney's success gave people in Hyannis, Kimball and Scottsbluff a reason to use the new superhighway.

Cowboy boots and Stetsons, often bright red, became a familiar sight in Lincoln on autumm Saturdays.

Lincoln's economy benefited.

East-west friendships grew stronger. The financial success of the football team made it possible for Nebraska to have a high-caliber women's athletic program. The classy Devaney football teams gave the university national visibility.

Some people say that too much is made of college athletics, and they're right. Devaney knew that. Remember, he told fans before a game in 1965, there are 800 million people in China ''who don't give a damn whether Nebraska wins or loses.'' There are bigger things in life than whether the team wins.

Devaney never seemed driven or angry. He respected his opponents. His spirit of good sportsmanship lives on in the Memorial Stadium fans who traditionally applaud Nebraska's opponents at the end of each game, even when Nebraska loses.

Devaney never set out to transform Nebraska. He would have laughed if someone in 1962 said he was responsible for propping up the self-esteem of an entire state. He was just a man with something he could do very, very well. But excellence on the football field inspired excellence in other walks of life.

Devaney's success, and the positive influence his accomplishments had on his adopted state, constitutes a memorial that will long bring honor to his name.●

WEI JINGSHENG

Mr. ROTH. Mr. President, I rise to join my colleagues who have so eloquently praised China's most prominent dissident and advocate of democracy, Wei Jingsheng, and who have called for his immediate release from prison. Yesterday marked the publication of Mr. Wei's remarkable book, ''The Courage to Stand Alone.'' The book is a compilation of his valiant prison letters to the Chinese leadership.

As a result of Mr. Wei's outspoken and articulate views on human rights and democracy the Government of China has imprisoned him—mostly in solitary confinement—for the greatest part of two decades. His personal sacrifices in the name of fundamental freedoms are a testament to his heroic spirit.

As one who has always supported commercial engagement with Beijing to encourage greater openness and freedom in China, I find China's repression of Wei's views and cruel treatment of Wei himself offensive.

As we are about to embark on our annual debate on renewing normal trade relations with China, Beijing must realize that its treatment of Mr. Wei in particular, and its repressive human rights policies in general, trouble all of the Members of this body, especially those of us who favor renewal.

While Mr. Wei has been outspoken in his own support of continuing China's MFN trade status—noting at his trial that the direct victims of MFN revocation ''would be the already poverty-stricken Chinese people'' rather than the authorities in Beijing—China would do its people and its position in the world well by heeding this brave man's calls for greater freedom and democracy.●

EARLY CHILDHOOD DEVELOPMENT ACT

● Mr. KENNEDY. Mr. President, it is a privilege to cosponsor the Early Childhood Development Act and I commend Senator KERRY for introducing this important legislation.

Recent research has clearly demonstrated what parents and others have intuitively known for generations: that experiences in the early childhood years lay the foundation for much of later development. Children thrive and grow on positive interactions with their parents and other adults. Quality child care, quality nutrition, and quality health care can make all the difference in enabling infants and children to reach their full potential and become contributing members of society. Ensuring that children have these experiences early in development is much easier and less expensive than coping with later crisis problems such as substance abuse, school dropout, and criminal behavior.

The Early Childhood Development Act is a significant step toward helping children obtain the multiple supports they need to grow and thrive. It builds effectively on the White House summit in April that emphasized the very great

importance of this issue. It will help State and local jurisdictions expand their efforts to assist young children and their families. It will strengthen Early Head Start, and increase resources for child care and nutrition.

This initiative is extremely important for the Nation's children. I look forward to continuing to work with Senator KERRY and others to provide children with the opportunities they need and deserve and must have in order to help our country for the generations to come.●

SENATE QUARTERLY MAIL COSTS—SECOND QUARTER

● Mr. WARNER. Mr. President, in accordance with section 318 of Public Law 101–520 as amended by Public Law 103–283, I am submitting the frank mail allocations made to each Senator from the appropriation for official mail expenses and a summary tabulation of Senate mass mail costs for the second quarter of fiscal year 1997 to be printed in the RECORD. The second quarter of fiscal year 1997 covers the period of January 1, 1997 through March 31, 1997. The official mail allocations are available for frank mail costs, as stipulated in Public Law 104–197, the Legislative Branch Appropriations Act of Fiscal Year 1997.

The material follows:

Senators	Fiscal year 1997 official mail allocation	Senate quarterly mass mail volumes and costs for the quarter ending Mar. 31, 1997			
		Total pieces	Pieces per capita	Total cost	Cost per capita
Abraham	$143,028	1,520	0.00016	$403.90	$0.00004
Akaka	43,336	0	0	0.00	0
Allard	59,148	0	0	0.00	0
Ashcroft	97,617	0	0	0.00	0
Baucus	41,864	12,443	0.01510	10,242.54	0.01243
Bennett	50,841	0	0	0.00	0
Biden	40,023	0	0	0.00	0
Bingaman	50,582	0	0	0.00	0
Bond	97,617	0	0	0.00	0
Boxer	382,528	815	0.00003	273.31	0.00001
Bradley	33,378	0	0	0.00	0
Breaux	82,527	0	0	0.00	0
Brown	20,625	0	0	0.00	0
Brownback	52,198	0	0	0.00	0
Bryan	50,755	0	0	0.00	0
Bumpers	62,350	0	0	0.00	0
Burns	41,864	0	0	0.00	0
Byrd	53,135	0	0	0.00	0
Campbell	77,822	0	0	0.00	0
Chafee	43,394	0	0	0.00	0
Cleland	90,218	0	0	0.00	0
Coats	100,503	0	0	0.00	0
Cochran	62,491	0	0	0.00	0
Cohen	12,042	0	0	0.00	0
Collins	35,217	0	0	0.00	0
Conrad	38,762	14,900	0.02343	1,976.46	0.00311
Coverdell	118,346	0	0	0.00	0
Craig	44,496	0	0	0.00	0
D'Amato	232,926	0	0	0.00	0
Daschle	39,578	0	0	0.00	0
DeWine	164,923	1,720	0.00016	448.000	0.00004
Dodd	71,425	0	0	0.00	0
Domenici	50,582	0	0	0.00	0
Dorgan	38,762	6,600	0.01038	864.74	0.00136
Durbin	125,121	0	0	0.00	0
Exon	13,199	0	0	0.00	0
Enzi	28,054	0	0	0.00	0
Faircloth	121,600	0	0	0.00	0
Feingold	91,527	0	0	0.00	0
Feinstein	382,528	0	0	0.00	0
Ford	77,040	0	0	0.00	0
Frahm	0	0	0	0.00	0
Frist	96,062	0	0	0.00	0
Glenn	164,923	0	0	0.00	0
Gorton	97,506	2,170	0.00042	564.31	0.00011
Graham	230,836	0	0	0.00	0
Gramm	251,855	1,400	0.00008	448.19	0.00003
Grams	85,350	57,080	0.01274	34,094.58	0.00761
Grassley	65,258	0	0	0.00	0
Gregg	44,910	4,176	0.00376	3,357.88	0.00302
Hagel	38,444	0	0	0.00	0
Harkin	65,258	0	0	0.00	0
Hatch	50,841	0	0	0.00	0
Hatfield	18,477	0	0	0.00	0
Heflin	22,240	0	0	0.00	0
Helms	121,600	0	0	0.00	0
Hollings	76,388	0	0	0.00	0
Hutchinson	47,286	0	0	0.00	0
Hutchison	251,855	0	0	0.00	0
Inhofe	73,454	0	0	0.00	0
Inouye	43,336	0	0	0.00	0
Jeffords	38,357	192,100	0.33702	32,489.42	0.05700
Johnson	29,826	0	0	0.00	0
Johnston	21,919	0	0	0.00	0
Kassebaum	16,457	0	0	0.00	0
Kempthorne	44,496	0	0	0.00	0
Kennedy	104,638	0	0	0.00	0
Kerrey	50,818	0	0	0.00	0
Kerry	104,638	0	0	0.00	0
Kohl	91,527	0	0	0.00	0
Kyl	83,872	0	0	0.00	0
Landrieu	62,755	0	0	0.00	0
Lautenberg	124,195	0	0	0.00	0
Leahy	38,357	0	0	0.00	0
Levin	143,028	0	0	0.00	0
Lieberman	71,425	0	0	0.00	0
Lott	62,491	388,500	0.14862	57,001.87	0.02181
Lugar	100,503	0	0	0.00	0
Mack	230,836	0	0	0.00	0
McCain	83,872	5,640	0.00147	4,692.98	0.00122
McConnell	77,040	0	0	0.00	0
Mikulski	90,835	0	0	0.00	0
Moseley-Braun	163,870	0	0	0.00	0
Moynihan	232,926	0	0	0.00	0
Murkowski	37,990	0	0	0.00	0
Murray	97,506	17,800	0.00347	3,910.47	0.00076
Nickles	73,454	0	0	0.00	0
Nunn	31,770	0	0	0.00	0
Pell	11,158	0	0	0.00	0
Pressler	10,108	0	0	0.00	0
Pryor	16,371	0	0	0.00	0

Senators	Fiscal year 1997 official mail allocation	Senate quarterly mass mail volumes and costs for the quarter ending Mar. 31, 1997			
		Total pieces	Pieces per capita	Total cost	Cost per capita
Reed	32,752	0	0	0.00	0
Reid	50,755	0	0	0.00	0
Robb	109,107	0	0	0.00	0
Roberts	47,525	0	0	0.00	0
Rockefeller	53,135	0	0	0.00	0
Roth	40,023	0	0	0.00	0
Santorum	176,220	0	0	0.00	0
Sarbanes	90,835	0	0	0.00	0
Sessions	63,649	0	0	0.00	0
Shelby	83,692	0	0	0.00	0
Simon	44,289	0	0	0.00	0
Simpson	9,473	0	0	0.00	0
Smith, Bob	44,910	0	0	0.00	0
Smith, Gordon	53,158	0	0	0.00	0
Snowe	46,609	0	0	0.00	0
Specter	176,220	0	0	0.00	0
Stevens	37,990	0	0	0.00	0
Thomas	37,266	0	0	0.00	0
Thompson	96,062	0	0	0.00	0
Thurmond	76,388	0	0	0.00	0
Torricelli	94,702	0	0	0.00	0
Warner	109,107	0	0	0.00	0
Wellstone	85,350	0	0	0.00	0
Wyden	70,009	0	0	0.00	0
Total		706,864	0.55683	150,768.65	0.10855•

SENATE QUARTERLY MAIL COSTS—FIRST QUARTER

• Mr. WARNER. Mr. President, in accordance with section 318 of Public Law 101–520 as amended by Public Law 103–283, I am submitting the frank mail allocations made to each Senator from the appropriation for official mail expenses and a summary tabulation of Senate mass mail costs for the first quarter of fiscal year 1997 to be printed in the RECORD. The first quarter of fiscal year 1997 covers the period of October 1, 1996, through December 31, 1996. The official mail allocations are available for frank mail costs, as stipulated in Public Law 104–197, the Legislative Branch Appropriations Act for fiscal year 1997.

The material follows:

Senators	Fiscal year 1997 official mail allocation	Senate quarterly mass mail volumes and costs for the quarter ending Mar. 31, 1996			
		Total pieces	Pieces per capita	Total cost	Cost per capita
Abraham	$143,028	2,750	0.00029	$563.73	$0.00006
Akaka	43,336	0	0	0.00	0
Allard	59,148	0	0	0.00	0
Ashcroft	97,617	0	0	0.00	0
Baucus	41,864	0	0	0.00	0
Bennett	50,841	0	0	0.00	0
Biden	40,023	0	0	0.00	0
Bingaman	50,582	0	0	0.00	0
Bond	97,617	0	0	0.00	0
Boxer	382,528	0	0	0.00	0
Bradley	33,378	0	0	0.00	0
Breaux	82,527	0	0	0.00	0
Brown	20,625	13,000	0.00375	3,833.68	0.00110
Brownback	52,198	0	0	0.00	0
Bryan	50,755	0	0	0.00	0
Bumpers	62,350	0	0	0.00	0
Burns	41,864	0	0	0.00	0
Byrd	53,135	0	0	0.00	0
Campbell	77,822	0	0	0.00	0
Chafee	43,394	0	0	0.00	0
Cleland	90,218	0	0	0.00	0
Coats	100,503	0	0	0.00	0
Cochran	62,491	0	0	0.00	0
Cohen	12,042	0	0	0.00	0
Collins	35,217	0	0	0.00	0
Conrad	38,762	0	0	0.00	0
Coverdell	118,346	0	0	0.00	0
Craig	44,496	0	0	0.00	0
D'Amato	232,926	0	0	0.00	0
Daschle	39,578	0	0	0.00	0
DeWine	164,923	0	0	0.00	0
Dodd	71,425	0	0	0.00	0
Domenici	50,582	0	0	0.00	0
Dorgan	38,762	0	0	0.00	0
Durbin	125,121	0	0	0.00	0
Exon	13,199	0	0	0.00	0
Enzi	28,054	0	0	0.00	0
Faircloth	121,600	0	0	0.00	0
Feingold	91,527	0	0	0.00	0
Feinstein	382,528	0	0	0.00	0
Ford	77,040	0	0	0.00	0
Frahm	0	0	0	0.00	0
Frist	96,062	0	0	0.00	0
Glenn	164,923	0	0	0.00	0
Gorton	97,506	0	0	0.00	0
Graham	230,836	0	0	0.00	0
Gramm	251,855	0	0	0.00	0
Grams	85,350	0	0	0.00	0
Grassley	65,258	0	0	0.00	0
Gregg	44,910	0	0	0.00	0
Hagel	38,444	0	0	0.00	0
Harkin	65,258	0	0	0.00	0
Hatch	50,841	0	0	0.00	0
Hatfield	18,477	0	0	0.00	0
Heflin	22,240	0	0	0.00	0
Helms	121,600	0	0	0.00	0
Hollings	76,388	0	0	0.00	0
Hutchinson	47,286	0	0	0.00	0
Hutchison	251,855	0	0	0.00	0
Inhofe	73,454	0	0	0.00	0
Inouye	43,336	0	0	0.00	0
Jeffords	38,357	31,020	0.05442	5,689.22	0.00998
Johnson	29,826	0	0	0.00	0
Johnston	21,919	0	0	0.00	0

Senators	Fiscal year 1997 official mail allocation	Senate quarterly mass mail volumes and costs for the quarter ending Mar. 31, 1996			
		Total pieces	Pieces per capita	Total cost	Cost per capita
Kassebaum	16,457	0	0	0.00	0
Kempthorne	44,496	0	0	0.00	0
Kennedy	104,638	0	0	0.00	0
Kerrey	50,818	0	0	0.00	0
Kerry	104,638	0	0	0.00	0
Kohl	91,527	0	0	0.00	0
Kyl	83,872	0	0	0.00	0
Landrieu	62,755	0	0	0.00	0
Lautenberg	124,195	0	0	0.00	0
Leahy	38,357	726	0.00127	1,018.31	0.00179
Levin	143,028	0	0	0.00	0
Lieberman	71,425	0	0	0.00	0
Lott	62,491	0	0	0.00	0
Lugar	100,503	0	0	0.00	0
Mack	230,836	0	0	0.00	0
McCain	83,872	4,398	0.00115	3,565.77	0.00093
McConnell	77,040	0	0	0.00	0
Mikulski	90,835	0	0	0.00	0
Moseley-Braun	163,870	0	0	0.00	0
Moynihan	232,926	0	0	0.00	0
Murkowski	37,990	0	0	0.00	0
Murray	97,506	0	0	0.00	0
Nickles	73,454	0	0	0.00	0
Nunn	31,770	0	0	0.00	0
Pell	11,158	0	0	0.00	0
Pressler	10,108	0	0	0.00	0
Pryor	16,371	0	0	0.00	0
Reed	32,752	0	0	0.00	0
Reid	50,755	0	0	0.00	0
Robb	109,107	0	0	0.00	0
Roberts	47,525	0	0	0.00	0
Rockefeller	53,135	0	0	0.00	0
Roth	40,023	0	0	0.00	0
Santorum	176,220	0	0	0.00	0
Sarbanes	90,835	0	0	0.00	0
Sessions	63,649	0	0	0.00	0
Shelby	83,692	0	0	0.00	0
Simon	44,289	0	0	0.00	0
Simpson	9,473	0	0	0.00	0
Smith, Bob	44,910	0	0	0.00	0
Smith, Gordon	53,158	0	0	0.00	0
Snowe	46,609	0	0	0.00	0
Specter	176,220	0	0	0.00	0
Stevens	37,990	0	0	0.00	0
Thomas	37,266	0	0	0.00	0
Thompson	96,062	0	0	0.00	0
Thurmond	76,388	0	0	0.00	0
Torricelli	94,702	0	0	0.00	0
Warner	109,107	0	0	0.00	0
Wellstone	85,350	0	0	0.00	0
Wyden	70,009	0	0	0.00	0
Total		51,894	0.06088	14,670.71	0.01386•

ORDERS FOR THURSDAY, MAY 15, 1997

Mr. LOTT. Madam President, I ask unanimous consent that at 9:15 a.m. on Thursday the Senate resume consideration of S. 4, the Family Friendly Workplace Act, and the time between then and 10 a.m. be equally divided between the two managers, or their designees; and, further, at 10 a.m. the Senate proceed to vote on the motion to invoke cloture on the pending committee amendment. I further ask unanimous consent that following that vote there be a period for morning business until the hour of 11 a.m. with Senator THOMAS in control of the first 20 minutes; and, Senator DASCHLE, or his designee, under the control of the next 20 minutes.

Finally, I ask unanimous consent that at 11 a.m. the Senate resume consideration of H.R. 1122, the Partial-Birth Abortion Ban Act.

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

Mr. LOTT. Madam President, I yield the floor, and I observe the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BROWNBACK. Madam President, I ask unanimouos consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection it is so ordered.

PARTIAL-BIRTH ABORTION BAN ACT OF 1997

Mr. BROWNBACK. Madam President, I rise to speak about something of great sadness in our Nation. Tomorrow we will take a vote on partial-birth abortion. I want to speak about that particular issue if I could this evening from a particular perspective that I think might be somewhat different from folks who might look at this as a sterile procedure, a procedure that we may consider banning. I would like to talk about what it says of our culture, what this procedure that is being used today says about us. Is the loss of love in our culture actually so great that we could actually kill a child and explain it away? I think this is actually how we ought to look at this debate on this issue.

I oppose the partial-birth abortion procedure being conducted in United States other than in cases of loss of life of the mother, and then I think we need to clearly say that this is available in cases of loss of life of the mother. My wife and I have three children, and I would hate to think that she would be put in a spot where she could not have access to a medical procedure that she desperately needed for her own life. But that is taken care of in this bill and there is an allowance for it. In the case where the life of the mother is at risk, this procedure is allowed, and that is proper and as it should be. We allow that to take place.

What I want to talk about more is that we have so many of these abortions happening in this country. What does it say about the culture and our own loss of care and our own loss of love? What does it say about us that this procedure is even allowed.

I want to point out to this body some of the things that have happened to American culture over the past 30 years that I think point out we have lost the care for other individuals and we have lost the compassion for others and even for babies.

Let us look at this chart, if I could share it with you. We are looking at child abuse and neglect reports in America, and this is 1976 to 1995. We are looking at numbers of reports in the millions. We are looking at about 600,000 in 1976, which is wholly too much, we are looking at 3 million, over 3 million in 1995.

The growth that has taken place during that period of time, what does that say about a loss of care and a loss of compassion in our society and in our culture?

I want to look at this next chart, violent crime offenses in our society. Look where we were in 1960. This is

rate per 100,000 individuals. For every 100,000 individuals in America, we had about 160 violent crime offenses in 1960.

Where are we today? In 1993, the latest we have numbers for, we are at 746 per 100,000 people. From 160 to 746 during that period of time of roughly about 30, 33 years.

I only point these out to ask, what is it today about our culture? I think our culture is in a great depression, that we are violent, we are not caring for our children, we are not doing the right things for them, and we are not doing the right things to try to correct it. We have to rebuild the culture, and I think we rebuild it by loving and caring for each other, and we will.

To me, that is what this debate is about. It is about banning a particular procedure used on babies, and it is about saying we should not, in a civilized society, allow this. We should not, in looking at this sort of violence and lack of caring and lack of respect in this society, let something like this go on. It is about those who are involved and it is about our conscience being pricked by this.

We see these charts—Senator SANTORUM has pointed to them —about the child being born, and we get uncomfortable; we don't like that because it is striking our conscience and it is saying it is not civilized for us to be doing and continuing this procedure. We see it and we do not like it. If we saw it happening to an animal, we would not like it, and we certainly feel that way towards a child.

That is why I urge my colleagues and the American people, let us reject this procedure as part of rebuilding our culture, as part of restaking this ground. We need to have is compassion and care and love for the most defenseless in our culture.

This is a child we are talking about. We must start turning these trends around and start caring for the most defenseless in this situation.

I think it is clear that we are going to pass this bill in the Senate. I hope we will pass it by an overwhelming majority and that we build on this from this point forward, saying let us change this culture. Let us bring it back to caring. Let us bring it back to compassion and love for everybody, especially the most defenseless.

With that, I yield back my time.

Mr. ASHCROFT. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SMITH of New Hampshire. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

AMENDING THE IMMIGRATION AND NATIONALITY TECHNICAL CORRECTIONS ACT OF 1994

Mr. SMITH of New Hampshire. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 48, S. 670.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 670) to amend the Immigration and Nationality Technical Corrections Act of 1994 to eliminate the special transition rule for issuance of a certificate of citizenship for certain children born outside the United States.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. SMITH of New Hampshire. Mr. President, I ask unanimous consent the bill be considered read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill appear at this point in the RECORD.

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

The bill (S. 670) was considered read the third time and passed as follows:

S. 670

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

SECTION 1. ELIMINATION OF CERTIFICATE OF CITIZENSHIP TRANSITION RULE APPLICABLE TO CERTAIN CHILDREN.

(a) IN GENERAL.—Section 102 of the Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103–416; 108 Stat. 4307) (as amended by section 671(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208; 110 Stat. 3009–1856)) is amended by striking subsection (e).

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the enactment of the Immigration and Nationality Technical Corrections Act of 1994.

ORDERS FOR THURSDAY, MAY 15, 1997

Mr. SMITH of New Hampshire. 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 Thursday, May 15. I further ask consent that on Thursday, immediately following the prayer, the routine requests through the morning hour be granted and the Senate then immediately resume consideration of S. 4, as under the previous order.

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

Mr. SMITH of New Hampshire. I further ask consent that Members have until 10 a.m. to file second-degree amendments to S. 4.

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

PROGRAM

Mr. SMITH of New Hampshire. For the information of all Senators, tomorrow the Senate will resume consideration of S. 4, the Family Friendly Workplace Act, with a vote on the motion to invoke cloture to occur at approximately 10 a.m. Following that vote, there will then be a period for morning business until the hour of 11 a.m., to allow a number of Senators the opportunity to speak. By previous order, the Senate will then resume consideration of H.R. 1122, the partial-birth abortion ban bill, with Senator FEINSTEIN recognized to offer an amendment. Debate on the Feinstein amendment will last until approximately 2 p.m., when a vote on or in relation to the Feinstein amendment will occur.

Following disposition of the Feinstein amendment, Senator DASCHLE will be recognized to offer his amendment, and under the consent agreement there will be 5 hours of debate in order. Therefore, Members can expect rollcall votes throughout Thursday's session of the Senate.

Again, I appreciate Senators adjusting their schedules to accommodate floor action while we work through these important issues prior to the Memorial Day recess.

ADJOURNMENT UNTIL 9:15 A.M. TOMORROW

Mr. SMITH of New Hampshire. If there is no further business to come before the Senate, I now ask that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:18 p.m, adjourned until Thursday, May 15, 1997 at 9:15 a.m.