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House of Representatives

The House was not in session today. Its next meeting will be held on Monday, May 3, 1999, at 2 p.m.

Senate

FRIDAY, APRIL 30, 1999

The Senate met at 9:31 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:

Our loving heavenly Father, there are times when our hearts overflow with gratitude to You. Today is one of those times. This has not been an easy week in our Nation or our world. And yet, in the midst of the turmoil, You have blessed us with strength and courage. We thank You for the stabilizing security You give us in the midst of challenges and change. Bless the Senators and all who serve in the Senate with a special measure of Your sustained grace. You know the needs of each person and every office. Heal all physical and spiritual distress; comfort those who suffer pain in silence; strengthen those who have heavy burdens to bear. We commit to You the families of the Senators and their staffs. Watch over them; keep them in Your love. While we focus our attention on Your calling here, surround them with Your care. Through our Lord and Savior. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able Senator from New Mexico is recognized.

Mr. DOMENICI. I thank the Chair.

SCHEDULE

Mr. DOMENICI. On behalf of the majority leader, I make the following opening statement.

Today the Senate will immediately begin 30 minutes of debate relating to cloture on the Social Security lockbox issue. Following that debate, the Senate will proceed to two rollcall votes. The first will be a cloture vote on the Abraham amendment to S. 557; the second on S. Res. 33 regarding National Military Appreciation Month, which will take place immediately following the first vote. Therefore, Senators can expect two votes at approximately 10 a.m.

For the remainder of the day, the Senate may continue debate on the lockbox issue or any other legislative or executive items cleared for action.

I yield the floor.

GUIDANCE FOR THE DESIGNATION OF EMERGENCIES AS A PART OF THE BUDGET PROCESS

The PRESIDING OFFICER (Mr. DEWINE). The clerk will report S. 557.

The assistant legislative clerk read as follows:

A bill (S. 557) to provide guidance for the designation of emergencies as part of the budget process.

The Senate resumed consideration of the bill.

Pending:

Lott (for Abraham) Amendment No. 254, to preserve and protect the surpluses of the social security trust funds by reaffirming the exclusion of receipts and disbursement from the budget, by setting a limit on the debt held by the public, and by amending the Congressional Budget Act of 1974 to provide a process to reduce the limit on the debt held by the public.

Abraham Amendment No. 255 (to Amendment No. 254), in the nature of a substitute.

Lott motion to recommit the bill to the Committee on Governmental Affairs, with instructions and report back forthwith.

Lott Amendment No. 296 (to the instructions of the Lott motion to recommit), to provide for Social Security surplus preservation and debt reduction.

Lott Amendment No. 297 (to Amendment No. 296), in the nature of a substitute.

The PRESIDING OFFICER. Under the previous order, there will now be 30 minutes for debate on the cloture motion on amendment No. 255.

Mr. ABRAHAM addressed the Chair.

The PRESIDING OFFICER. Who yields time?

The Senator from Michigan.

Mr. ABRAHAM. Mr. President, might I just ask, is the 30 minutes of debate to be equally divided?

The PRESIDING OFFICER. That is correct.

Mr. ABRAHAM. In that case, Mr. President, I yield myself up to 5 minutes at this point.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. ABRAHAM. Mr. President, just to remind our colleagues, as well as those who watch our deliberations, what we are trying to do with this amendment is to amend the budget process in such a fashion that we protect the surpluses that will be built up over the next 10 years in the Social Security trust fund. We have now entered an era in which we project very substantial surpluses coming into the Federal Government, not just as a result of

Social Security trust fund payments but also in the rest of the budget as well. We do not need to use Social Security trust funds to balance the budget. We are at the point now where we can accomplish that without any Social Security money being used.

That, combined with the fact we are facing a huge long-term unfunded obligation problem in the Social Security trust fund, in my judgment, absolutely requires us at this time to protect those Social Security trust fund dollars so they can be used to modernize Social Security. The purpose of this amendment is to try to accomplish that.

In short, this amendment says that until we come up with a plan to modernize Social Security, the Social Security trust fund surpluses should be used to pay down the publicly held debt.

I do not think this is a very complicated proposal. I think it is one that people on both sides of the aisle were applauding just a few months ago when it was talked about by the President in the State of the Union Address, and yet now we hear one after another argument as to why we should not do this. The arguments range from those of some colleagues who say, well, let's just take all the Social Security trust fund surplus and, instead of paying down the national debt, put it in Fort Knox or some other place where it is secure—I can't quite even figure out how that one would work—to others who say this is not the right kind of lockbox; instead of just protecting the Social Security trust fund surplus, we should also save money for fixing Medicare.

Well, their argument seems to be that if we don't somehow address Medicare simultaneously, we should spend the Social Security trust fund surplus. That one I can't figure out, either. Then we have heard, from the Secretary of Treasury, various concerns raised about the process by which this amendment would work. We have offered to try to address those concerns. We attempt to do that. We address that in this amendment, responding to his initial letter. Then we heard additional concerns in a second letter. Yet, we have heard no proposal from either the White House or the Treasury as to how to put together a lockbox that would satisfy them.

Based on the vote last week, and what I expect to be the vote today, I think we are hearing an awful lot of protests, but I am increasingly questioning whether or not people are really sincere about truly trying to save this trust fund surplus.

So for those reasons we are going to keep pushing this issue. We are going to keep bringing this back to the floor. We believe the money people send in for Social Security which creates a surplus ought to be saved to either modernize Social Security or used to pay down the debt and not spent on more programs here in Washington. The people pay in the money. They deserve to have it for their own retirement. We are going to keep working very hard to make sure they do.

At this point, Mr. President, I will yield back any remaining time I had in this first 5 minutes, and now for 5 minutes I yield to the Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. ASHCROFT. I thank the Chair.

Mr. President, I rise today in favor of the provision to protect Social Security, to, in effect, put it in a lockbox to make sure it is not dissipated or misallocated or used to cover deficits in other parts of Government.

The votes we are about to cast are important votes. They relate to the future of Social Security, the integrity of Social Security, the strength of America and its ability to meet its obligations when individuals call upon Social Security to do what Congress has said Social Security would be able to do.

This vote is about making sure the Social Security surpluses are not used to pay for new budget deficit spending in other parts of Government.

Congress is committed to stopping the raid on Social Security. This Congress has passed a budget without using Social Security trust funds. This is historic and it is novel. We have not been passing budgets like this. We have not done it before.

It is important; we have passed a budget that says we are not going to raid the Social Security trust fund. In contrast, over the next 5 years, President Clinton's budget would have taken $158 billion from the Social Security trust fund to pay for non-Social Security programs.

I think Congress is on the right track. Should we have a $158 billion raid or no raid at all? I think Congress has it right: Don't have any raid at all on Social Security.

Frankly, this vote should be bipartisan and unanimous. Last month, the Senate voted 99 to nothing in support of legislation to protect Social Security. We are calling on every Senator to vote with us to pass the legislation that implements the unanimous resolution passed by the Senate 99 to nothing earlier this month.

The Abraham-Domenici-Ashcroft lockbox will make sure that Social Security funds do not go for anything other than Social Security.

The bill will achieve these three important results:

No. 1, the President will no longer be able to propose budgets that use Social Security funds to balance the budget. Write into the law the President is not to send us proposals for spending which include a backdoor raid on Social Security. It really establishes a priority. It says Social Security is more important than these other new programs or ideas for spending.

No. 2, Congress will no longer routinely pass budgets that use Social Security trust funds to balance the budget. A congressional budget that uses Social Security funds to balance the budget will be subject to what is called a point of order.

All of us have been involved at one point or another in meetings where someone tries to bring something up and the chairman simply says with a thump of the gavel, ''That's out of order; we are not going to discuss it.'' That is how it should be when people propose, for example, raiding the Social Security trust fund for other Government programs.

Mr. President, you, as the occupant of the Chair, should say, with a thump, ''That is out of order, that is off the table, we do not discuss those things, that is not part of what we do.'' A point of order then simply allows, provides for the Chair to say, ''That's out of order, that's not something we do, and if you want to do that, you have to change the way we do business around here, you have to change the rules or suspend them.'' I think that is a major step forward.

As a final tool to make sure Social Security trust funds are not used to finance new deficits, this provision will reduce the amount of debt held by the public by the amount of the Social Security surplus, so that when the Social Security surplus is not spent on programs but is invested to pay down the national debt so that we are stronger when we need to pay for Social Security, this makes sure the money will not go into other programs. This will ensure that any and all Social Security surpluses will be directed toward reducing the debt, which means strengthening the capacity to pay Social Security when the time comes.

Americans, including the 1 million Missourians who receive Social Security benefits, want Social Security protected, and they have a right to have it protected. They paid for it, they have earned it, and we should protect the integrity of the fund.

This bill does what America wants and what every Senator has previously said they want to do as well in behalf of their constituents. It is time for the Senate to vote now to end the debate on this bill, to pass this bill, to do this month what we said last month we wanted to do when we passed the budget resolution; that is, to protect the Social Security trust fund, to reserve it for the benefit of the recipients of the fund, to strengthen and protect the integrity of the fund. I call upon other Members of the Senate to join in this noble cause to which they have already registered their serious commitment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. ABRAHAM. Mr. President, I inquire as to how much time is left on our side.

The PRESIDING OFFICER. The Senator from Michigan has 6 minutes 20 seconds.

Mr. ABRAHAM. It is my understanding that the chairman of the

Budget Committee, Senator DOMENICI, wants to be the final speaker on our side for approximately 5 minutes, and Senator LAUTENBERG, who is the ranking member of the committee, wants to have approximately 5 minutes before that. I suggest the absence of a quorum and ask, in our desire to protect the time on our side, that the time be assessed against Senator LAUTENBERG's time.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. LAUTENBERG. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. The Senator from New Jersey has 10 minutes 20 seconds left, and the Senator from Michigan has 5 minutes 51 seconds left.

Mr. LAUTENBERG. I thank the Chair.

Mr. President, I rise to support walling off all Social Security surpluses and in strong opposition to the pending Social Security lockbox.

I stand in opposition to the Social Security lockbox proposal that is in front of us because I believe this legislation is a lockbox in name only. In reality, instead of protecting Social Security benefits, I believe it would actually threaten them, and I think the threat is a serious one. It could cause a Government default and trigger worldwide economic instability.

Before I review the problem with the Social Security lockbox, I will take a minute to talk about saving Social Security and my continuing hope that we can address this issue in the near future.

I am fairly optimistic, Mr. President, but I have heard a lot of gloomy comments about the prospects for legislation to protect and preserve Social Security for the future. I hope we do not give up on this.

I do not want to be critical in any way of any of my colleagues. I know many are concerned that this issue is just too hot to handle politically, but I do not see it that way. In fact, I think we have a unique opportunity this year to really prepare our country for the future, and it is an opportunity we should seize.

President Clinton has made Social Security reform a top priority. He is in his second term and is eager to take on this politically difficult task and can lend us the leadership it requires. We are now in pretty good financial shape. We are projecting budget surpluses for years to come. And with the economy going so strong, our Nation is ready to accept some of the hard choices that will be necessary to get the job done.

If we cannot solve the Social Security problem now, I would ask, When can we? This is the time to act, and we need to do it soon before we get too close to the next year's Presidential election. And we need to do it on a bipartisan basis. Frankly, that is the only way it can be done—through direct negotiations between the congressional leadership of both parties in both Houses and the White House.

One thing should be clear to everyone, and that is that the Social Security lockbox amendment before us does not represent Social Security reform. It does nothing to prepare our country for the financial pressures which will be created when the baby boomers retire. It does not extend Social Security solvency by even a single day. I just hope it will not be used as an excuse to avoid dealing with Social Security in a real and meaningful way.

I have reviewed this before, but I want to again recount for my colleagues the three serious problems I see with this legislation.

First, it directly threatens Social Security benefits. Treasury Secretary Rubin has explained in a letter that under this proposal an unexpected economic downturn could block the issuance of Social Security checks, as well as Medicare, veterans', and other benefits.

Additionally, the amendment contains a huge loophole that would allow Social Security contributions to be diverted for purposes other than direct Social Security benefits. Anything the Congress labels as ''Social Security reform'' would be exempt from the lockbox. So this could include privatization plans that might be risky, tax cuts, or who knows what.

I know some of my colleagues dispute my interpretation of this provision. But I would simply point to the broad language of the legislation itself. It effectively exempts from the lockbox any legislation which includes a provision designating itself as Social Security reform. So if Congress passes a big tax cut, even if it provides significant benefit to wealthy retirees, we can just claim that this represents Social Security reform, and all the costs of the legislation will be exempt from the lockbox. Some of the bill's cosponsors may say that is not their intent. But that is what the bill says.

I would like to be able to offer an amendment to correct this problem. The majority, however, has prohibited us from offering any amendments whatsoever. So we have had little opportunity to do anything but point out the loophole.

Mr. President, the second major problem with the pending bill is that it does absolutely nothing to protect Medicare. Instead, it allows Congress to squander funds needed for Medicare on tax breaks which go largely to the wealthier among us.

Senator CONRAD and I have developed a different lockbox to protect both Social Security and Medicare. Our bill, S. 862, would reserve all of the Social Security surpluses exclusively for Social Security, and 40 percent of the non-Social Security surpluses for Medicare. We would like an opportunity to offer that lockbox amendment to this bill, but again the majority is blocking all of these amendments.

Finally, and perhaps most importantly, the Republicans' so-called lockbox threatens a potential Government default. In the short term this could undermine our Nation's credit standing and increase interest costs. Ultimately, it could block benefit payments and lead to a worldwide economic crisis. That is why the Treasury Secretary, Robert Rubin, has said he would recommend that the President veto the bill if it ever reaches his desk.

Mr. President, the lockbox Senator CONRAD and I have developed avoids the risk of default, while protecting both Social Security and Medicare. Our lockbox would not establish a new debt limit. It would use supermajority points of order and across-the-board cuts to guarantee enforcement. I think it is a far better, more responsible approach.

So I urge my colleagues to oppose cloture on this legislation. Let's establish a Social Security lockbox. In fact, let's establish a Social Security and Medicare lockbox. Let's make it a real, responsible lockbox, not one that actually, in its implementation, could threaten Social Security benefits, risking a worldwide financial crisis. And then, Mr. President, let's sit down with the White House and negotiate a compromise which will truly protect Social Security and Medicare for the long term.

I yield the floor.

Mr. KENNEDY. Mr. President, the Republican ''lockbox'' proposal is deeply flawed, and does not deserve to be adopted. It does nothing to extend the life of the Social Security Trust Fund for future beneficiaries. In fact, it would do just the reverse. This legislation actually places Social Security at greater risk than it is today. It would allow payroll tax dollars that belong to Social Security to be spent instead on risky privatization schemes. And, because of the harsh debt ceiling limits it would impose, this plan could produce a governmental shutdown that would jeopardize the timely payment of Social Security benefits to current recipients.

It is time to look behind the rhetoric of the proponents of the ''lockbox.'' Their statements convey the impression that they have taken a major step toward protecting Social Security. In truth, they have done nothing to strengthen Social Security. Their proposal would not provide even one additional dollar to pay benefits to future retirees. Nor would it extend the solvency of the Trust Fund by even one more day. It merely recommits to Social Security those dollars which already belong to the Trust Fund under current law. At best, that is all their so-called ''lockbox'' would do.

By contrast, President Clinton's proposed budget would contribute 2.8 trillion new dollars of the surplus to Social Security over the next 15 years. By doing so, the President's budget would extend the life of the Trust Fund by more than a generation, to beyond 2050.

There is a fundamental difference between the parties over what to do with the savings which will result from using the surplus for debt reduction. The Federal Government will realize enormous savings from paying down the debt. As a result, billions of dollars that would have been required to pay interest on the national debt will become available each year for other purposes. President Clinton believes those debt savings should be used to strengthen Social Security. Since it is payroll tax revenues which make the debt reduction possible, those savings should in turn be used to strengthen Social Security. I wholeheartedly agree. It is an eminently reasonable plan. But Republican Members of Congress oppose it.

Not only does the Republican plan fail to provide any new resources to fund Social Security benefits for future retirees, it does not even effectively guarantee that existing payroll tax revenues will be used to pay Social Security benefits. They have deliberately built a trapdoor in their ''lockbox.'' Their plan would allow Social Security payroll taxes to be used instead to finance unspecified ''reform'' plans. This loophole opens the door to risky schemes to finance private retirement accounts at the expense of Social Security's guaranteed benefits. If these dollars are expended on private accounts, there will be nothing left for debt reduction, and no new resources to fund future Social Security benefits. Such a privatization plan could actually make Social Security's financial picture far worse than it is today, necessitating deep benefit cuts in the future.

A genuine ''lockbox'' would prevent any such diversion of funds. A genuine ''lockbox'' would guarantee that those payroll tax dollars would be in the Trust Fund when needed to pay benefits to future recipients. The Republican ''lockbox'' does just the opposite. It actually invites a raid on the Social Security Trust Fund.

The Social Security reform proposal put forth by Chairman ARCHER and Congressman SHAW earlier this week demonstrates that the real Republican agenda is to substitute private accounts for traditional Social Security benefits. That plan would spend the entire Social Security surplus on tax credits to subsidize private accounts. There would be no money left for debt reduction, and thus no debt service savings which could be used to help fund future Social Security benefits. In fact, their plan will ultimately require either enormous new borrowing or drastic program cuts to continue funding the private accounts after the Social Security surplus is exhausted. These costly tax credits would go to subsidize private accounts disproportionately benefiting the most affluent workers. Low and middle income workers would receive little or no net benefit from the Archer plan. Their retirement security would not be enhanced at all.

Placing Social Security on a firm financial footing should be our highest budget priority, not further enriching the already wealthy. Two-thirds of our senior citizens depend upon Social Security retirement benefits for more than fifty percent of their annual income. Without it, half the nation's elderly would fall below the poverty line.

To our Republican colleagues, I say: ''If you are unwilling to strengthen Social Security, at least do not weaken it. Do not divert dollars which belong to the Social Security Trust Fund for other purposes. Every dollar in that Trust Fund is needed to pay future Social Security benefits.''

The proposed ''lockbox'' poses a second, very serious threat to Social Security. By using the debt ceiling as an enforcement mechanism, it runs the risk of creating a government shutdown crisis. The Republicans propose to enforce their ''lockbox'' by mandating dangerously low debt ceilings. Such a reduced debt ceiling could make it impossible for the federal government to meet its financial obligations—including its obligation to pay Social Security benefits to millions of men and women who depend upon them. The risk is real. It is fundamentally wrong to put those who depend on Social Security at risk in this way.

The ''lockbox'' which proponents claim will save Social Security actually imperils it. As Treasury Secretary Rubin has said, ''This legislation does nothing to extend the solvency of the Social Security Trust Fund, while potentially threatening the ability to make Social Security payments to millions of Americans.''

While this ''lockbox'' provides no genuine protection for Social Security, it provides no protection at all for Medicare. The Republicans are so indifferent to senior citizens' health care that they have completely omitted Medicare from their ''lockbox''.

By contrast, Democrats have proposed to devote 15% of the surplus to Medicare over the next 15 years. Those new dollars would come entirely from the on-budget portion of the surplus. The Republicans have adamantly refused to provide any additional funds for Medicare. Instead, they propose to spend the entire on-budget surplus on tax cuts disproportionately benefiting the wealthiest Americans.

I urge my colleagues, on both sides of the aisle, to reject this ill-conceived proposal. It jeopardizes Social Security and ignores Medicare. It is an assault on America's senior citizens, and it does not deserve to pass.

Mr. GRASSLEY. Mr. President, today we are taking a critical step toward saving Social Security. However, in considering this measure we are seeking to reaffirm provisions in the current law stating that money earmarked for Social Security should not be considered for purposes of the Federal budget. Furthermore, this measure would make it very difficult for this Congress and Administration, or future Congresses and Administrations, to use Social Security surpluses to achieve a balanced budget.

In his 1998 State of the Union address, the President pledged to save every penny of the Social Security surplus for Social Security. Many of us supported his pledge and worked not to spend Social Security surplus money. However, his fiscal year 2000 budget request would require the use of $158 billion in Social Security surplus money over the next five years.

The ''lockbox'' measure we are considering today would prohibit Congress or the President from spending Social Security trust fund money but would still allow Congress the flexibility needed in case unforeseen emergencies, such as a war or a recession, develop. It is vital that we take steps to exercise fiscal restraint so that we don't squander the surpluses necessary to enact improvements to the Social Security program which would enhance the retirement security of our children and grandchildren.

I believe that this is of critical importance in the path toward saving Social Security, so much so that I am missing a field hearing by the Senate Committee on Commerce, Science and Transportation back home in Iowa that Senator MCCAIN was gracious enough to hold on the difficulties Iowa faces with competition in the airline industry. Unfortunately, I can't be there right now, but I hope my being here to cast this vote supporting this proposal is a testament to the importance of taking steps to bring us closer to saving Social Security.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. How much time do we have?

The PRESIDING OFFICER. The Senator from New Mexico has 5 minutes 51 seconds.

Mr. DOMENICI. I yield myself such time as I use.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, first, let me suggest that this idea that we are locking out any amendments with our Social Security Protection Act is nice to say, but it isn't true. If the Democrats let us vote on this, we will see whether it passes or not, but once it passes, it is subject to amendments.

The good Senator from New Jersey, my dear friend, can offer his substitute or his amendment, but first we have to have an opportunity to vote on this amendment, which for some strange reason, while the other side of the aisle and the President keep saying, ''Let's

not spend any of the Social Security trust fund,'' they somehow do not want to vote for a proposition that will really lock it up so it cannot be spent, it cannot be embezzled, as some Democrats called it a few years ago, when you use it. They said you were embezzling the trust fund. I would think if that is true—I never used that word—you ought to lock it up tough, you ought to put a whopping key on it that can't hardly be moved. So that is what we have done.

For those who say, ''If you can't spend the Social Security trust fund, you are going to destroy the economy of America,'' that is just absolutely untrue. Would anyone believe that taking a trust fund which belongs to Social Security, using it to pay down the debt until we need it for Social Security reform, would anybody submit that that is going to harm America? That is going to help us. We are going to be reducing the debt right at the right time by a huge amount, which is going to keep inflation down, which is going to keep interest rates down, all of which helps Social Security.

All of these arguments about cash management, and you can't pay Social Security—just read the bill. The bill says, under all circumstances the Social Security checks are forthcoming, just by specific item. The management problems that the Treasury Secretary has have been fixed.

The truth of the matter is, those on the other side of the aisle think it might be easy to spend this money if you do not have this lockbox. And they are right, it will be easy to spend it. In fact, the President of the United States, in his budget, spent $158 billion of it in the first 5 years. No wonder he does not want this lockbox. It wrecks his budget, because he is already going to spend it. We say, ''No. No, you can't spend it. You challenged us not to spend it. We are for real.'' That is what this is all about.

Last but not least, let me suggest that it is really amazing for some on the other side of the aisle to talk about saving both Medicare and Social Security in some kind of a lockbox when you see what it really is. It is sort of a Democratic position that we should not cut taxes for the American people or, if we do, we ought to do it their way—even though we are in the majority and the President has a veto pen, we ought to do it their way.

We say there is plenty of money outside of Social Security to give the American taxpayers back a real tax reduction over the next decade. Whenever you say, let's take more of that surplus that does not belong to Social Security, and say let's spend it on something else, you are really choosing not to give the American people a tax reduction that they deserve.

Frankly, I do not believe today we are going to get cloture. But I think sooner or later—and hopefully it will not be too much later—we will make this filibuster a real one. We will stay down here until we wear out, around the clock. And let's stay here a couple nights so everybody will understand this is serious business, and who is keeping us from voting on it, to protect our seniors and their money for the next decade when it is most in jeopardy. It will be those on that side of the aisle who will not vote today. They will probably not vote for it the next time. But sooner or later, a lot of Americans are going to be asking, who is holding up the real lockbox that will protect our money? It is going to dawn on a few people on the other side of the aisle that they are and that the American people are cognizant and aware of it, and maybe some people will change their minds.

With that, if I have any remaining time, I yield it back. I understand we have agreed to start voting at this time, in any event.

The PRESIDING OFFICER. The Senator from New Jersey has 3 minutes remaining.

Mr. LAUTENBERG. Mr. President, does the Senator from New Mexico have some time remaining, may I ask?

The PRESIDING OFFICER. The Senator has 1 minute remaining.

The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, with all due respect and friendship for my colleague, the chairman of the Committee on the Budget, we both would like to get to the same place. I am sure he has never heard me use terms like ''embezzlement.'' I don't do that kind of stuff. Frankly, I do not like that terminology. I don't care from where it comes.

But what we see here is what I would call a couple of escape hatches in the legislation that worry the devil out of us. That is, perhaps in the interest of Social Security reform or retirement security, we are locking ourselves into a position where we would be unable to respond to changes in the economy. That is not where we ought to be.

This economy is too important in the whole world scheme of things. It is too important in terms of those who are very dependent, totally dependent, in some cases, on the benefits derived from Social Security, veterans' benefits, Medicare. That is all they have in many cases. With the threat of creating a debt limit, and I think artificially creating a new debt limit, I think we could immediately be damaging the possibility that these benefits might be offered.

That is where we differ. I always enjoy my work with the distinguished Senator from New Mexico, except when he wins, which we does so often. But other than that, we ought to be able to sit down and reason out some of these things.

I hope this vote, by discouraging cloture, will give us some impetus to sit down and try to work the problems out.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I have 1 minute?

The PRESIDING OFFICER. The Senator has 1 minute.

Mr. DOMENICI. Mr. President, I want to use it at this point to make a couple of points.

Senior citizens, what some like to do is to say, to protect your Social Security trust fund, we are going to hurt other people who are entitled to Federal money because we may have a recession one of these days and things may change.

We are aware of that. Read the bill. It says the lockbox is held in abeyance in the event we have two quarters of economic downturn, which normally is called a recession. You hold it steady there and see where we come out. Anybody who would be looking at this kind of proposition would think that is a prudent thing to do. We did that.

Likewise, in case of a national emergency like a war, we have said, you cannot not spend money on that, and so there is an emergency that takes place then and you can temporarily use it. Remember, we are holding $1.8 trillion for the seniors and these emergencies of which we are speaking. If they occur, they will be very small in proportion to the good we are doing under this proposal.

I, too, hope we can get a true lockbox put together. If bipartisan, fine; if not, I am very comfortable with this one.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The legislative assistant read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the standing rules of the Senate, do hereby move to bring to a close debate on the pending amendment to Calendar No. 89. S. 577, a bill to provide guidance for the designation of emergencies as a part of the budget process.

Trent Lott, Pete Domenici, Ben Nighthorse Campbell, Jeff Sessions, Kay Bailey Hutchison, Craig Thomas, Slade Gorton, Chuck Hagel, Spencer Abraham, Pat Roberts, Thad Cochran, Conrad Burns, Christopher Bond, John Ashcroft, Jon Kyl, and Mike DeWine.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on amendment No. 255 to S. 557, a bill to provide for designation of emergencies as a part of the budget process, shall be brought to a close?

The yeas and nays are required under the rule. The clerk will call the roll.

The assistant legislative clerk called the roll:

Mr. NICKLES. I announce that the Senator from Texas (Mr. GRAMM), the Senator from Utah (Mr. HATCH), the Senator from Kentucky (Mr. BUNNING), and the Senator from Arizona (Mr. MCCAIN), are necessarily absent.

I further announce that the Senator from Alaska (Mr. STEVENS) is absent on official business.

Mr. REID. I announce that the Senator from Iowa (Mr. HARKIN), is necessarily absent.

I also announce that the Senator from New York (Mr. MOYNIHAN), is absent due to surgery.

I further announce that, if present and voting, the Senator from New York (Mr. MOYNIHAN), would vote ''no.''

The result was announced—yeas 49, nays 44, as follows:

[Rollcall Vote No. 96 Leg.]

YEAS—49

Abraham	Fitzgerald	Murkowski
Allard	Frist	Nickles
Ashcroft	Gorton	Roberts
Bennett	Grams	Santorum
Bond	Grassley	Sessions
Brownback	Gregg	Shelby
Burns	Hagel	Smith (NH)
Campbell	Helms	Smith (OR)
Chafee	Hutchinson	Snowe
Cochran	Hutchison	Specter
Collins	Inhofe	Thomas
Coverdell	Jeffords	Thompson
Craig	Kyl	Thurmond
Crapo	Lott	Voinovich
DeWine	Lugar	Warner
Domenici	Mack	
Enzi	McConnell	

NAYS—44

Akaka	Edwards	Lieberman
Baucus	Feingold	Lincoln
Bayh	Feinstein	Mikulski
Biden	Graham	Murray
Bingaman	Hollings	Reed
Boxer	Inouye	Reid
Breaux	Johnson	Robb
Bryan	Kennedy	Rockefeller
Byrd	Kerrey	Roth
Cleland	Kerry	Sarbanes
Conrad	Kohl	Schumer
Daschle	Landrieu	Torricelli
Dodd	Lautenberg	Wellstone
Dorgan	Leahy	Wyden
Durbin	Levin	

NOT VOTING—7

Bunning	Hatch	Stevens
Gramm	McCain	
Harkin	Moynihan	

The PRESIDING OFFICER (Mr. SESSIONS). On this vote, the yeas are 49, the nays are 44. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

NATIONAL MILITARY APPRECIATION MONTH

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of S. Res. 33, which the clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 33) designating May 1999 as ''National Military Appreciation Month''.

The Senate proceeded to consider the resolution.

Mr. THURMOND. Mr. President, I rise today in support of Senate Resolution 33, which designates May 1999 as ''National Military Appreciation Month.'' I congratulate Senator MCCAIN for introducing this important legislation, and I am proud to be a cosponsor.

In Congress, we spend many hours discussing this Nation's national security and how our Armed Forces will be used to secure America's defenses. We spend far too little time discussing what is central in making our national security possible—the individual service member. Great warplanes, warships, tanks and ground weapon systems are only as good as the soldiers, sailors, airmen and marines who man the front lines. American military service members are unique in their mission, their special culture and have a special place in our society.

The American military lives by fundamental values: duty, honor, country. We are unique in the world in this respect. Our service personnel put their lives on the line not for danger or the thrill of combat, but for a higher cause. To do their job effectively, those in the military must have faith in the society they serve. In turn, our society must support and honor its Armed Forces. General Matthew Ridgway strongly believed that those in uniform must be forthright with the American citizen they serve. He said, ''The professional soldier should never pull his punches, should never let himself for one moment be dissuaded from stating honest opinions based on his own military experience and judgment which tells him what will be needed to do the job required of him.'' No factor of political motivation should excuse, and no reason of political expediency should interfere with the supreme duties our military undertake. General Ridgway went on to note that ''Since George Washington's time, no top soldier has forgotten that he is a citizen first and a soldier second, and that the troops under his command are an instrument of the people's will.'' This is why the American people have always had a special relationship with its military.

This is what makes the American military men and women unique. If you have been there, you know exactly what I mean. For those who have not had the opportunity to serve, you should speak with our military men and women. Learn more about their accomplishments, challenges, and sacrifices. In combat, in conflict and violence, bonds of trust and love are forged. This is a very powerful experience which contributes to how the words duty, honor, country have a sacred meaning to our military. As the military, we learn that every decision we make calls upon us to act on our own personal integrity and our own willingness to sacrifice. No commitment is more powerful.

The military instills a sense of purpose, a sense of belonging, a sense that the military matters to the citizens they serve. After all, this is a profession where people are called upon to make the ultimate and most personal sacrifice. The military is not a mere interest group. In the turmoil following Vietnam, General Fred Weyand wrote, ''The American Army is really a people's Army in the sense that it belongs to the American people who take a jealous proprietary interest in its involvement . . . The American Army is not so much an arm of the Federal Government as it is an arm of the American people.'' We Americans should keep this in mind before we make the serious decisions which may put our best youngsters into harm's way. The American military is a national treasure, for which we all are accountable.

The military professional is set apart from those who have followed other walks of life. It is a family. This is true throughout the services and down to the level of small units, whose cohesiveness was clearly illustrated during the Gulf War. When a television correspondent interviewed a young African American soldier in a tank platoon on the eve of Desert Storm and repeatedly asked him to speak to his fear of the impending battle, the young soldier just as persistently repeated his answer: ''This is my family and we'll take care of each other.'' The values and beliefs that form the substance of military professionalism determine in no small measure the role of the military in our great Nation.

We Americans should at the very least show appreciation to our military service members.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the resolution. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Texas (Mr. GRAMM), the Senator from Utah (Mr. HATCH), the Senator from Kentucky (Mr. BUNNING), and the Senator from Arizona (Mr. MCCAIN) are necessarily absent.

I further announce that the Senator from Alaska (Mr. STEVENS) is absent on official business.

Mr. REID. I announce that the Senator from Iowa (Mr. HARKIN), is necessarily absent.

I also announce that the Senator from New York (Mr. MOYNIHAN) is absent due to surgery.

I further announce that, if present and voting, the Senator from New York (Mr. MOYNIHAN) would vote ''aye.''

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

The result was announced—yeas 93, nays 0, as follows:

[Rollcall Vote No. 97 Leg.]

YEAS—93

Abraham	Conrad	Hagel
Akaka	Coverdell	Helms
Allard	Craig	Hollings
Ashcroft	Crapo	Hutchinson
Baucus	Daschle	Hutchison
Bayh	DeWine	Inhofe
Bennett	Dodd	Inouye
Biden	Domenici	Jeffords
Bingaman	Dorgan	Johnson
Bond	Durbin	Kennedy
Boxer	Edwards	Kerrey
Breaux	Enzi	Kerry
Brownback	Feingold	Kohl
Bryan	Feinstein	Kyl
Burns	Fitzgerald	Landrieu
Byrd	Frist	Lautenberg
Campbell	Gorton	Leahy
Chafee	Graham	Levin
Cleland	Grams	Lieberman
Cochran	Grassley	Lincoln
Collins	Gregg	Lott

Lugar	Roberts	Snowe
Mack	Rockefeller	Specter
McConnell	Roth	Thomas
Mikulski	Santorum	Thompson
Murkowski	Sarbanes	Thurmond
Murray	Schumer	Torricelli
Nickles	Sessions	Voinovich
Reed	Shelby	Warner
Reid	Smith (NH)	Wellstone
Robb	Smith (OR)	Wyden

NOT VOTING—7

Bunning	Hatch	Stevens
Gramm	McCain	
Harkin	Moynihan	

The resolution (S. Res. 33) was agreed to.

The preamble was agreed to.

The resolution (S. Res. 33), with its preamble, reads as follows:

S. RES. 33

Whereas the freedom and security that United States citizens enjoy today are results of the vigilant commitment of the United States Armed Forces in preserving the freedom and security;

Whereas it is appropriate to promote national awareness of the sacrifices that members of the United States Armed Forces have made in the past and continue to make every day in order to support the Constitution and to preserve the freedoms and liberties that enrich the Nation;

Whereas it is important to preserve and foster the honor and respect that the United States Armed Forces deserve for vital service on behalf of the United States;

Whereas it is appropriate to emphasize the importance of the United States Armed Forces to all persons in the United States;

Whereas it is important to instill in the youth in the United States the significance of the contributions that members of the United States Armed Forces have made in securing and protecting the freedoms that United States citizens enjoy today;

Whereas it is appropriate to underscore the vital support and encouragement that families of members of the United States Armed Forces lend to the strength and commitment of those members;

Whereas it is important to inspire greater love for the United States and encourage greater support for the role of the United States Armed Forces in maintaining the superiority of the United States as a nation and in contributing to world peace;

Whereas it is appropriate to recognize the importance of maintaining a strong, equipped, well-educated, well-trained military for the United States to safeguard freedoms, humanitarianism, and peacekeeping efforts around the world;

Whereas it is important to give greater recognition for the dedication and sacrifices that individuals who serve in the United States Armed Forces have made and continue to make on behalf of the United States;

Whereas it is appropriate to display the proper honor and pride United States citizens feel towards members of the United States Armed Forces for their service;

Whereas it is important to reflect upon the sacrifices made by members of the United States Armed Forces and to show appreciation for such service;

Whereas it is appropriate to recognize, honor, and encourage the dedication and commitment of members of the United States Armed Forces in serving the United States; and

Whereas it is important to acknowledge the contributions of the many individuals who have served in the United States Armed Forces since inception of the Armed Forces: Now, therefore, be it

Resolved, That the Senate—

(1) designates May 1999 as ''National Military Appreciation Month''; and

(2) requests that the President issue a proclamation calling upon the people of the United States to recognize and honor the dedication and commitment of the members of the United States Armed Forces and to observe the month with appropriate ceremonies and activities.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER (Mr. BENNETT). The Senator from South Carolina.

MORNING BUSINESS

Mr. THURMOND. Mr. President, I ask unanimous consent that there now be a period for morning business, with Senators to speak for up to 10 minutes each. I further ask unanimous consent that the following Senators be recognized to speak: Senator MCCONNELL, Senator DORGAN, and Senator CONRAD.

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

Mr. MCCONNELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. I thank the Chair.

(The remarks of Mr. MCCONNELL, Mr. CONRAD, and Mr. DORGAN pertaining to the introduction of S. 931 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Ms. COLLINS addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

NATIONAL MILITARY APPRECIATION MONTH

Ms. COLLINS. Mr. President, I am proud to be a cosponsor of the resolution that the Senate just unanimously approved to designate May as the National Military Appreciation Month.

With troops in harm's way in Bosnia, in Serbia, in Haiti and the Persian Gulf, it is difficult to conceive of a more appropriate time for the Senate to have clearly put itself on record as supporting our brave men and women in uniform.

Regardless of how we may feel about these individual deployments, it is important that the American people send an unmistakable signal to our troops that we salute their bravery, their patriotism, their courage and their unparalleled skill as they carry out dangerous missions throughout the world.

I am proud to support our troops 100 percent, as they carry out their missions and the will of the Commander in Chief.

Mr. President, let us all join together today and every day to remember our troops throughout the world.

Mr. President, I yield the floor, and 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. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

The Senate is in morning business and Senators are granted permission to speak up to 10 minutes on a Friday afternoon.

The Senator is recognized.

Mr. SPECTER. Mr. President, I ask unanimous consent that I be permitted to speak for up to 20 minutes in morning business, notwithstanding the afternoon.

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

DEPLOYMENT OF U.S. ARMED FORCES IN KOSOVO

Mr. SPECTER. Mr. President, on Monday, in the afternoon, the distinguished majority leader has scheduled a vote, so far denominated as a tabling motion on the pending S.J. Res. 20, concerning the deployment of United States Armed Forces in the Kosovo region of the Federal Republic of Yugoslavia.

Since Monday afternoon is likely to be crowded with debate on this subject and there is free time in the Senate Chamber today, I have decided to speak about this issue because I believe it is a matter of overwhelming importance for the United States, for NATO, for Europe and, for that matter, for the world.

The resolution provides in a short statement worth reading in its entirety:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that the President is authorized to use all necessary force and other means, in concert with United States allies, to accomplish United States and North Atlantic Treaty Organization objectives in the Federal Republic of Yugoslavia (Serbia and Montenegro).

Mr. President, I am strongly opposed to this resolution because it gives a total blank check to the President to involve the United States in any type of military action which he deems appropriate when it is the Congress of the United States that has the sole authority under the Constitution to declare war. In my view, the Congress ought not to give such a blank check, but instead ought to ask the President to come before the Congress, specifying what the President seeks to accomplish and what the means are for accomplishing that objective.

I supported the resolution for airstrikes with a specific limitation that there would not be a deployment of ground forces. We have a great many very, very important questions, the answers to which ought to be provided, in my judgment, by the executive branch, by the President, to the Congress before the Congress exercises its authority to, in effect, declare war.

Bear in mind at the outset, that the President has asked for no such authority, and that is a very important point and a threshold matter. But

these are some of the questions which ought to be examined. I know that the distinguished Presiding Officer, Senator ROBERTS from Kansas, who is on the Armed Services Committee, has participated in offering legislation which conditions funding and conditions congressional authority on a number of similar issues.

These questions are of such vital importance that they bear repetition and they bear analysis and understanding by the American people, at least the relatively few who are watching on C–SPAN2 today. But these are monumental matters. These are some of the issues which I think have to be answered before the Congress is in a position to decide what authorization is to be given to the President:

First, to what extent have the forces of the Federal Republic of Yugoslavia been degraded by the air attacks?

Second, what would the projected resistance be of the armed forces of the Federal Republic of Yugoslavia?

Third, what is the President's plan? So far we do not know what the President would like to do. There is not agreement among the alliance. The President has stated that he wishes to proceed with the support of the alliance, just as he has had the support of the alliance up to date.

Once we know what the plan is, the fourth question would be, what resources are necessary to implement a specific plan?

Fifth, what would the risks be to U.S. military personnel in carrying out the plan?

Next, what contributions would be made by others of the alliance?

And an additional question: What other pressures are available to use against the forces of President Milosevic, such as the pressure of the War Crimes Tribunal?

These are all vital questions which ought to be answered before the Congress of the United States plunges into this field precipitously, without a request by the President, without a request by NATO, without any plan for us to consider on issues which can be answered only by the President of the United States.

What we are being asked for on this resolution is a blank check, and it is really an unusual form of a blank check because the check is not only blank as to amount, but the check is also blank as to the identity of the payee; that is, who receives the funds.

A check has a number of ingredients. There is the party who writes the check. That would be the Congress of the United States in the case of this resolution. A check has the identification of the party who receives the check, the payee. And the check has the amount of the check. And this check is blank in both material aspects. What is the amount of the check and who is to receive the check?

I think the Congress of the United States would be most unwise to enact such a resolution on the state of the record which exists at the present time.

What we have in Kosovo, what we have with NATO, what we have in our military action against the Republic of Yugoslavia is really a constitutional crisis. It is a constitutional crisis of major import, if anybody would pay attention to the Constitution. Only by ignoring the Constitution are we able to ignore the constitutional crisis.

But the Constitution is explicit that only the Congress of the United States has the authority to declare war. Only the Congress of the United States has the power, responsibility and authority to engage the U.S. Armed Forces in war. But what we have going on at the present time in Kosovo against the Federal Republic of Yugoslavia is a war.

The military actions there are clear-cut acts of war. We have this war in process without the authority of the Congress of the United States.

As of Wednesday of this week, we have the war in process with a specific action of the House of Representatives in rejecting the use of airstrikes by a tie vote of 213–213.

It is true that the Senate authorized the use of airstrikes with the reservation against ground forces by a vote of 58–41. But we have, as we all know, a bicameral legislature. You cannot have a declaration of war by the Senate. You could only have a declaration of war by the Congress; and that means joint action of the Senate and the House of Representatives.

And now we have the House of Representatives rejecting the President's authority to conduct air operations by a vote of 213–213. And that is as forceful a rejection as had it been 426–0. Unless it passes, albeit by as little as a single vote, it is a rejection.

The House of Representatives had a curious legislative day on Wednesday, April 28, taking up a series of resolutions by Congressman TOM CAMPBELL of California. And I compliment Congressman CAMPBELL for bringing the issues to a head—or trying to bring the issues to a head.

The House of Representatives rejected a resolution calling for a state of war by a vote of 2 in favor, 427 against.

The House of Representatives then voted on a resolution directing the President, under the War Powers Resolution, to withdraw troops from the operation against the Federal Republic of Yugoslavia. That, too, was rejected by a vote of 139–290.

Then there was the resolution authorizing the President to conduct air operations similar to the one passed by the Senate on March 23. As previously noted, that was rejected 213–213.

Then, the House passed a resolution 249–180, placing limitations on the funding of the President to use ground troops in Federal Republic of Yugoslavia without prior congressional authority.

When we read through the War Powers Act, the legislation which was passed to try to limit the erosion of Congress' authority to declare war with the taking on of that authority by the President under his constitutional powers as Commander in Chief, the provisions of 5c specify that ''at any time the United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories, without a declaration of war or specific statutory authorization, such forces shall be removed by the President if a Congress so directs by concurrent resolution.''

So here we have the anomalous situation that the House turns down a declaration of war, the House turns down the use of airstrikes, the Senate has authorized airstrikes with the reservation prohibiting the use of ground forces, and you do not have the Congress—even the House—directing the withdrawal of forces. So it is a quagmire, to say the least.

And it is a constitutional confrontation and a constitutional crisis to identify it squarely, when you have the Constitution requiring action by the Congress to declare war to involve the United States in war, and you have one House of the Congress, the House of Representatives, failing to authorize the airstrikes which are currently underway.

The resolution which is going to be voted on on Monday, Mr. President, bears a striking similarity to the infamous Gulf of Tonkin Resolution, which was used to justify United States participation in the Vietnam war without a declaration of war.

Section 2 of the Gulf of Tonkin Resolution provides as follows:

''. . .The United States is, therefore, prepared, as the President determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom.''

And note with particularity the language ''to take all necessary steps, including the use of armed force'' from the Gulf of Tonkin resolution compared to the resolution to be voted on on Monday that the President is ''authorized to use all necessary force and other means.'' These are blank checks which are not in the interest of the United States, but these checks ought to be very carefully considered, and ought to be very carefully written before the United States is engaged in war with the authorization of the Congress of the United States.

The President has, to his credit, held a series of meetings with Members of Congress, going really beyond notification and really beyond what is customarily regarded as consultation in seeking opinions of Members of the Senate and the House of Representatives. In one of these meetings, the President raised the issue of collateral activities, beyond or in addition to the use of military force, and made a specific reference to the War Crimes Tribunal. We have had President Milosevic denominated as early as the end of 1992, by

then-Secretary of State Eagleburger, as, in effect, being a war criminal.

We know that the War Crimes Tribunal has successfully completed prosecutions arising out of the incidents in Bosnia. There has been a very noteworthy plea of guilty and a life sentence for the Prime Minister of Rwanda for the genocide which occurred there, a guilty plea, a conviction, and a life sentence—the life sentence now being under appeal—of enormous importance, although hardly noticed by the press in the United States or the press in Europe. Somehow a matter of genocide or a matter of a conviction or a matter of a prosecution of a war criminal in Rwanda is of lesser status. It should not be, but that happens to be the practical fact of life.

This morning there was a bipartisan meeting with Justice Louise Arbour, the chief prosecutor in the War Crimes Tribunal. Justice Arbour made a strong point of seeking support for the arrest of Karadzic, who is under indictment for war crimes in Bosnia, and for seeking an arrest for others in cases where there are sealed indictments arising from war crimes in Bosnia.

Justice Arbour described the number of these cases, by the reference that there are only a handful, but she made the point—and I think it is a very valid point—that IFOR should proceed to arrest those individuals—even those under sealed indictment who have been identified to the military forces now in Bosnia, and Karadzic is an especially prominent war criminal under indictment, where the indictment has been outstanding for some 4 years. Not only has Karadzic thumbed his nose at the War Crimes Tribunal, but the reality is that the IFOR troops who have a responsibility to execute those warrants have, in effect, similarly thumbed their nose at the War Crimes Tribunal. The military commanders on the scene have been heard to say that they could make these arrests, that they could make the arrest of Karadzic who is, according to reportedly reliable information, in the French quarter. A real question arises as to the willingness of the French to cooperate in the arrest of Karadzic, but this is something which could be accomplished.

Justice Arbour makes the point, and I think with great validity, that it would send a very strong message and have a chilling effect on the military and political leaders under Milosevic, if they saw that the War Crimes Tribunal had the skill to acquire evidence to bring forth indictments and then to follow with convictions; and, if the NATO and the IFOR forces had the political courage to execute those warrants of arrest by taking those indictees into custody. This would be a very, very strong deterrent to the continuation of the criminal activity by the Serbian forces and by the forces of the Federal Republic of Yugoslavia.

The War Crimes Tribunal has done its job. Now it is a matter of courage, the political courage and the military courage to serve those warrants of arrest and take those individuals into custody.

By way of a footnote, Justice Arbour outlined the need for some $18 million in funding. The entire War Crimes Tribunal has only 17 investigators, an amazingly small number, to carry out the sort of work which has to be undertaken. For example, investigating overhead satellites intelligence which is telling something about the mass grave sites. This funding is something which will be coming before the Appropriations Committee next week, soon before the full Senate, and then the Congress. And at least judging from the reaction of the Senators who were present at the meeting today with Justice Arbour, there will be a favorable response. Certainly $18 million for the War Crimes Tribunal and an additional $2 million for extra State Department officials and extra help from the Central Intelligence Agency is a very small amount of the $6 billion requested by the President and the additions which have been made by the House of Representatives.

Mr. President, in conclusion—the two most popular words of any speech—I urge my colleagues to focus with great care on this resolution. I have a strong sense that it won't be possible to make extended remarks on Monday, when a vote grows nearer. The number of Senators will increase, from the presiding Senator and the one Senator on the floor making a speech, to a fair number of Senators who will be seeking recognition. When we had the resolution authorizing the use of force with the airstrikes, there was a limited time agreement. Speakers were limited to 2 minutes in the final stage of that debate before the vote, not too much time to express a Senatorial judgment on an important issue, but more time than many of us were accorded later when the time was so limited that we couldn't even speak. So seeing an empty Chamber, and in attendance an attentive Presiding Officer, I thought I would take this opportunity to speak at some length on this important subject.

I thank the Chair for his attention. The Chair is customarily in attendance, infrequently at attention.

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

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

DRAFT RESOLUTION ON YUGOSLAVIA

Mr. LOTT. Mr. President, for the information of all Senators, I am including in the RECORD today a draft Senate Joint Resolution setting forth requirements that must be met before the United States Armed Forces may be deployed in or adjacent to the Federal Republic of Yugoslavia (Serbia and Montenegro) to conduct offensive ground operations. This draft resolution has been the subject of discussion among numerous Senators, as a possible compromise measure on the subject of Kosovo. My discussions with Senator DASCHLE and other Senators, from both parties, continue in an effort to determine whether bipartisan agreement can be reached on the timing and substance of a Kosovo debate here in the Senate. I commend the attached resolution to the attention of my colleagues. I ask unanimous consent it be printed in the RECORD.

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

Whereas the United States and its allies in the North Atlantic Treaty Organization (NATO) are conducting offensive air combat operations against the Federal Republic of Yugoslavia (Serbia and Montenegro);

Whereas the Federal Republic of Yugoslavia (Serbia and Montenegro) has refused to comply with NATO demands that it withdraw its military, paramilitary, and security forces from the province of Kosovo, permit the return of ethnic Albanian refugees to their homes, and permit the establishment of an international peacekeeping force in Kosovo;

Whereas the men and women of the Armed Forces of the United States have performed their mission with the utmost professionalism, dedication, and patriotism; and

Whereas the President has not proposed the deployment of the Armed Forces of the United States in or adjacent to the Federal Republic of Yugoslavia (Serbia and Montenegro) for the purpose of conducting offensive ground operations: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REQUIREMENTS BEFORE DEPLOYMENT OF THE ARMED FORCES OF THE UNITED STATES IN YUGOSLAVIA FOR THE PURPOSE OF CONDUCTING OFFENSIVE GROUND OPERATIONS.

(a) IN GENERAL.—Except as provided in subsection (c), none of the funds available to the Department of Defense (including funds appropriated for fiscal year 1999 or any prior fiscal year) may be used to deploy the Armed Forces of the United States in or adjacent to the Federal Republic of Yugoslavia (Serbia and Montenegro) for the purpose of conducting offensive ground operations unless and until—

(1) the President submits a written request to the Speaker of the House of Representatives and the President pro tempore of the Senate—

(A) seeking specific statutory authorization for any such deployment or a declaration of war against the Federal Republic of Yugoslavia (Serbia and Montenegro); and

(B) containing the information described in subsection (b) regarding the deployment; and

(2) Congress enacts specific statutory authorization for any such deployment or a declaration of war against the Federal Republic of Yugoslavia (Serbia and Montenegro).

(b) REQUEST ELEMENTS.—In addition to the request described in subsection (a)(1)(A), the written request required by subsection (a) shall set forth—

(1) the national security interests of the United States at stake that warrant the deployment;

(2) the political and military objectives of the deployment;

(3) in general terms the military forces and other means by which the President proposes to attain the objectives specified in paragraph (2);

(4) the role the President proposes for the Kosovo Liberation Army in connection with such combat, and what assistance, if any, the President proposes to extend to that organization;

(5) in general terms what the President believes the obligations of the United States will be in connection with the recovery and reconstruction of those nations in the Balkans affected by the combat once the combat has ceased;

(6) the anticipated duration and cost of the deployment;

(7) in general terms the number of personnel of the Armed Forces of the United States estimated to be required in and around the Federal Republic of Yugoslavia (Serbia and Montenegro) after the termination of armed conflict and the mission of those personnel; and

(8) in general terms the roles and responsibilities of the NATO allies in the conduct of offensive ground operations, recovery and reconstruction efforts, and military missions after the termination of armed conflict.

(c) EXCEPTION.—Subsection (a) does not apply to any action to protect the security of personnel of the Armed Forces of the United States, or personnel of the armed forces of any other member country of the North Atlantic Treaty Organization (NATO), that are involved in military air operations in or adjacent to the Federal Republic of Yugoslavia (Serbia and Montenegro).

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Thursday, April 29, 1999, the federal debt stood at $5,597,263,457,235.83 (Five trillion, five hundred ninety-seven billion, two hundred sixty-three million, four hundred fifty-seven thousand, two hundred thirty-five dollars and eighty-three cents).

One year ago, April 29, 1998, the federal debt stood at $5,512,959,000,000 (Five trillion, five hundred twelve billion, nine hundred fifty-nine million).

Five years ago, April 29, 1994, the federal debt stood at $4,568,704,000,000 (Four trillion, five hundred sixty-eight billion, seven hundred four million).

Twenty-five years ago, April 29, 1974, the federal debt stood at $471,613,000,000 (Four hundred seventy-one billion, six hundred thirteen million) which reflects a debt increase of more than $5 trillion—$5,125,650,457,235.83 (Five trillion, one hundred twenty-five billion, six hundred fifty million, four hundred fifty-seven thousand, two hundred thirty-five dollars and eighty-three cents) during the past 25 years.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–2778. A communication from the Assistant to the Board, Policy Development, Federal Reserve Board of Governors, transmitting, pursuant to law, the report of a rule entitled ''Risk-Based Capital Standards: Market Risk'' (Docket No. R–0996), received April 12, 1999; to the Committee on Banking, Housing, and Urban Affairs.

EC–2779. A communication from the Assistant to the Board, Division of Consumer and Community Affairs, Federal Reserve Board of Governors, transmitting, pursuant to law, the report of a rule entitled ''Regulation Z, Truth in Lending'' (R–1029), received April 13, 1999; to the Committee on Banking, Housing, and Urban Affairs.

EC–2780. A communication from the Assistant to the Board, Division of Consumer and Community Affairs, Federal Reserve Board of Governors, transmitting, pursuant to law, the report of a rule entitled ''Regulation M, Consumer Lending'' (R–1029), received April 13, 1999; to the Committee on Banking, Housing, and Urban Affairs.

EC–2781. A communication from the Office of General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determinations, 64 FR 17571, 04/12/99'', received April 15, 1999; to the Committee on Banking, Housing, and Urban Affairs.

EC–2782. A communication from the Office of General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled ''Changes in Flood Elevation Determinations, 64 FR 17569, 04/12/99'' (FEMA–7280), received April 15, 1999; to the Committee on Banking, Housing, and Urban Affairs.

EC–2783. A communication from the Office of General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled ''Changes in Flood Elevation Determinations, 64 FR 17567, 04/12/99'', received April 15, 1999; to the Committee on Banking, Housing, and Urban Affairs.

EC–2784. A communication from the Assistant General Counsel for Regulations, Office of the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Implementation of the Housing for Older Persons Act of 1995 (FR–4094)'' (RIN2529–AA80), received April 9, 1999; to the Committee on Banking, Housing, and Urban Affairs.

EC–2785. A communication from the Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Amendments to the Iranian Transactions Regulations (31 CFR Part 560): Implementation of Executive Order 13059'' (31 CFR Part 560), received April 20, 1999; to the Committee on Banking, Housing, and Urban Affairs.

EC–2786. A communication from the Assistant General Counsel for Regulations, Office of the Secretary-Office of Lead Hazard Control, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Lead-Based Paint Poisoning Prevention in Certain Residential Structures-Information Collection Approval Numbers; Technical Amendment'' (FR–4444–F–02), received April 9, 1999; to the Committee on Banking, Housing, and Urban Affairs.

EC–2787. A communication from the Assistant Secretary for Export Administration, Bureau of Export Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Exports of Firearms'' (RIN0694–AB68), received April 7, 1999; to the Committee on Banking, Housing, and Urban Affairs.

EC–2788. A communication from the Assistant General Counsel for Regulations, Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Builder Warranty for High-Ratio FHA Insured Single Family Mortgages for New Homes (FR–4288)'' (RIN2502–AH08), received April 9, 1999; to the Committee on Banking, Housing, and Urban Affairs.

EC–2789. A communication from the Assistant General Counsel for Regulations, Office of Public Housing and Indian Housing, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Section 8 Certificate and Voucher Programs Conforming Rule; Technical Amendment (4054)'' (RIN2577–AB63), received April 9, 1999; to the Committee on Banking, Housing, and Urban Affairs.

EC–2790. A communication from the Assistant General Counsel for Regulations, Office of Public Housing and Indian Housing, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Section 8 Certificate and Voucher Programs Conforming Rule; Technical Amendment (FR–4054)'' (RIN2577–AB63), received April 9, 1999; to the Committee on Banking, Housing, and Urban Affairs.

EC–2791. A communication from the Assistant General Counsel for Regulations, Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''FHA Single Family Mortgage Insurance; Statutory Changes for Maximum Mortgage Limit and Downpayment Requirement (FR–4431)'' (RIN2502–AH31), received April 9, 1999; to the Committee on Banking, Housing, and Urban Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HELMS, from the Committee on Foreign Relations, without recommendation without amendment and with a preamble:

S.J. Res. 20. A joint resolution concerning the deployment of the United States Armed Forces to the Kosovo region in Yugoslavia.

EXECUTIVE REPORTS OF A COMMITTEE

The following executive reports of a committee were submitted:

By Mr. JEFFORDS, for the Committee on Health, Education, Labor, and Pensions:

Kenneth M. Bresnahan, of Virginia, to be Chief Financial Officer, Department of Labor, vice Edmundo A. Gonzales, resigned.

Arthur J. Naparstek, of Ohio, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term expiring October 6, 2003. (Reappointment)

Ruth Y. Tamura, of Hawaii, to be a Member of the National Museum Services Board for a term expiring December 6, 2001. (Reappointment)

Chang-Lin Tien, of California, to be a Member of the National Science Board, National Science Foundation, for a term expiring May 20, 2004, vice Richard Neil Zare, term expired.

Joseph Bordogna, of Pennsylvania, to be Deputy Director of the National Science Foundation, vice Anne C. Petersen, resigned.

Gary L. Visscher, of Maryland, to be a Member of the Occupational Safety and Health Review Commission for a term expiring April 27, 2001, vice Daniel Guttman.

Lorraine Pratte Lewis, of the District of Columbia, to be Inspector General, Department of Education, vice Thomas R. Bloom.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' 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 Mr. MCCONNELL (for himself, Mr. BENNETT, Mr. CONRAD, and Mr. DORGAN):

S. 931. A bill to provide for the protection of the flag of the United States, and for other purposes; to the Committee on the Judiciary.

By Mr. CAMPBELL:

S. 932. A bill to prevent Federal agencies from pursuing policies of unjustifiable nonacquiescence in, and relitigation of, precedent established in the Federal judicial courts; to the Committee on the Judiciary.

By Mr. MURKOWSKI (for himself and Mr. STEVENS):

S. 933. A bill to amend the Internal Revenue Code of 1986 to clarify the tax treatment of Settlement Trusts established pursuant to the Alaska Native Claims Settlement Act; to the Committee on Finance.

By Mr. LEAHY (for himself, Mr. KENNEDY, Mr. SARBANES, Mr. KERRY, Mr. HARKIN, and Mrs. MURRAY):

S. 934. A bill to enhance rights and protections for victims of crime; to the Committee on the Judiciary.

By Mr. LUGAR:

S. 935. A bill to amend the National Agricultural Research, Extension, and Teaching Policy Act of 1977 to authorize research to promote the conversion of biomass into biobased industrial products, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. CLELAND (for himself and Mr. MOYNIHAN):

S.J. Res. 24. A joint resolution conferring status as an honorary veteran of the United States Armed Forces on Zachary Fisher; to the Committee on Veterans Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MCCONNELL (for himself, Mr. BENNETT, Mr. CONRAD, and Mr. DORGAN):

S. 931. A bill to provide for the protection of the flag of the United States, and for other purposes; to the Committee on the Judiciary.

FLAG PROTECTION ACT OF 1999

Mr. MCCONNELL. Mr. President, the American flag is our most precious national symbol and the Constitution is our most revered national document. They both represent the ideas, values and traditions that unify us as a people and a nation. Brave men and women have fought and given their lives in defense of the freedom and way of life that they both represent.

Today, I am proud to introduce, along with my colleague from Utah, Senator BENNETT, and my colleagues from North Dakota, Senator CONRAD and Senator DORGAN, the Flag Protection Act of 1999. This legislation would ensure that acts of deliberately confrontational flag-burnings are punished with stiff fines and even jail time. My bill will help prevent desecration of the flag, and at the same time, protect the Constitution.

Those malcontents who desecrate the flag do so to grab attention for themselves and to inflame the passions of patriotic Americans. And, speech that incites lawlessness or is intended to do so merits no First Amendment protection, as the Supreme Court has made abundantly clear. From Chaplinsky's ''fighting words'' doctrine in 1942 to Brandenburg's ''incitement'' test in 1969 to Wisconsin v. Mitchell's ''physical assault'' standard in 1993, the Supreme Court has never protected speech which causes or intends to cause physical harm to others.

And, that, Mr. President, is the basis for this legislation. My bill outlaws three types of illegal flag desecration. First, anyone who destroys or damages a U.S. flag with a clear intent to incite imminent violence or a breach of the peace may be punished by a fine of up to $100,000, or up to one year in jail, or both.

Second, anyone who steals a flag that belongs to the United States and destroys or damages that flag may be fined up to $250,000 or imprisoned up to 2 years, or both.

And third, anyone who steals a flag from U.S. property and destroys or damages that flag may also be fined up to $250,000 or imprisoned up to 2 years, or both.

Some of my colleagues will argue that we've been down the statutory road before and the Supreme Court has rejected it. However, the Senate's previous statutory effort wasn't pegged to the well-established Supreme Court precedents in this area.

This bill differs from the statutes reviewed by the Supreme Court in the two leading cases: Texas v. Johnson, (1989) and U.S. v. Eichman, (1990).

In Johnson, the defendant violated a Texas law banning the desecration of a venerated object, including the flag, in a way that will offend one or more persons. Johnson took a stolen flag and burned it as part of a political protest staged outside the 1984 Republican convention in Dallas. The state of Texas argued that its interest in enforcing the law centered on preventing breaches of the peace. But the government, according to the Supreme Court, may not ''assume every expression of a provocative idea will incite a riot. . . .'' Johnson, according to the Court, was prosecuted for the expression of his particular ideas: dissatisfaction with government policies. And it is a bedrock principle underlying the First Amendment, said the Court, that an individual cannot be punished for expressing an idea that offends.

The Johnson decision started a national debate on flag-burning and as a result, Congress, in 1989, enacted the Flag Protection Act. In seeking to safeguard the flag as the symbol of our nation, Congress took a different tack from the Texas legislature. The federal statute simply outlawed the mutilation or other desecration of the flag.

The Supreme Court, however, ruled in Eichman that the federal statute was unconstitutional. Specifically, the Court found that Congressional intent to protect the national symbol was insufficient to overcome the First Amendment protection for the expressive conduct exhibited by flag-burning.

Notwithstanding these decisions, the Court clearly left the door open for outlawing flag-burning that incites lawlessness: ''the mere destruction or disfigurement of a particular physical manifestation of the symbol, without more, does not diminish or otherwise affect the symbol itself in any way.''

But Mr. President, you don't have to take my word on it. The Congressional Research Service has offered legal opinions concluding that this initiative will withstand constitutional scrutiny:

> The judicial precedents establish that the [Flag Protection and Free Speech Act], if enacted, while not reversing Johnson and Eichman, should survive constitutional attack on First Amendment grounds.

In addition, Bruce Fein, a former official in the Reagan Administration and respected constitutional scholar, concurs:

> In holding flag desecration statutes unconstitutional in Johnson, the Court cast no doubt on the continuing vitality of Brandenburg and Chaplinsky as applied to expression through use or abuse of the flag. [The Flag Protection and Free Speech Act] falls well within the protective constitutional umbrella of Brandenburg and Chaplinsky . . . [and it] also avoids content-based discrimination which is generally frowned on by the First Amendment.

And several other constitutional specialists also agree that this initiative respects the First Amendment and will withstand constitutional challenge. A memo by Robert Peck, and Professors Robert O'Neil and Erwin Chemerinsky concludes that this legislation ''conforms to constitutional requirements in both its purpose and its provisions.''

And, these same three respected men have looked at the few State court cases which have been decided since we had this debate 3 years ago and have reiterated their original finding of constitutionality. In a recent memo, they explained:

> Three years ago . . . [w]e expressed our strongly held opinion that [the Flag Protection and Free Speech Act] would be compatible with the U.S. Supreme Court's rulings in Texas v. Johnson, 491 U.S. 397 (1989) and United States v. Eichman, 496 U.S. 310 (1990). We write now to reiterate that position, finding that nothing that has occurred in the interim casts any doubt on our conclusion.

Mr. President, I ask unanimous consent that the full text of these various memos be printed in the RECORD. And, I note that some of the memos refer to S. 982 in the 105th Congress and some refer to S. 1335 in the 104th Congress. These bills, introduced in different sessions of Congress, are the same, and are both entitled the Flag Protection and Free Speech Act.

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

BRUCE FEIN,
ATTORNEY AT LAW,
Great Falls, VA, October 21, 1995.

Senator MITCH MCCONNELL,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR: This letter responds for your request for an appraisal of the constitutionality of the proposed ''Flag Protection and Free Speech Act of 1995.'' I believe it easily passes constitutional muster with flying banners or guidons.

The only non-frivolous constitutional question is raised by section 3(a). It criminalizes the destruction or damaging of the flag of the United States with the intent to provoke imminent violence or a breach of the peace in circumstances where the provocation is reasonably likely to succeed. In Chaplinsky v. New Hampshire (1942), the Supreme Court upheld the constitutionality of laws that prohibit expression calculated and likely to cause a breach of the peace. Writing for a unanimous Court, Justice Frank Murphy explained that such ''fighting'' words ''are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.''

In Brandenburg v. Ohio (1969), the Court concluded that the First Amendment is no bar to the punishment of expression ''directed to inciting or producing imminent lawless action and is likely to incite or produce such action.''

In holding flag desecration statutes unconstitutional in Texas v. Johnson (1989), the Court cast no doubt on the continuing vitality of Brandenburg and Chaplinsky as applied to expression through use or abuse of the flag. See 491 U.S. at 409–410.

Section 3(a) falls well within the protective constitutional umbrella of Brandenburg and Chaplinsky. It prohibits only expressive uses of the flag that constitute ''fighting'' words or are otherwise intended to provoke imminent violence and in circumstances where the provocation is reasonably likely to occasion lawlessness. The section is also sufficiently specific in defining ''flag of the United States'' to avoid the vice of vagueness. The phrase is defined to include any flag in any size and in a form commonly displayed as a flag that would be perceived by the reasonable observer to be a flag of the United States. The definition is intended to prevent circumvention by destruction or damage to virtual flag representations that could be as provocative to an audience as mutilating the genuine article. Any potential chilling effect on free speech caused by inherent definitional vagueness, moreover, is nonexistent because the only type of expression punished by section 3(a) is that intended by the speaker to provoke imminent lawlessness, not a thoughtful response. The First Amendment was not intended to protect appeals to imminent criminality.

Section 3(a) also avoids content-based discrimination which is generally frowned on by the First Amendment. It does not punish based on a particular ideology or viewpoint of the speaker. Rather, it punishes based on calculated provocations of imminent violence through the destruction or damage of the flag of the United States that are reasonably likely to succeed irrespective of the content of the speaker's expression. Such expressive neutrality is not unconstitutional discrimination because the prohibition is intended to safeguard the social interest in order, not to suppress a particular idea. See F.C.C. v. Pacifica Foundation, 438 U.S. 726, 744–746 (1978).

I would welcome the opportunity to amplify on the constitutionality of section 3(a) as your bill progresses through the legislative process.

Very truly yours,

BRUCE FEIN.

MEMORANDUM

To: Interested Parties.

From: Robert S. Peck, Esq. Robert M. O'Neil, Professor, University of Virginia Law School and Director, Thomas Jefferson Center for the Protection of Free Expression. Erwin Chemerinsky, Sydney Irmas Professor of Law and Political Science, University of Southern California.

Re: S. 982, the Flag Protection and Free Speech Act of 1997.

Three years ago, we offered our analysis of constitutional issues raised by S. 1335, which has been reintroduced this Congress as S. 982, the Flag Protection and Free Speech Act. We expressed our strongly held opinion that such a statute would be compatible with the First Amendment and not conflict with the U.S. Supreme Court's rulings in Texas v. Johnson, 491 U.S. 397 (1989) and United States v. Eichman, 496 U.S. 310 (1990). We write now to reiterate that position, finding that nothing that has occurred in the interim casts any doubt on our conclusion.

We observed in our earlier memorandum that the Eichman Court expressly left open a number of options for flag-related laws, including the approach taken by then-S. 1335 (now S. 982). Moreover, we noted that, in R.A.V. v. City of St. Paul, 505 U.S. 377, 385 (1992), the Court reiterated this opening by indicating that flag burning could be punishable under circumstances where dishonoring the flag did not comprise the gist of the crime.

S. 982 targets for punishment incitement to violence, which has never been regarded as a constitutionally protected activity. Some opponents of S. 982 have suggested that several recent state court decisions raise questions about our conclusions. They are mistaken. This memorandum will supplement our earlier analysis by reviewing those cases. Once again, we find that our earlier reasoning remains sound.

The most recent of these state court decisions, and the only one that was not available to us when we wrote our earlier memorandum, is Wisconsin v. Janssen, 570 N.W. 2d 746 (Wis. App. 1997)., review granted, 215 Wis. 2d 421 (Wis. Nov. 20, 1997). This memorandum will also review the holdings in Ohio v. Lessin, 620 N.E. 2d 72 (Ohio 1993), cert. denied, 510 U.S. 1194 (1994), and Texas v. Jimenez, 828 S.W. 2d 455 (Tex. App.), cert. denied, 506 U.S. 917 (1992). In preparing our original memorandum in 1995, we found these two cases irrelevant to the constitutionality of S. 1335 (now S. 982). Review of these cases, in fact, strengthens our conclusion about the constitutional viability of S. 982 because these courts recognized the same distinction between the protected expression of disparaging views of the flag, and the punishable conduct outlined in our earlier memorandum.

In Janssen, a state statute made punishable as a crime both contemptuous treatment of the American flag, as well as conduct that did not contain expressive elements. A Wisconsin Court of Appeals invalidated the statute that penalized anyone who ''intentionally and publicly mutilates, defiles, or casts contempt upon the flag . . .'' Such a statute, the court said, improperly punishes contemptuous treatment of the flag and impermissibly discriminates against a viewpoint, the same flaw that the U.S. Supreme Court found in its original flag burning decisions, Texas v. Johnson, 491 U.S. 397 (1989) and United States v. Eichman, 496 U.S. 310 (1990). Thus, the court found that the statute's broad language ''. . . clearly encompasses acts that the United States Supreme Court has deemed to be protected speech.'' The Wisconsin court did not specifically examine the non-expressive portion of the statute, which did not implicate First Amendment concerns, finding that courts cannot rewrite statutes to bring them into compliance with constitutional commands. The court's treatment of the statute endorses the view that a statute that eschews punishment for expressing a point of view by mistreatment of the flag and instead focuses solely on punishable non-expressive conduct will pass constitutional muster. The far more precise language of S. 982 is carefully designed to avoid punishing an expressed viewpoint. The Janssen case thus has no bearing on S. 982.

The Ohio Supreme Court's decision in Lessin also has no impact on any analysis of S. 982. The Court did not overturn the statute in question, which was a general incitement statute, but instead reversed a conviction because of flawed jury instructions. In fact, the Court indicated that a conviction would be upheld if a jury convicted the accused on the basis of a more ''accurate and thorough set of jury instructions.'' The fatal flaw in the jury instructions was that there was a failure to separate purely expressive conduct from legitimately criminalized violence. Because of that failure, the Court could not say whether the jury convicted the defendant for contempt for the flag or incitement. The Court said that the jury must be informed that ''flag burning in the absence of a call to violence is protected speech under the First Amendment.'' By the same token, the Court's statement clearly indicates that burning an American flag to incite violence is not protected by the First Amendment. S. 982 properly punishes the use of the flag to incite violence, and Lessin supports its constitutionality.

Finally, Jimenez invalidated a Texas law that a court of appeals in that state found indistinguishable from the federal law invalidated by the U.S. Supreme Court in Eichman. Unlike S. 982, the Texas law did not require proof of direct incitement to imminent lawless action. Instead, it still targeted protected expression, though it contained no viewpoint bias. While the Jimenez Court speculated that no flag burning law could ever be constitutional, that question was definitively answered otherwise, as we indicated in our first memorandum, by the U.S. Supreme Court in R.A.V., a decision issued several months after Jimenez. In R.A.V., the Court said that flag burning that did not publish the message or viewpoint of the flag burner, but concentrated solely on the criminal conduct, would meet constitutional requirements.

Opponents of S. 982 also argue that the fact that the Supreme Court denied certiorari in Jimenez and Lessin shows that the Court would likely find S. 982 unconstitutional. This argument is flawed for two principal reasons. First, since the underlying state decisions do not address the constitutionality of S. 982, or call into question the premises upon which its validity rests, the Court's denial of certiorari in those cases could not support the claim that the Court would invalidate S. 982 on constitutional grounds.

Second, the Supreme Court each year decides to review only a tiny fraction of the several thousand appeals and petitions that are filed. The Court is not a court of error, but rather takes cases that require a national resolution, and it spoke definitively to the flag burning issue in Johnson and Eichman. Given that neither Jimenez nor Lessin raised novel or undecided constitutional issues that required such a national

resolution, there was very little chance that the Court would be interested in hearing these cases. As Justice Stevens stated last year, ''it is well settled that our decision to deny a petition for a writ of certiorari does not in any sense constitute a ruling on the merits of the case in which the writ is sought.'' Bethley v. Louisiana, 117 S. Ct. 2425 (1997) (statement of Stevens, J.); see also Maryland v. Baltimore Radio Show, Inc., 228 U.S. 912, 919 (1950) (opinion of Frankfurter, J., respecting denial of petition for writ of cert.), U.S. v. Carver, 260 U.S. 482 (1923). The value of the Jimenez and Lessin decisions, therefore, is in no way enhanced by the Court's refusal of review.

We conclude, on the basis of all relevant judicial decisions, that S. 982 is constitutional.

MEMORANDUM

To: Interested Parties.

From: Robert S. Peck, Esq. Robert M. O'Neil, Professor, University of Virginia Law School Erwin Chemerinsky, Legion Lex Professor of Law, University of Southern California.

Re: S. 1335, the Flag Protection and Free Speech Act of 1995.

Date: November 7, 1995.

This memorandum will analyze the constitutional implications of S. 1335, the Flag Protection and Free Speech Act of 1995. As its name implies and the legislation states as its purpose, S. 1335 seeks ''to provide the maximum protection against the use of the flag of the United States to promote violence while respecting the liberties that it symbolizes.'' S. 1335, 104th Cong., 1st Sess. §2(b) (1995). This memorandum concludes that the bill conforms to constitutional requirements in both its purpose and its provisions.

It would be a mistake to conclude that S. 1335 is unconstitutional simply because the U.S. Supreme Court invalidated the Flag Protection Act of 1990 in its decision in United States v. Eichman, 496 U.S. 310 (1990). In this decision, as well as its earlier flag-desecration opinion, the Court specifically left open a number of options for flag-related laws, including the approach undertaken by S. 1335. The Court reiterated its stand in its 1992 cross-burning case, indicating that flag burning could be punishable under circumstances where dishonoring the flag did not comprise the gist of the crime. R.A.V. v. City of St. Paul, 112 S.Ct. 2538, 2544 (1992).

Unlike the 1990 flag law that the Court negated, S. 1335 is not aimed at suppressing non-violent political protest; in fact, it fully acknowledges that constitutionally protected right. In contrast, the Flag Protection Act, the Court said, unconstitutionally attempted to reserve the use of the flag as a symbol for governmentally approved expressive purposes. S. 1335 makes no similar attempt to prohibit the use of the flag to express certain points of view. Instead, it both advances a legitimate anti-violent purpose while remaining solicitous of our tradition of ''uninhibited, robust, and wide-open'' public debate. New York Times v. Sullivan, 376 U.S. 254, 270 (1964).

Moreover, the statute is sensitive to, and complies with, several other constitutional considerations, namely: (1) it does not discriminate between expression on the basis of its content or viewpoint, since it avoids the kind of discrimination condemned by the court in R.A.V.; (2) it does not provide opponents of controversial political ideas with an excuse to use their own propensity for violence as a means of exercising a veto over otherwise protected speech, since it requires that the defendant have a specific intent to instigate a violent response; and (3) it does not usurp authority vested in the states, since it does not intrude upon police powers traditionally exercised by the states. Each of these points will be discussed in greater detail below.

One additional point is worth noting. Passing a statute is far preferable to enacting a constitutional amendment that would mark the first time in its more than two centuries as a beacon of freedom that the United States amended the Bill of Rights. Totalitarian regimes fear freedom and enact broad authorizations to pick and choose the freedoms they allow. The broadly worded proposed constitutional amendment follows that blueprint by giving plenary authority to the federal and state governments to pick and choose which exercises of freedom will be tolerated. On the contrary, American democracy has never feared freedom, and no crisis exists that should cause us to reconsider this path. Because the Court has never said that Congress lacks the constitutional power to enact a statute to prevent the flag from becoming a tool of violence, a statute—rather than a constitutional amendment—is an incomparably better choice.

I. S. 1335 PUNISHES VIOLENCE OR INCITEMENT TO VIOLENCE, NOT EXPRESSIVE CONDUCT

The fatal common flaw in the flag-desecration prosecution of Gregory Lee Johnson, whose Supreme Court case started the controversy that has led to the proposed constitutional amendment, and the subsequent enactment by Congress of the Flag Protection Act of 1989 was the focus on punishing contemptuous views concerning the American flag. Eichman, 496 U.S. at 317–19; Texas v. Johnson, 491 U.S. 397, 405–07 (1989). In both instances, law was employed in an attempt to reserve use of the flag for governmentally approved viewpoints (i.e., patriotic purposes). The Court held such a reservation violated bedrock First Amendment principles in that the government has no power to ''ensure that a symbol be used to express only one view of that symbol or its referents.'' Id. at 417.

Johnson had been charged with desecrating a venerated object, rather than any of a number of other criminal charges that he could have been prosecuted for and that would not have raised any constitutional issues. Critical to the Supreme Court's decision in his case, as well as to the Texas courts that also held the conviction unconstitutional, was the fact that ''[n]o one was physically injured or threatened with injury.'' 491 U.S. at 399. The Texas Court of Criminal Appeals noted that ''there was no breach of the peace nor does the record reflect that the situation was potentially explosive.'' Id. at 401 (quoting 755 S.W. 2d 92, 96 (1988)). Thus, the primary concern addressed by S. 1335, incitement to violence, was not at issue in the Johnson case. The Eichman Court found the congressional statute to be indistinguishable in its intent and purpose from the prosecution reviewed in Johnson and thus also unconstitutional.

In reaching its conclusion about the issue of constitutionality, the Court, however, specifically declared that ''[w]e do not suggest that the First Amendment forbids a State to prevent, 'imminent lawless action.'" Id. at 410 (quoting Brandenburg v. Ohio, 395 U.S. 444, 447 (1969)). In Brandenburg, the Court said that government may not ''forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.'' 395 U.S. at 447. It went on to state that ''[a] statute which fails to draw this distinction impermissibly intrudes upon the freedoms guaranteed by the First and Fourteenth Amendments. It sweeps within its condemnation speech which our Constitution has immunized from government control.'' Id. at 448.

S. 1335 merely takes up the Court's invitation to focus a proper law on ''imminent lawless action.'' It specifically punishes ''[a]ny person who destroys or damages a flag of the United States with the primary purpose and intent to incite or produce imminent violence or a breach of the peace, and in circumstances where the person knows it is reasonably likely to produce imminent violence or a breach of the peace.'' S. 1335, at §3(a). The language precisely mirrors the Court's Brandenburg criteria. It does not implicate the Constitution's free-speech protections, because ''[t]he First Amendment does not protect violence.'' NAACP v. Claiborne Hardware Co., 458 U.S. 886, 916 (1982).

More recently, the Court put it this way: ''a physical assault is not by any stretch of the imagination expressive conduct protected by the First Amendment.'' Wisconsin v. Mitchell, 113 S. Ct. 2194, 2199 (1993). Under the Court's criteria, for example, a symbolic protest that consists of hanging the President in effigy is indeed protected symbolic speech. Although hanging the actual President might convey the same message of protest, a physical assault on the nation's chief executive cannot be justified as constitutionally protected expressive activity and could constitutionally be singled out for specific punishment. S. 1335 makes this necessary distinction as well, protecting the use of the flag to make a political statement, whether pro- or anti-government, while imposing sanctions for its use to incite a violent response.

Courts and prosecutors are quite capable of discerning the difference between protected speech and actionable conduct. Federal law already makes a variety of threats of violence a crime. Congress has, for example, targeted for criminal sanction interference with commerce by threat or violence, 18 U.S.C. §1951, (1994), incitement to riot, 18 U.S.C. §2101, tampering with consumer products, U.S.C. §1365, and interfering with certain federally protected activities. 18 U.S.C. §245. S. 1335 fits well within the rubric that these laws have previously occupied. It cannot be reasonably asserted that S. 1335 attempts to suppress protected expression.

II. S. 1335 DOES NOT UNCONSTITUTIONALLY DISCRIMINATE ON THE BASIS OF CONTENT OR VIEWPOINT

The Supreme Court has repeatedly recognized that ''above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.'' Police Department v. Mosley, 408 U.S. 92, 95 (1972). On this basis, the Court recently invalidated a St. Paul, Minnesota ordinance that purported to punish symbolic expression when it constituted fighting words directed toward people because of their race, color, creed, religion or gender. Fighting words is a category of expression that the Court had previously held to be outside the First Amendment's protections. Chaplinsky v. New Hampshire, 315 U.S. 568, 571–72 (1942). In R.A.V. v. City of St. Paul, 112 S. Ct. 2538, 2543 (1992), the Court gave this statement greater nuance by stating that categories of speech such as fighting words are not so entirely without constitutional import ''that they may be made the vehicles for content discrimination unrelated to their distinctively proscribable content.'' Explaining this concept, the Court gave an example involving libel: ''the government may proscribe libel; but it may not make the further content discrimination of proscribing only libel critical of the government.'' Id.

As a further example, the Court said a city council could not enact an ordinance prohibiting only those legally obscene works that

contain criticism of the city government. Id. As yet another example, the Court stated that ''burning a flag in violation of an ordinance against outdoor fires could be punishable, whereas burning a flag in violation of an ordinance against dishonoring the flag is not.'' Id. at 2544. The rationale behind this limitation, the Court explained, was that government could not be vested with the power to ''drive certain ideas or viewpoints from the marketplace.'' Id. at 2545 (quoting Simon & Schuster, Inc. v. Members of the N.Y. State Crime Victims Bd., 112 S.Ct. 501, 508 (1991)).

No such danger exists under S. 1335. Both the patriotic group that makes use of the flag to provoke a violent response from dissenters and the protesters who use the flag to provoke a violent response from loyalists are subject to its provisions. A law that would only punish one or the other perspective would have the kind of constitutional flaw identified by the Court in R.A.V. Moreover, the legislation recognizes, as the Supreme Court itself did (''the flag occupies a ''deservedly cherished place in our community,'' 491 U.S. at 419) that the flag has a special status that justifies its special attention. Similarly, the R.A.V. Court noted that a law aimed at protecting the President against threats of violence, even though it did not protect other citizens, is constitutional because such threats ''have special force when applied to the person of the President.'' Id. at 2546. The rule against content discrimination, the Court explained, is not a rule against content discrimination, the Court explained, is not a rule against underinclusiveness. For example, ''a State may choose to regulate price advertising in one industry but not in others, because the risk of fraud is in its view greater there.'' Id. (parenthetical and citation omitted).

The federal law cited earlier that make certain types of threats of violence into crimes are not thought to pose content discrimination problems because they deal with only limited kinds of threats. To give another example, federal law also makes the use of a gun in the course of a crime grounds for special additional punishment. See 18 U.S.C. §924(c). In Brandenburg, the Court found that a Ku Klux Klan rally at which guns were brandished and overthrow of the government discussed remained protected free speech. Because guns were used for expressive purposes in Brandenburg and found to be beyond the law's reach there does not mean that the law enhancing punishment because a gun is used during the commission of a crime unlawfully infringes on any expressive rights.

The gun law makes the necessary constitutional distinctions that the Court requires, and so does S. 1335's concentration on crimes involving the American flag rather than protests involving the flag. S. 1335 properly identifies in its findings the reason for Congress to take special note of the flag: ''it is a unique symbol of national unity.'' §2(a)(1). It notes that ''destruction of the flag of the United States can occur to incite a violent response rather than make a political statement.'' §2(a)(4). As a result, Congress has developed the necessary legislative facts to justify such a particularized law.

In its only post-R.A.V. decision on a hatecrimes statute, the Court upheld a statute that enhanced the punishment of an individual who ''intentionally selects'' his victim on the basis of race, religion, color, disability, sexual orientation, national origin or ancestry. Wisconsin v. Mitchell, 113 S.Ct. 2194 (1993). A fair reading of the Court's unanimous decision in that case supports the conclusion that the Court would not strike down S. 1335 on R.A.V. grounds. In Mitchell, the Court concluded that the statute did not impermissibly punish the defendant's ''abstract beliefs,'' id. at 2200 (citing Dawson v. Delaware, 122 S. Ct. 1093 (1992)), but instead spotlighted conduct that had the potential to cause a physical harm that the State could properly proscribe. S. 1335 similarly eschews ideological or viewpoint discrimination to focus on the intentional provocation of violence, a harm well within the government's power to punish.

III. S. 1335 DOES NOT ENCOURAGE A HECKLER'S VETO

First Amendment doctrine does not permit the government to use the excuse of a hostile audience to prevent the expression of political ideas. Thus, the First Amendment will not allow the government to give a heckler some sort of veto against the expression of ideas that he or she finds offensive. As a result, the Court has observed, ''in public debate our own citizens must tolerate insulting, and even outrageous, speech in order to provide 'adequate breathing space' to the freedoms protected by the First Amendment.'' Boos v. Barry, 485 U.S. 312, 322 (1988). Any other approach to free speech ''would lead to standardization of ideas either by legislatures, courts, or dominant political or community groups.'' Terminiello v. Chicago, 337 U.S. 1, 4 (1949). Thus, simply because some might be provoked and respond violently to a march that expressed hatred of the residents of a community, that is insufficient justification to overcome the First Amendment's protection of ideas, no matter how noxious they may be deemed. See, e.g., Collin v. Smith, 578 F.2d 1197 (7th Cir.), cert. denied, 436 U.S. 953 (1978).

The Supreme Court's flag-burning decisions applied this principal. In Johnson, the state of Texas attempted to counter the argument against its flag-desecration prosecution by asserting an overriding governmental interest; it claimed that the burning of a flag ''is necessarily likely to disturb the peace and that the expression may be prohibited on this basis.'' 491 U.S. at 408 (footnote omitted). The Court rejected this argument on two grounds: (1) no evidence had been submitted to indicate that there was an actual breach of the peace, nor was evidence adduced that a breach of the peace was one of Johnson's goals; Id. at 407, and (2) to hold ''that every flag burning necessarily possesses [violent] potential would be to eviscerate our holding in Brandenburg [that the expression must be directed to and likely to incite or produce violence to be subject to criminalization].'' Id. at 409.

S. 1335 avoids the problems that Texas had by requiring that the defendant have ''the primary purpose and intent to incite or produce imminent violence or a breach of the peace, . . . in circumstances where the person knows it is reasonably likely to produce imminent violence or a breach of the peace.'' S. 1335, at §(a)(a). If Texas had demonstrated that Johnson had intended to breach the peace and was likely to accomplish this goal, Johnson could have been convicted of a crime for burning the U.S. flag. Texas, however, never attempted to prove this.

Moreover, S. 1335 does not enable hecklers to veto expression by reacting violently because it requires that the defendant have the specific intent to provoke that response, while at the same time taking away any bias-motivated discretion from law enforcers. The existence of a scienter requirement and a likelihood element is critical to distinguishing between a law that unconstitutionally punishes a viewpoint because some people hate it and one that legitimately punishes incitement to violence.

IV. S. 1335 IS CONSISTENT WITH FEDERALISM PRINCIPLES

Earlier this year, the Supreme Court held that the Gun-Free School Zones Act of 1990, 18 U.S.C. §922(q)(1)(a) unconstitutionally exceeded the power of Congress to regulate Commerce. Untied States v. Lopez, 63 U.S.L.W. 4343(1995). In doing so, the Court reaffirmed the original principle that ''the powers delegated by the [] Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.'' Id. at 4344 (quoting The Federalist No. 45, pp. 292–293 (C. Rossiter ed. 1961) (James Madison)).

S. 1335 respects these principles by directing its sanctions only at preventing the use of the national flag to incite violence, preventing someone from damaging an American flag belonging to the United States, or damaging, on federal land, an American flag stolen from another person. Each of these acts have a clear federal nexus and remain properly within the jurisdiction of the federal government. Moreover, the bill concedes jurisdiction to the states wherever it may properly be exercised. S. 1335, at §3(a)(d).

V. CONCLUSION

S. 1335 is carefully crafted to avoid constitutional difficulties by being solicitous of federalism and freedom of speech by focusing on incitement to violence. By doing so, it meets all constitutional requirements.

CONGRESSIONAL RESEARCH SERVICE,
Washington, DC, October 23, 1995.

To: Honorable Robert F. Bennett. Attention: Lisa Norton.

From: American Law Division.

Subject: Constitutionality of Flag Desecration Bill.

This memorandum is in response to your request for a constitutional evaluation of S. 1335, 104th Congress, a bill to provide for the protection of the flag of the United States and free speech and for other purposes.

Briefly, the bill would criminalize the destruction or damage of a United States flag under three circumstances. First, subsection (a) would penalize such conduct when the person engaging in it does so with the primary purpose and intent to incite or produce imminent violence or a breach of the peace and in circumstances where the person knows it is reasonably likely to produce imminent violence or a breach of the peace.

Second, subsection (b) would punish any person who steals or knowingly converts to his or her use, or to the use of another, a United States flag belonging to the United States and who intentionally destroys or damages that flag. Third, subsection (c) punishes any person who, within any lands reserved for the use of the United States or under the exclusive or concurrent jurisdiction of the United States, steals or knowingly converts to his or her use, or to the use of another, a flag of the United States belonging to another person and who intentionally destroys or damages that flag.

Of course, the bill is intended to protect the flag of the United States in circumstances under which statutory protection may be afforded. The obstacle to a general prohibition of destruction of or damage to the flag is the principle enunciated in United States v. Eichman, 496 U.S. 310 (1990), and Texas v. Johnson, 491 U.S. 397 (1989), that flag desecration, usually through burning, is expressive conduct if committed to ''send a message,'' and that the Court would review limits on this conduct with exacting scrutiny; legislation that proposed to penalize the conduct in order to silence the message or out of disagreement with the message violates the First Amendment speech clause.

Rather clearly, subsections (b) and (c) would present no constitutional difficulties, based on judicial precedents, either facially or as applied. The Court has been plain that one may not exercise expressive conduct or symbolic speech with or upon the property of others or by trespass upon the property of another Eichman, supra, 496 U.S., 316 n. 5; Johnson, supra, 412 n. 8; Spence v. Washington, 418 U.S. 405, 408–409 (1974). See also R. A. V. v. City of St. Paul, 112 S.Ct. 2538 (1992) (cross burning on another's property). The subsections are directed precisely to the theft or conversion of a flag belonging to someone else, the government or a private party, and the destruction of or damage to that flag.

Almost as evident from the Supreme Court's precedents, subsection (a) is quite likely to pass constitutional muster. The provision's language is drawn from the ''fighting words'' doctrine of Chaplinsky v. New Hampshire, 315 U.S. 568 (1942). That case defined a variety of expression that was unprotected by the First Amendment, among the categories being speech that inflicts injury or tends to incite immediate violence. Id., 572. While the Court over the years has modified the other categories listed in Chaplinsky, it has not departed from the holding that the ''fighting words'' exception continues to exist. It has, of course, laid down some governing principles, which are reflected in the subsection's language.

Thus, the Court has applied to ''fighting words'' the principle of Brandenburg v. Ohio, 395 U.S. 444 (1969), under which speech advocating unlawful action may be punished only if it directed to inciting or producing imminent lawless action and is likely to incite or produce such action. Id., 447. This development is spelled out in Cohen v. California, 403 U.S. 15, 20, 22–23 (1971). See also NAACP v. Claiborne Hardware Co., 458 U.S. 886, 928 (1982); Hess v. Indiana, 414 U.S. 105 (1973).

A second principle, enunciated in an opinion demonstrating the continuing vitality of the ''fighting words'' doctrine, is that it is impermissible to punish only those ''fighting words'' of which government disapproves. Government may not distinguish between classes of ''fighting words'' on an ideological basis. R. A. V. v. City of St. Paul, 112 S.Ct. 2538 (1992).

Subsection (a) is drafted in a manner to reflect both these principles. It requires not only that the conduct be reasonably likely to produce imminent violence or breach of the peace, but that the person intend to bring about imminent violence or breach of the peace. Further, nothing in the subsection draws a distinction between approved or disapproved expression that is communicated by the action committed with or on the flag.

In conclusion, the judicial precedents establish that the bill, if enacted, would survive constitutional attack. Subsections (b) and (c) are more securely grounded in constitutional law, but subsection (a) is only a little less anchored in decisional law.

Because of time constraints, this memorandum is necessarily brief. If, however, you desire a more generous treatment, please do not hesitate to get in touch with us.

JOHNNY H. KILLIAN,
Senior Specialist,
American Constitutional Law.

Mr. MCCONNELL. I urge the Senate to pass this legislation and protect our Nation's most cherished symbol and our most revered document.

Mr. President, I ask unanimous consent that the bill in its entirety be printed in the RECORD.

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

S. 931

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 ''Flag Protection Act of 1999''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the flag of the United States is a unique symbol of national unity and represents the values of liberty, justice, and equality that make this Nation an example of freedom unmatched throughout the world;

(2) the Bill of Rights is a guarantee of those freedoms and should not be amended in a manner that could be interpreted to restrict freedom, a course that is regularly resorted to by authoritarian governments which fear freedom and not by free and democratic nations;

(3) abuse of the flag of the United States causes more than pain and distress to the overwhelming majority of the American people and may amount to fighting words or a direct threat to the physical and emotional well-being of individuals at whom the threat is targeted; and

(4) destruction of the flag of the United States can be intended to incite a violent response rather than make a political statement and such conduct is outside the protections afforded by the first amendment to the Constitution.

(b) PURPOSE.—The purpose of this Act is to provide the maximum protection against the use of the flag of the United States to promote violence while respecting the liberties that it symbolizes.

SEC. 3. PROTECTION OF THE FLAG OF THE UNITED STATES AGAINST USE FOR PROMOTING VIOLENCE.

(a) IN GENERAL.—Section 700 of title 18, United States Code, is amended to read as follows:

''§ 700. Incitement; damage or destruction of property involving the flag of the United States

''(a) DEFINITION OF FLAG OF THE UNITED STATES.—In this section, the term 'flag of the United States' means any flag of the United States, or any part thereof, made of any substance, in any size, in a form that is commonly displayed as a flag and that would be taken to be a flag by the reasonable observer.

''(b) ACTIONS PROMOTING VIOLENCE.—Any person who destroys or damages a flag of the United States with the primary purpose and intent to incite or produce imminent violence or a breach of the peace, and under circumstances in which the person knows that it is reasonably likely to produce imminent violence or a breach of the peace, shall be fined not more than $100,000, imprisoned not more than 1 year, or both.

''(c) DAMAGING A FLAG BELONGING TO THE UNITED STATES.—Any person who steals or knowingly converts to his or her use, or to the use of another, a flag of the United States belonging to the United States, and who intentionally destroys or damages that flag, shall be fined not more than $250,000 imprisoned not more than 2 years, or both.

''(d) DAMAGING A FLAG OF ANOTHER ON FEDERAL LAND.—Any person who, within any lands reserved for the use of the United States, or under the exclusive or concurrent jurisdiction of the United States, steals or knowingly converts to his or her use, or to the use of another, a flag of the United States belonging to another person, and who intentionally destroys or damages that flag, shall be fined not more than $250,000, imprisoned not more than 2 years, or both.

''(e) CONSTRUCTION.—Nothing in this section shall be construed to indicate an intent on the part of Congress to deprive any State, territory, or possession of the United States, or the Commonwealth of Puerto Rico of jurisdiction over any offense over which it would have jurisdiction in the absence of this section.''.

(b) CLERICAL AMENDMENT.—The analysis for chapter 33 of title 18, United States Code, is amended by striking the item relating to section 700 and inserting the following:

''700. Incitement; damage or destruction of property involving the flag of the United States.''.

Mr. MCCONNELL. Mr. President, I yield the floor.

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, I rise today as an original cosponsor of the bipartisan Flag Protection Act of 1999. I salute its author, Senator MCCONNELL of Kentucky.

I believe every Member of this body abhors acts of desecration against the flag. Burning a flag, or otherwise dishonoring this symbol of freedom, is repugnant to me, to my colleagues, and to the vast majority of American citizens. I believe we should protect the flag from the acts of those few who would dishonor it.

But the question is, How do we do it? Mr. President, we have previously passed a statute to protect the flag but that was overturned by the U.S. Supreme Court as unconstitutional.

Some now say the only alternative is to pass a constitutional amendment. After considerable study and review, I have concluded that is not the case. There is an alternative, and the alternative is the legislation that we offer today, the Flag Protection Act of 1999. It is a statute. It is not a constitutional amendment. It will protect the flag, and I believe it will be upheld as constitutional.

We have a clear responsibility to exhaust all other options before we take the very serious step of amending the Constitution of the United States. Every one of us in the Senate pledges on our first day in this Chamber to uphold, protect, and defend the Constitution of the United States. Amending that time-honored, time-tested document is among the most serious of our duties—a step we have taken only rarely in the long history of our country.

The Constitution is the foundation of our Government. I believe it is one of the greatest documents in human history. Its freedoms are the source of our strength as a nation—and a model of freedom to the world.

Mr. President, the Founding Fathers wisely made it very difficult to amend the Constitution. They knew that a process that would allow for easy amendment of the Constitution could destabilize our country, that it could undermine the stability we have enjoyed through our long history. The Constitution has been amended only 27 times in 200 years, although many more attempts have been made.

Those 27 amendments, beginning with the Bill of Rights, were the result

of fundamental debates about the nature of our society, and who we would be as a nation. Freedom of religion, freedom of the press, freedom to assemble peacefully, the right to a trial by jury, the right to vote—these amendments address rights so basic we almost take them for granted today. Yet, some of them at the time of adoption provoked serious debate and division, division so deep they threatened to split the country.

Mr. President, I hesitate to launch this Nation on an undertaking of such magnitude and divisiveness. When there is an alternative—and there is an alternative—I believe we can protect the flag without amending the Constitution. I believe we can propose and pass a statute that will protect the flag against burning and other acts of desecration, and I believe that statute will be upheld as constitutional.

That is why today I am joining this bipartisan effort with my colleagues, Senator MCCONNELL of Kentucky, Senator DORGAN of North Dakota, and Senator BENNETT of Utah, to introduce the Flag Protection Act of 1999. This statute provides for maximum protection for the flag while respecting the liberties it symbolizes. We have been assured by experts at the Congressional Research Service and by constitutional scholars that it will be upheld by the courts.

When it comes to amending the Constitution, I am conservative. I feel strongly that the flag can and should be protected. But before we take the step of amending the Constitution of the United States, we should exhaust every other remedy. Today we have introduced a statutory remedy. I ask my colleagues to join me in approving this law to protect the flag and the Constitution.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from the AMVETS of North Dakota. The AMVETS, in a letter to me, dated September 29, 1998, have endorsed this approach. I also ask unanimous consent to have printed in the RECORD the specific provision that they adopted at their convention supporting the approach that we are taking today.

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

AMVETS,
DEPARTMENT OF NORTH DAKOTA,
Fargo, ND, September 29, 1998.

Hon. KENT CONRAD,
U.S. Senate,
Washington, DC.

DEAR SENATOR CONRAD: I am sure your are hearing both sides of the issue concerning SJR–40. During our May 1998 Department convention in West Fargo, our membership passed an amended resolution to petition congress to work towards legislation to prevent U.S. Flag Desecration. Enclosed is a copy of the passed resolution S98–14. During the convention you addressed our membership and stated you felt this was a viable and defensible alternative to a proposed Constitutional amendment. At our State Executive Committee meeting Wahpeton, ND, on September 26, 1998, the SEC voted to continue pursuing this goal.

Thank you for your time and consideration of this matter.

RANDALL A. LEKANDER,
Department Commander.

RESOLUTION S. 98–14
U.S. FLAG DESECRATION

Whereas although the right of free expression is part of the foundation of the Constitution of the United States, very carefully drawn limits on expression, in specific instances, have long been recognized as legitimate means of maintaining public safety and defining other societal standards, and

Whereas certain actions, although arguably related to a person's free expression, nevertheless raise issues concerning public decency, public space, and the rights of other citizens, and

Whereas the United States flag is a most honorable and worthy banner of a nation which is thankful for its strengths and committed to curing its faults, a nation that remains the destination of millions of immigrants attracted by the universal power of the American ideal, and

Whereas the law, as interpreted by the United States Supreme Court, no longer accords the Stars and Stripes the reverence, respect and dignity befitting a banner of that most noble experiment of a nation-state, and

Whereas it is only fitting the Americans everywhere should lend their voices to a forceful call for restoration of the Stars and Stripes to a proper station under law and decency; now therefore, be it

Resolved, That AMVETS petition Congress to work towards legislation which specifies that Congress shall have the power to prohibit physical desecration of the United States flag.

Mr. CONRAD. Mr. President, I would also like to read briefly from a letter I received from a constituent in North Dakota. He wrote to me the following:

As a third generation military officer, I cannot support an amendment to the Constitution with respect to the flag. I have many compelling reasons to ask that you not support this amendment. My sworn duty as an officer in the United States Air Force to uphold and defend the Constitution of the United States lies at the heart of my opposition. This amendment will weaken the Constitution and open the door for more frivolous amendments in the future. I cannot stand by and let this happen without raising my voice.

He went on to say:

Of the gallant Americans who fought and died in the service of our country within the last 200 years, I tell you this: They did not die defending the flag. They died defending our freedom and the ideals upon which our country was founded. Don't cheapen their sacrifice by supporting this misguided amendment.

Mr. President, a third letter that I received was from a man also from North Dakota. He wrote me this:

On my mother's side, my great-grandfather came to the United States from Bohemia and fought in the Union Army. On my father's side, my great-grandmother lost her two oldest sons, Iowa soldiers, at the Siege of Vicksburg. And members of my family have represented the United States in every war since. I am a Korean War combat veteran.

He went on to say:

The flag is strong enough to take care of itself. But if these flag protectors are sincere about its protection, then strong legislation is the safest way to go.

Mr. President, that is what we are offering today on a bipartisan basis—four Senators; two Democrats, two Republicans—offering the Flag Protection Act of 1999. We believe this is the appropriate way to protect the flag.

Mr. President, I yield the floor.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER (Mr. BURNS). The Senator from North Dakota.

Mr. DORGAN. Mr. President, I rise today as a cosponsor of the legislation that my colleagues, Senator MCCONNELL, Senator BENNETT, Senator CONRAD and I have jointly introduced—a piece of legislation called the Flag Protection Act.

This, at its roots, is about the Constitution. Some will say the Constitution is an easy issue.

A decade ago, the U.S. Supreme Court struck down a Texas statute, a statute which provided criminal sanctions for the burning of an American flag. The Supreme Court said, no, the desecration of a flag is an expression of speech. That fellow in Texas had a constitutional right to do that. That was a 5–4 decision of the Supreme Court. I disagreed with that decision. I think the Supreme Court was wrong. But immediately—and for 10 years—there was an effort to amend the Constitution to overturn the Supreme Court's decision and allow a statute to be deemed constitutional that would prohibit the desecration of the American flag.

I have voted on two occasions against a constitutional amendment to prohibit flag desecration. Those who say it is an easy vote say it is just an amendment amending the Constitution. Let's just do it and protect the flag.

It might be easy for them; it is not easy for me.

Then there are those who say we should never amend the Constitution, that you have a right to desecrate the flag. They too say this is an easy choice. Let's just make that choice.

This decision has been just as difficult. I have agonized about this issue.

There are many, many Americans, over many, many years, who have shed their blood to nurture this country's liberties and freedoms. The burning of an American flag is a disgusting act, one that I personally do not think is protected under the first amendment of the Constitution.

The question is, however, what do you do to remedy this situation? Do you amend the Constitution, or is there a way to craft a statute saying flag desecration is wrong in a manner that the Supreme Court would say, yes, this statute will meet the test?

I believe there is. I have believed all along there is. I pledged to some folks back in my home State that I would review this, reanalyze it again. I have done that over and over. I have read everything that has been written by virtually all of the scholars on both sides of this issue. I conclude, once again, that our country is better served by reserving our attempts to alter the U.S. Constitution for those things that are extraordinary occasions, as one of the

authors of the Constitution, James Madison discussed. Then the Constitution should be amended only in circumstances when it is the only remedy.

Some 12 or 13 years ago, I went to Philadelphia in the summertime for the 200th birthday of the writing of the U.S. Constitution. I have told my colleagues this before, but I want to say it again, because it describes how I feel for the Constitution.

Two hundred years previously, 55 white men marched into the assembly room in Independence Hall, a room that is substantially smaller than this Chamber. Those 55 men wrote a Constitution for this country. Walking down the cobbled streets of Philadelphia, someone asked Benjamin Franklin, one of the 55, what they were doing. He said, we are writing a Constitution, if you can keep it.

Two hundred years after the writing of that Constitution, 55 of us were privileged to go back into the very same room. The chair where George Washington presided still sits in the front of the room. Mason sat over here, Madison, Ben Franklin. I was one of the 55 chosen, men, women, minorities. I come from a town of 300 people, a high school class of 9. I got goose bumps sitting in this room where they wrote the Constitution of the United States. I have never forgotten that day, thinking that I am in the room where the historic figures of our country created the framework for governance in our country.

That day is always etched in my memory when we debate the questions of whether we should amend the Constitution of the United States.

There have been 11,000 proposals to change America's Constitution. Outside of the first 10, the Bill of Rights, only 17 amendments have changed our Constitution in the more than two centuries of history in this country.

Now we have a proposal during these past 10 years to change the Constitution. Is it a serious proposal about a serious issue? Yes, it is. Our flag is important. So is our Constitution. It seems to me, as I said, our country is better served if there is a way to address the issue of flag desecration by passing a statute that will meet the test of the Supreme Court, to do that rather than alter our U.S. Constitution.

The piece of legislation we have introduced today has been reviewed by a number of constitutional experts, the Congressional Research Service and elsewhere, and they indicate they feel it does meet the test. It would be upheld by the Supreme Court.

To be able to enact a statute of this type and avoid altering the Constitution makes eminent good sense to me. I think future generations and our Founding Fathers would agree that it is worth the effort for us to find a way to protect our flag without having to wonder about the unintended consequences of altering this significant area of our Constitution that guarantees and preserves important rights for the citizens of our country.

Mr. President, I know that many who have invested a great amount of time and effort to enact a constitutional amendment will be sorely disappointed by my decision and, perhaps, Senator CONRAD's decision and others, to not support a constitutional amendment on flag desecration. I know they are impatient to correct a decision by the Supreme Court that they and I believe was wrong.

I have wrestled with this issue for so long. I wish I were not, with my decision, disappointing so many, including some of my friends who passionately believe we must amend the Constitution to protect the flag. But as I sift through all of the material and think about the history of our country and think about this constitutional framework of our government and all of the appetite that exists here and elsewhere to change this Constitution for 100 different reasons and 100 different ways, I think our country is better served by patience and by a thoughtful effort to correct a problem short of altering our country's Constitution.

For that reason, I join my colleagues today, two Republicans and two Democrats, to offer a piece of legislation that would serve, instead of altering our Constitution, as an effort to protect our American flag.

Mr. President, I ask that my written statement be printed in the RECORD.

● Mr. DORGAN. Mr. President, 10 years ago the U.S. Supreme Court in a 5-4 decision struck down a Texas flag protection statute on the grounds that burning an American flag was ''speech'' and therefore protected under the First Amendment of the Constitution. I disagreed with the Court's decision then and I still do. I don't believe that the act of desecrating a flag is an act of speech. I believe that our flag, as our national symbol, can and should be protected by law.

In the intervening years since the Supreme Court decision I have twice supported federal legislation that would make flag desecration illegal, and on two occasions I voted against amendments to the Constitution to do the same. I voted that way because, while I believe that flag desecration is despicable conduct that should be prohibited by law, I also believe that amending our Constitution is a step that should be taken only rarely and then only as a last resort.

In the past year I have once again reviewed in detail nearly all of the legal opinions and written materials published by Constitutional scholars and courts on all sides of this issue. I pledged to the supporters of the Constitutional amendment that I would reevaluate whether a Constitutional amendment is necessary to resolve this issue.

From my review I have concluded that there remains a way to protect our flag without having to alter the Constitution of the United States. I am joining with Senators BENNETT, MCCONNELL and CONRAD today to introduce legislation that I believe accomplishes that goal. The bill we introduce today protects the flag but does so without altering the Constitution and a number of respected Constitutional scholars tell us they believe this type of statute will be upheld by the U.S. Supreme Court. This statute protects the flag by criminalizing flag desecration when the purpose is to, and the person doing it knows, it is likely to lead to violence.

Supporters of a Constitutional amendment will be disappointed I know by my decision to support this statutory remedy to protect the flag rather than support an amendment to the U.S. Constitution. I know they are impatient to correct a decision by the Supreme Court that they and I believe was wrong. I have wrestled with this issue for so long and I wish I were not, with my decision, disappointing those, including many of my friends, who passionately believe that we must amend the Constitution to protect the flag.

But in the end I know that our country will be better served reserving our attempts to alter the Constitution only for those things that are ''extraordinary occasions'' as outlined by President James Madison, one of the authors of the Constitution, and only in circumstances when it is the only remedy for something that must be done.

More than 11,000 Constitutional amendments have been proposed since our Constitution was ratified. However, since the ratification of the Bill of Rights in 1791 only 17 amendments have been enacted. These 17 include three reconstruction era amendments that abolished slavery, and gave African-Americans the right to vote. The amendments included giving women the right to vote, limiting Presidents to two terms, and establishing an order of succession in case of a President's death or departure from office. The last time Congress considered and passed a new Constitutional amendment was when it changed the voting age to 18, more than a quarter of a century ago. All of these matters were of such scope they required a Constitutional amendment to be accomplished.

But protecting the American flag can be accomplished without amending the Constitution, and that is a critically important point.

Constitutional scholars, including those at the Congressional Research Service, the research arm of Congress, and Duke University's Professor William Alstyne, have concluded that this statute passes Constitutional muster, because it recognizes that the same standard that already applies to other forms of speech applies to burning the flag as well. This is the same standard which makes it illegal to falsely cry ''fire'' in a crowded theater. Reckless speech that is likely to cause violence is not protected under the ''fighting words'' standard, long recognized by the Supreme Court of the United States.

I believe that future generations—and our founding fathers—would agree that it's worth the effort for us to find a way to protect our flag without having to wonder about the unintended consequences of altering our Constitution.●

Mr. President, I yield the floor.

By Mr. CAMPBELL:

S. 932. A bill to prevent Federal agencies from pursuing policies of unjustifiable nonacquiescence in, and relitigation of, precedent established in the Federal judicial courts; to the Committee on the Judiciary.

FEDERAL BUREAUCRACY ACCOUNTABILITY ACT OF 1999

Mr. CAMPBELL. Mr. President, today I introduce the Federal Bureaucracy Accountability Act of 1999.

This legislation is clearly needed because when federal bureaucracies are faced with a decision between enforcing their rules and regulations or complying with our nation's laws they all to often choose to ignore the law and follow their rules. These bureaucracies can get away with ignoring laws passed by Congress, signed into law and then interpreted by our federal courts because of a technical, legal loophole. Bureaucracies ought not ignore our laws and courts simply because they may find it easier and more convenient to stick with their familiar rules and regulations rather than changing their ways and complying with the law. And when these bureaucracies choose to ignore the law it is almost always average Americans who end up suffering.

There are thousands of stories of Americans who have been wrongfully denied their rightful benefits because some federal agency refuses to follow the legal decisions reached by our federal courts. In these situations ordinary American citizens must comply with the law, but federal agencies may simply choose to ignore that same law whenever they may so choose. This is not equal justice under the law.

Our Founding Fathers envisioned a justice system in which everyone is required to obey the laws as they are interpreted and enforced through our courts. When there are disagreements appeals can be made to higher courts. But otherwise, when the courts have spoken, we all must obey the law or face the consequences, as it was intended.

Currently, if a federal court in one jurisdiction rules against a federal agency's rule, that same federal agency can continue to follow that same rule in other jurisdictions, even if it is to the detriment of the American citizens they are purportedly serving. This needlessly leads to years of costly legal wrangling while also compounding the pain and suffering American citizens endure as they try to secure the same services other Americans are already receiving in neighboring jurisdictions.

Some of the more egregious actions are seen in the Social Security Administration, the federal agencies running Medicare and Medicaid, the Bureau of Land Management, and the Internal Revenue Service.

In legal terms, this bill would prevent federal agencies from pursuing policies of unjustifiable nonacquiesence with, or the relitigation of, judicial precedents as established through the federal courts.

This legislation is a revised version of S. 1166, a bill I introduced in the 105th Congress. The bill I am introducing today contains perfecting language reflecting the valuable input I received during a June 15, 1998, Senate Judiciary Subcommittee on Administrative Oversight and the Courts hearing on S. 1166.

During that hearing, a fellow Coloradan, Lynn Conforti, testified about how her claims for disability benefits were repeatedly denied by the Social Security Administration, not on the basis of existing law, but on the basis of bureaucratic policies. Her testimony highlighted how her physical suffering was compounded by severe financial troubles and mental anguish as a result of her 32-month struggle with the Social Security Administration. This was her return for 27 years of contributing to Social Security. Ms. Conforti hopes to be able to return to work in the future, but she still requires access to the resources she needs to continue her rehabilitation efforts. Finally, Ms. Conforti was awarded her disability benefits by an Administrative Law Judge in an on the record determination.

Ms. Conforti's story is just one sad example of how agencies too often fail to help the very people whose need is real. Thousands of other Americans go through similar experiences each year. Something clearly must be done to ensure that federal agencies comply with federal law.

There are important organizations that also make it clear that something needs to be done. The Judicial Conference of the United States, chaired by Supreme Court Chief Justice William Rehnquist, serves as the Federal Judiciary's governing body. The Judicial Conference has identified federal agency nonacquiesence as a policy that undermines legal certainty and the fair application of the law. The American Bar Association has also strongly recommended that Congress pass legislation to stop federal agencies from disregarding federal judicial decisions. In addition, organizations such as the National Multiple Sclerosis Society and the Diabetes Research Institute also came out in support of last year's bill, S. 1166.

It's time we made sure federal agencies comply with the law. I urge my colleagues to support passage of this legislation.

Mr. President, I ask unanimous consent that a copy of the Federal Bureaucracy Accountability Act of 1999 be printed in the RECORD following my comments.

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

S. 932

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

SECTION 1. PROHIBITING INTRACIRCUIT AGENCY NON-ACQUIESCENCE IN APPELLATE PRECEDENT.

(a) SHORT TITLE.—This Act may be cited as the ''Federal Bureaucracy Accountability Act of 1999''.

(b) IN GENERAL.—Chapter 7 of title 5, United States Code, is amended by adding at the end the following:

''§ 707. Adherence to court of appeals precedent

''(a) Except as provided in subsection (b), an agency (as defined in section 701(b)(1) of this title) shall in civil cases, in administering a statute, rule, regulation, program, or policy within a judicial circuit, adhere to the existing precedent respecting the interpretation and application of such statute, rule, regulation, program, or policy, as established by the decisions of the United States court of appeals for that circuit. All officers and employees of an agency, including administrative law judges, shall adhere to such precedent.

''(b) An agency is not precluded under subsection (a) from taking a position, either in administrative or litigation, that is at variance with precedent established by a United States court of appeals if—

''(1) it is not certain whether the administration of the statute, rule, regulation, program, or policy will be subject to review exclusively by the court of appeals that established that precedent or a court of appeals for another circuit;

''(2) the Government did not seek further review of the case in which that precedent was first established, in that court of appeals or the United States Supreme Court, because—

''(A) neither the United States nor any agency or officer thereof was a party to the case; or

''(B) the decision establishing that precedent was otherwise substantially favorable to the Government; or

''(3) it is reasonable to question the continued validity of that precedent in light of a subsequent decision of that court of appeals or the United States Supreme Court, a subsequent change in any pertinent statute or regulation, or any other subsequent change in the public policy or circumstances on which that precedent was based.''.

(c) CLERICAL AMENDMENT.—The table of sections for chapter 7 of title 5, United States Code, is amended by adding at the end the following new item:

''707. Adherence to court of appeals precedent.''.

By Mr. MURKOWSKI (for himself and Mr. STEVENS):

S. 933. A bill to amend the Internal Revenue Code of 1986 to clarify the tax treatment of Settlement Trusts established pursuant to the Alaska Native Claims Settlement Act; to the Committee on Finance.

ALASKA NATIVE SETTLEMENT TRUST TAX LEGISLATION

Mr. MURKOWSKI. Mr. President, I am pleased to be joined by Senator STEVENS in introducing legislation that will allow Alaska Native Corporations to establish settlement trusts designed to promote the health, education, welfare and cultural heritage of Alaska Natives.

Mr. President, in 1987, the Alaska Native Claims Settlement Act was

amended to permit Native Corporations to establish settlement trusts to hold lands and investments for the benefit of current and future generations of Alaska Natives. Assets in these trusts are insulated from business exposure and risks and can be invested to provide distributions of income to Native shareholders and their future generations.

Although the 1987 amendments were designed to facilitate the development of settlement trusts, many Native Corporations have been stymied in their efforts because the tax law, in many cases, imposes onerous penalties on the Native shareholders when the trusts are created. For example, when assets are transferred to the trust, they are treated as a de facto distribution of assets directly to the shareholders themselves to the extent of the corporation's earnings and profits.

Even though the current shareholders receive no actual income at the time of the transfer into the trust, they are liable for income taxes as if they received an actual distribution. This not only requires the shareholder to come up with money to pay taxes on a distribution he or she never received, but also can result in a situation where a trust fund beneficiary is required to prepay taxes on his share of the entire trust corpus, which may be substantially more in taxes than the amount of cash benefits he or she will actually receive in the future.

Our legislation remedies this inequity by requiring that a beneficiary of a settlement trust will be subject to taxation with respect to assets conveyed to the trust only when the actual distribution is received by the beneficiary. Moreover, the legislation provides that distributions from the trust will be taxable as ordinary income even if the distribution represents a return of capital. In addition, to ensure that these trusts do not accumulate excessive levels of the corporation's earnings, the legislation requires that the trust must annually distribute at least 55 percent of their taxable income.

Mr. President, Alaska Native Corporations are unique entities. Unlike Native American tribes in the lower 48, Alaska Native corporations are subject to income tax. But unlike ordinary C corporations, Alaska Native corporations have diverse purposes, one of which is to preserve and protect the heritage of the Native shareholders. The settlement trust concept is well suited to the special needs of Alaska's Natives. As the Conference Committee Report to ANSCA amendments of 1987 stated:

> Trust distributions may be used to fight poverty, provide food, shelter and clothing and served comparable economic welfare purposes. Additionally, cash distributions of trust income may be made on an across-the-board basis to the beneficiary population as part of the economic welfare function.

Settlement trusts will ensure that for generations to come, Native Alaskans will have a steady stream of income on which to continue building an economic base. The current tax rules discourage the creation of such trusts with the result that Native corporations are under extreme pressure to distribute all current earnings rather than prudently reinvesting for the future.

Mr. President, it is my hope that we will be able to see this legislation adopted into law this year. For the long-term benefit of Alaska Natives, this tax law change is fundamentally necessary.

Mr. President, I ask unanimous consent that the text of the legislation be included in the RECORD.

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

S. 933

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

SECTION 1. TAX TREATMENT OF ALASKA NATIVE SETTLEMENT TRUSTS.

(a) TAX EXEMPTION.—Section 501(c) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

''(28) A trust which—

''(A) constitutes a Settlement Trust under section 39 of the Alaska Native Claims Settlement Act (43 U.S.C. 1629e), and

''(B) with respect to which an election under subsection (p)(2) is in effect.''

(b) SPECIAL RULES RELATING TO TAXATION OF ALASKA NATIVE SETTLEMENT TRUSTS.—Section 501 of the Internal Revenue Code of 1986 is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

''(p) SPECIAL RULES FOR TAXATION OF ALASKA NATIVE SETTLEMENT TRUSTS.—

''(1) IN GENERAL.—For purposes of this title, the following rules shall apply in the case of a Settlement Trust:

''(A) ELECTING TRUST.—If an election under paragraph (2) is in effect for any taxable year—

''(i) no amount shall be includible in the gross income of a beneficiary of the Settlement Trust by reason of a contribution to the Settlement Trust made during such taxable year, and

''(ii) except as provided in this subsection, the provisions of subchapter J and section 1(e) shall not apply to the Settlement Trust and its beneficiaries for such taxable year.

''(B) NONELECTING TRUST.—If an election is not in effect under paragraph (2) for any taxable year, the provisions of subchapter J and section 1(e) shall apply to the Settlement Trust and its beneficiaries for such taxable year.

''(2) ONE-TIME ELECTION.—

''(A) IN GENERAL.—A Settlement Trust may elect to have the provisions of this subsection and subsection (c)(28) apply to the trust and its beneficiaries.

''(B) TIME AND METHOD OF ELECTION.—An election under subparagraph (A) shall be made—

''(i) before the due date (including extensions) for filing the Settlement Trust's return of tax for the 1st taxable year of the Settlement Trust ending after the date of the enactment of this subsection, and

''(ii) by attaching to such return of tax a statement specifically providing for such election.

''(C) PERIOD ELECTION IN EFFECT.—Except as provided in paragraph (3), an election under subparagraph (A)—

''(i) shall apply to the 1st taxable year described in subparagraph (B)(i) and all subsequent taxable years, and

''(ii) may not be revoked once it is made.

''(3) SPECIAL RULES WHERE TRANSFER RESTRICTIONS MODIFIED.—

''(A) TRANSFER OF BENEFICIAL INTERESTS.—If, at any time, a beneficial interest in a Settlement Trust may be disposed of in a manner which would not be permitted by section 7(h) of the Alaska Native Claims Settlement Act (43 U.S.C. 1606(h)) if the interest were Settlement Common Stock—

''(i) no election may be made under paragraph (2)(A) with respect to such trust, and

''(ii) if an election under paragraph (2)(A) is in effect as of such time—

''(I) such election is revoked as of the 1st day of the taxable year following the taxable year in which such disposition is first permitted, and

''(II) there is hereby imposed on such trust a tax equal to the product of the fair market value of the assets held by the trust as of the close of the taxable year in which such disposition is first permitted and the highest rate of tax under section 1(e) for such taxable year.

The tax imposed by clause (ii)(II) shall be in lieu of any other tax imposed by this chapter for the taxable year.

''(B) STOCK IN CORPORATION.—If—

''(i) the Settlement Common Stock in any Native Corporation which transferred assets to a Settlement Trust making an election under paragraph (2)(A) may be disposed of in a manner not permitted by section 7(h) of the Alaska Native Claims Settlement Act (43 U.S.C. 1606(h)), and

''(ii) at any time after such disposition of stock is first permitted, such corporation transfers assets to such trust,

clause (ii) of subparagraph (A) shall be applied to such trust on and after the date of the transfer in the same manner as if the trust permitted dispositions of beneficial interests in the trust in a manner not permitted by such section 7(h).

''(C) ADMINISTRATIVE PROVISIONS.—For purposes of subtitle F, any tax imposed by subparagraph (A)(ii)(II) shall be treated as an excise tax with respect to which the deficiency procedures of such subtitle apply.

''(4) DISTRIBUTION REQUIREMENT ON ELECTING SETTLEMENT TRUST.—

''(A) IN GENERAL.—If an election is in effect under paragraph (2) for any taxable year, a Settlement Trust shall distribute at least 55 percent of its adjusted taxable income for such taxable year.

''(B) TAX IMPOSED IF INSUFFICIENT DISTRIBUTION.—If a Settlement Trust fails to meet the distribution requirement of subparagraph (A) for any taxable year, then, notwithstanding subsection (c)(28), a tax shall be imposed on the trust under section 1(e) on an amount of taxable income equal to the amount of such failure.

''(C) DESIGNATION OF DISTRIBUTION.—Solely for purposes of meeting the requirements of this paragraph, a Settlement Trust may elect to treat any distribution (or portion) during the 65-day period following the close of any taxable year as made on the last day of such taxable year. Any such distribution (or portion) may not be taken into account under this paragraph for any other taxable year.

''(D) ADJUSTED TAXABLE INCOME.—For purposes of this paragraph, the term 'adjusted taxable income' means taxable income determined under section 641(b) without regard to any deduction under section 651 or 661.

''(5) TAX TREATMENT OF DISTRIBUTIONS TO BENEFICIARIES.—

''(A) ELECTING TRUST.—If an election is in effect under paragraph (2) for any taxable

year, any distribution to a beneficiary shall be included in gross income of the beneficiary as ordinary income.

''(B) NONELECTING TRUSTS.—Any distribution to a beneficiary from a Settlement Trust not described in subparagraph (A) shall be includible in income as provided under subchapter J.

''(6) DEFINITIONS.—For purposes of this subsection—

''(A) NATIVE CORPORATION.—The term 'Native Corporation' has the meaning given such term by section 3(m) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m)).

''(B) SETTLEMENT TRUST.—The term 'Settlement Trust' means a trust which constitutes a Settlement Trust under section 39 of the Alaska Native Claims Settlement Act (43 U.S.C. 1629e).''

(c) WITHHOLDING ON DISTRIBUTIONS BY ELECTING ANCSA SETTLEMENT TRUSTS.—Section 3402 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

''(t) TAX WITHHOLDING ON DISTRIBUTIONS BY ELECTING ANCSA SETTLEMENT TRUSTS.—

''(1) IN GENERAL.—Any Settlement Trust (as defined in section 501(p)(6)(B)) which is exempt from income tax under section 501(c)(28) (in this subsection referred to as an 'electing trust') and which makes a payment to any beneficiary shall deduct and withhold from such payment a tax in an amount equal to such payment's proportionate share of the annualized tax.

''(2) EXCEPTION.—The tax imposed by paragraph (1) shall not apply to any payment to the extent that such payment, when annualized, does not exceed an amount equal to the amount in effect under section 6012(a)(1)(A)(i) for taxable years beginning in the calendar year in which the payment is made.

''(3) ANNUALIZED TAX.—For purposes of paragraph (1), the term 'annualized tax' means, with respect to any payment, the amount of tax which would be imposed by section 1(c) (determined without regard to any rate of tax in excess of 31 percent) on an amount of taxable income equal to the excess of—

''(A) the annualized amount of such payment, over

''(B) the amount determined under paragraph (2).

''(4) ANNUALIZATION.—For purposes of this subsection, amounts shall be annualized in the manner prescribed by the Secretary.

''(5) NO APPLICATION TO THIRD PARTY PAYMENTS.—This subsection shall not apply in the case of a payment made, pursuant to the written terms of the trust agreement governing an electing trust, directly to third parties to provide educational, funeral, or medical benefits.

''(6) ALTERNATE WITHHOLDING PROCEDURES.—At the election of an electing trust, the tax imposed by this subsection on any payment made by such trust shall be determined in accordance with such tables or computational procedures as may be specified in regulations prescribed by the Secretary (in lieu of in accordance with paragraphs (2) and (3)).

''(7) COORDINATION WITH OTHER SECTIONS.—For purposes of this chapter and so much of subtitle F as relates to this chapter, payments which are subject to withholding under this subsection shall be treated as if they were wages paid by an employer to an employee.''

(d) REPORTING.—Section 6041 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

''(f) APPLICATION TO ALASKA NATIVE SETTLEMENT TRUSTS.—In the case of any distribution from a Settlement Trust (as defined in section 501(p)(6)(B)) to a beneficiary, this section shall apply, except that—

''(1) this section shall apply to such distribution without regard to the amount thereof,

''(2) the Settlement Trust shall include on any return or statement required by this section information as to the character of such distribution (if applicable) and the amount of tax imposed by chapter 1 which has been deducted and withheld from such distribution, and

''(3) the filing of any return or statement required by this section shall satisfy any requirement to file any other form or schedule under this title with respect to distributive share information (including any form or schedule to be included with the trust's tax return).''

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of Settlement Trusts ending after the date of the enactment of this Act and to contributions to such trusts after such date.

By Mr. LEAHY (for himself, Mr. KENNEDY, Mr. SARBANES, Mr. KERRY, Mr. HARKIN, and Mrs. MURRAY):

S. 934. A bill to enhance rights and protections for victims of crime; to the Committee on the Judiciary.

CRIME VICTIMS ASSISTANCE ACT

Mr. LEAHY. Mr. President, this past Sunday marked the beginning of National Crime Victims' Rights Week. We set this week aside each year to focus attention on the needs and rights of crime victims. I am pleased to take this opportunity to introduce legislation with my good friend from Massachusetts, Senator KENNEDY, and our cosponsors, Senators SARBANES, KERRY, HARKIN, and MURRAY. Our ''Crime Victims Assistance Act'' represents the next step in our continuing efforts to afford dignity and recognition to victims of crime.

My involvement with crime victims began more than three decades ago when I served as State's Attorney for Chittenden County, Vermont, and witnessed first hand the devastation of crime. I have worked ever since to ensure that the criminal justice system is one that respects the rights and dignity of victims of crime, rather than one that presents additional ordeals for those already victimized.

I am proud that Congress has been a significant part of the solution to provide victims with greater rights and assistance. Over the past 15 years, Congress has passed several bills to this end. These bills have included: the Victims and Witness Protection Act of 1982; the Victims of Crime Act of 1984; the Victims' Bill of Rights of 1990; the 1994 Violent Crime Control and Law Enforcement Act; the Justice for Victims of Terrorism Act of 1996; the Victim Rights Clarification Act of 1997; and the Victims with Disabilities Awareness Act.

Also, on the first day of this session, we introduced S.9, a youth crime bill. In that legislation, which we have identified as a legislative priority for the entire Democratic caucus, we included provisions for victims of juvenile crime so that their rights to appear, to be heard, and to be informed would be protected. The recent tragedy in Littleton, Colorado, was only the most recent reminder of the urgent need to enhance protections for these victims, to ensure that their voices are heard.

The legislation that we introduce today, the ''Crime Victims Assistance Act,'' builds upon this progress. It provides for a wholesale reform of the Federal Rules and Federal law to establish additional rights and protections for victims of federal crime.

Particularly, the legislation would provide crime victims with an enhanced: right to be heard on the issue of pretrial detention; right to be heard on plea bargains; right to a speedy trial; right to be present in the courtroom throughout a trial; right to give a statement at sentencing; right to be heard on probation revocation; and right to be notified of a defendant's escape or release from prison.

The legislation goes further than other victims rights proposals that are currently before Congress by including: enhanced penalties for witness intimidation; an increase in Federal victim assistance personnel; enhanced training for State and local law enforcement and officers of the Court; the development of state-of-the-art systems for notifying victims of important dates and developments in their cases; the establishment of ombudsman programs for crime victims; the establishment of pilot programs that implement balanced and restorative justice models; and more direct and effective Federal assistance to victims of international terrorism, including victims of the Lockerbie bombing and other terrorist acts occurring prior to passage of the Victims of Crime Act.

These are all matters that can be considered and enacted this year with a simple majority of both Houses of Congress. They need not overcome the delay and higher standards necessitated by proposing to amend the Constitution. They need not wait the hammering out of implementing legislation before making a difference in the lives of crime victims.

The Judiciary Committee has already held another hearing this year on a proposed constitutional amendment regarding crime victims. Previous hearings on this proposal were held in 1996, 1997, and 1998. Unfortunately, the Committee has devoted not a minute to consideration of legislative initiatives like the Crime Victims Assistance Act, which Senator KENNEDY and I have introduced over the past years to assist crime victims and better protect their rights. Like many other deserving initiatives, it has taken a back seat to the constitutional amendment debate that continues.

I regret that we did not do more for victims last year or the year before. Over the course of that time, I have noted my concern that we not dissipate the progress we could be making by focusing exclusively on efforts to amend the Constitution. Regretfully, I must

note that the pace of victims legislation has slowed noticeably and many opportunities for progress have been squandered.

I look forward to continuing to work with the Administration, victims groups, prosecutors, judges and other interested parties on how we can most effectively enhance the rights of victims of crime. Congress and State legislatures have become more sensitive to crime victims rights over the past 20 years and we have a golden opportunity to make additional, significant progress this year to provide the greater voice and rights that crime victims deserve.

I would like to acknowledge several groups and individuals who have been extremely helpful with regards to the legislation that we are introducing today: The Office for Victims of Crime at the Justice Department; the National Network to End Domestic Violence; the NOW Legal Defense Fund; the National Clearinghouse for the Defense of Battered Women; the National Victim Center; the National Organization for Victim Assistance; Professor Lynne Henderson of Indiana Law School; and Roger Pilon, Director of the Center for Constitutional Studies at the Cato Institute.

While we have greatly improved our crime victims assistance programs and made advances in recognizing crime victims rights, we still have more to do. That is why it is my hope that Democrats and Republicans, supporters and opponents of a constitutional amendment on this issue, will join in advancing this important legislation through Congress. We can make a difference in the lives of crime victims right now, and I hope Congress will make it a top priority and pass the Crime Victims Assistance Act before the end of the year.

Mr. President, I ask unanimous consent that the text of the bill and the section-by-section analysis be printed in the RECORD.

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

S. 934

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 CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Crime Victims Assistance Act''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. DEFINITIONS.

In this Act—

(1) the term ''Attorney General'' means the Attorney General of the United States;

(2) the term ''bodily injury'' has the meaning given that term in section 1365(g) of title 18, United States Code;

(3) the term ''Commission'' means the Commission on Victims' Rights established under section 204;

(4) the term ''Indian tribe'' has the same meaning as in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e));

(5) the term ''Judicial Conference'' means the Judicial Conference of the United States established under section 331 of title 28, United States Code;

(6) the term ''law enforcement officer'' means an individual authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of law, and includes corrections, probation, parole, and judicial officers;

(7) the term ''Office of Victims of Crime'' means the Office of Victims of Crime of the Department of Justice;

(8) the term ''State'' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands;

(9) the term ''unit of local government'' means any—

(A) city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State; or

(B) Indian tribe;

(10) the term ''victim''—

(A) means an individual harmed as a result of a commission of an offense; and

(B) in the case of a victim who is less than 18 years of age, incompetent, incapacitated, or deceased—

(i) the legal guardian of the victim;

(ii) a representative of the estate of the victim;

(iii) a member of the family of the victim; or

(iv) any other person appointed by the court to represent the victim, except that in no event shall a defendant be appointed as the representative or guardian of the victim; and

(11) the term ''qualified private entity'' means a private entity that meets such requirements as the Attorney General may establish.

TITLE I—VICTIM RIGHTS

Subtitle A—Amendments to Title 18, United States Code

SEC. 101. RIGHT TO BE NOTIFIED OF DETENTION HEARING AND RIGHT TO BE HEARD ON THE ISSUE OF DETENTION.

Section 3142 of title 18, United States Code, is amended by adding at the end the following:

''(k) NOTIFICATION OF RIGHT TO BE HEARD.—

''(1) IN GENERAL.—In any case involving a defendant who is arrested for an offense involving death or bodily injury to any person, a threat of death or bodily injury to any person, a sexual assault, or an attempted sexual assault, in which a detention hearing is scheduled pursuant to subsection (f)—

''(A) the Government shall make a reasonable effort to notify the victim of the hearing, and of the right of the victim to be heard on the issue of detention; and

''(B) at the hearing under subsection (f), the court shall inquire of the Government as to whether the efforts at notification of the victim under subparagraph (A) were successful and, if so, whether the victim wishes to be heard on the issue of detention and, if so, shall afford the victim such an opportunity.

''(2) LIMITATION.—Upon motion of either party that identification of the defendant by the victim is a fact in dispute, and that no means of verification has been attempted, the Court shall use appropriate measures to protect integrity of the identification process.

''(3) DEFINITION OF VICTIM.—In this subsection, the term 'victim' means any individual against whom an offense involving death or bodily injury to any person, a threat of death or bodily injury to any person, a sexual assault, or an attempted sexual assault, has been committed and also includes the parent or legal guardian of a victim who is less than 18 years of age, or incompetent, or 1 or more family members designated by the court if the victim is deceased or incapacitated.''.

SEC. 102. RIGHT TO A SPEEDY TRIAL AND PROMPT DISPOSITION FREE FROM UNREASONABLE DELAY.

Section 3161(h)(8)(B) of title 18, United States Code, is amended by adding at the end the following:

''(v) The interests of the victim (or the family of a victim who is deceased or incapacitated) in the prompt and appropriate disposition of the case, free from unreasonable delay.''.

SEC. 103. ENHANCED RIGHT TO ORDER OF RESTITUTION.

Section 3664(d)(2)(A)(iv) of title 18, United States Code, is amended by inserting '', and the right of the victim (or the family of a victim who is deceased or incapacitated) to attend the sentencing hearing and to make a

statement to the court at the sentencing hearing'' before the semicolon.

SEC. 104. ENHANCED RIGHT TO BE NOTIFIED OF ESCAPE OR RELEASE FROM PRISON.

Section 503(c)(5)(B) of the Victims' Rights and Restitution Act of 1990 (42 U.S.C. 10607(c)(5)(B)) is amended by inserting after ''offender'' the following: '', including escape, work release, furlough, or any other form of release from a psychiatric institution or other facility that provides mental health services to offenders''.

SEC. 105. ENHANCED PENALTIES FOR WITNESS TAMPERING.

Section 1512 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ''as provided in paragraph (2)'' and inserting ''as provided in paragraph (3)'';

(B) by redesignating paragraph (2) as paragraph (3);

(C) by inserting after paragraph (1) the following:

''(2) Whoever uses physical force or the threat of physical force, or attempts to do so, with intent to—

''(A) influence, delay, or prevent the testimony of any person in an official proceeding;

''(B) cause or induce any person to—

''(i) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

''(ii) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

''(iii) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; and

''(iv) be absent from an official proceeding to which such person has been summoned by legal process; or

''(C) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;

shall be punished as provided in paragraph (3).''; and

(D) in paragraph (3)(B), as redesignated, by striking ''in the case of'' and all that follows before the period and inserting ''an attempt to murder, the use of physical force, the threat of physical force, or an attempt to do so, imprisonment for not more than 20 years''; and

(2) in subsection (b), by striking ''or physical force''.

Subtitle B—Amendments to Federal Rules of Criminal Procedure

SEC. 121. RIGHT TO BE NOTIFIED OF PLEA AGREEMENT AND TO BE HEARD ON MERITS OF THE PLEA AGREEMENT.

(a) IN GENERAL.—Rule 11 of the Federal Rules of Criminal Procedure is amended by adding at the end the following:

''(i) RIGHTS OF VICTIMS.—

''(1) IN GENERAL.—In any case involving a defendant who is charged with an offense involving death or bodily injury to any person, a threat of death or bodily injury to any person, a sexual assault, or an attempted sexual assault—

''(A) the Government, prior to a hearing at which a plea of guilty or nolo contendere is entered, shall make a reasonable effort to notify the victim of—

''(i) the date and time of the hearing; and

''(ii) the right of the victim to attend the hearing and to address the court; and

''(B) if the victim attends a hearing described in subparagraph (A), the court, before accepting a plea of guilty or nolo contendere, shall afford the victim an opportunity to be heard on the proposed plea agreement.

''(2) DEFINITION OF VICTIM.—In this subsection, the term 'victim' means any individual against whom an offense involving death or bodily injury to any person, a threat of death or bodily injury to any person, a sexual assault, or an attempted sexual assault, has been committed and also includes the parent or legal guardian of a victim who is less than 18 years of age, or incompetent, or 1 or more family members designated by the court if the victim is deceased or incapacitated.

''(4) MASS VICTIM CASES.—In any case involving more than 15 victims, the court, after consultation with the Government and the victims, may appoint a number of victims to serve as representatives of the victims' interests.''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall become effective as provided in paragraph (3).

(2) ACTION BY JUDICIAL CONFERENCE.—

(A) RECOMMENDATIONS.—Not later than 180 days after the date of enactment of this Act, the Judicial Conference shall submit to Congress a report containing recommendations for amending the Federal Rules of Criminal Procedure to provide enhanced opportunities for victims of offenses involving death or bodily injury to any person, the threat of death or bodily injury to any person, a sexual assault, or an attempted sexual assault, to be heard on the issue of whether or not the court should accept a plea of guilty or nolo contendere.

(B) INAPPLICABILITY OF OTHER LAW.—Chapter 131 of title 28, United States Code, does not apply to any recommendation made by the Judicial Conference under this paragraph.

(3) CONGRESSIONAL ACTION.—Except as otherwise provided by law, if the Judicial Conference—

(A) submits a report in accordance with paragraph (2) containing recommendations described in that paragraph, and those recommendations are the same as the amendment made by subsection (a), then the amendment made by subsection (a) shall become effective 30 days after the date on which the recommendations are submitted to Congress under paragraph (2);

(B) submits a report in accordance with paragraph (2) containing recommendations described in that paragraph, and those recommendations are different in any respect from the amendment made by subsection (a), the recommendations made pursuant to paragraph (2) shall become effective 180 days after the date on which the recommendations are submitted to Congress under paragraph (2), unless an Act of Congress is passed overturning the recommendations; and

(C) fails to comply with paragraph (2), the amendment made by subsection (a) shall become effective 360 days after the date of enactment of this Act.

(4) APPLICATION.—Any amendment made pursuant to this section (including any amendment made pursuant to the recommendations of the United States Sentencing Commission under paragraph (2)) shall apply in any proceeding commenced on or after the effective date of the amendment.

SEC. 122. ENHANCED RIGHTS OF NOTIFICATION AND ALLOCUTION AT SENTENCING.

(a) IN GENERAL.—Rule 32 of the Federal Rules of Criminal Procedure is amended—

(1) in subsection (b)—

(A) in paragraph (4), by striking subparagraph (D) and inserting the following:

''(D) a victim impact statement, identifying, to the maximum extent practicable—

''(i) each victim of the offense (except that such identification shall not include information relating to any telephone number, place of employment, or residential address of any victim);

''(ii) an itemized account of any economic loss suffered by each victim as a result of the offense;

''(iii) any physical injury suffered by each victim as a result of the offense, along with its seriousness and permanence;

''(iv) a description of any change in the personal welfare or familial relationships of each victim as a result of the offense; and

''(v) a description of the impact of the offense upon each victim and the recommendation of each victim regarding an appropriate sanction for the defendant;''; and

(B) by adding at the end the following:

''(7) VICTIM IMPACT STATEMENTS.—

''(A) IN GENERAL.—Any probation officer preparing a presentence report shall—

''(i) make a reasonable effort to notify each victim of the offense that such a report is being prepared and the purpose of such report; and

''(ii) provide the victim with an opportunity to submit an oral or written statement, or a statement on audio or videotape outlining the impact of the offense upon the victim.

''(B) USE OF STATEMENTS.—Any written statement submitted by a victim under subparagraph (A) shall be attached to the presentence report and shall be provided to the sentencing court and to the parties.'';

(2) in subsection (c)(1), by adding at the end the following: ''Before sentencing in any case in which a defendant has been charged with or found guilty of an offense involving death or bodily injury to any person, a threat of death or bodily injury to any person, a sexual assault, or an attempted sexual assault, the Government shall make a reasonable effort to notify the victim (or the family of a victim who is deceased) of the time and place of sentencing and of their right to attend and to be heard.''; and

(3) in subsection (f), by inserting ''the right to notification and to submit a statement under subdivision (b)(7), the right to notification and to be heard under subdivision (c)(1), and'' before ''the right of allocution''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsection (a) shall become effective as provided in paragraph (3).

(2) ACTION BY JUDICIAL CONFERENCE.—

(A) RECOMMENDATIONS.—Not later than 180 days after the date of enactment of this Act, the Judicial Conference shall submit to Congress a report containing recommendations for amending the Federal Rules of Criminal Procedure to provide enhanced opportunities for victims of offenses involving death or bodily injury to any person, the threat of death or bodily injury to any person, a sexual assault, or an attempted sexual assault, to participate during the presentencing phase of the criminal process.

(B) INAPPLICABILITY OF OTHER LAW.—Chapter 131 of title 28, United States Code, does not apply to any recommendation made by the Judicial Conference under this paragraph.

(3) CONGRESSIONAL ACTION.—Except as otherwise provided by law, if the Judicial Conference—

(A) submits a report in accordance with paragraph (2) containing recommendations described in that paragraph, and those recommendations are the same as the amendments made by subsection (a), then the amendments made by subsection (a) shall become effective 30 days after the date on which the recommendations are submitted to Congress under paragraph (2);

(B) submits a report in accordance with paragraph (2) containing recommendations described in that paragraph, and those recommendations are different in any respect from the amendments made by subsection (a), the recommendations made pursuant to paragraph (2) shall become effective 180 days after the date on which the recommendations are submitted to Congress under paragraph (2), unless an Act of Congress is passed overturning the recommendations; and

(C) fails to comply with paragraph (2), the amendments made by subsection (a) shall become effective 360 days after the date of enactment of this Act.

(4) APPLICATION.—Any amendment made pursuant to this section (including any amendment made pursuant to the recommendations of the United States Sentencing Commission under paragraph (2)) shall apply in any proceeding commenced on or after the effective date of the amendment.

SEC. 123. RIGHTS OF NOTIFICATION AND ALLOCUTION AT A PROBATION REVOCATION HEARING.

(a) IN GENERAL.—Rule 32.1 of the Federal Rules of Criminal Procedure is amended by adding at the end the following:

''(d) RIGHTS OF VICTIMS.—

''(1) IN GENERAL.—At any hearing pursuant to subsection (a)(2) involving one or more persons who have been convicted of an offense involving death or bodily injury to any person, a threat of death or bodily injury to any person, a sexual assault, or an attempted sexual assault, the Government shall make reasonable effort to notify the victim of the offense (and the victim of any new charges giving rise to the hearings), of—

''(A) the date and time of the hearing; and

''(B) the right of the victim to attend the hearing and to address the court regarding whether the terms or conditions of probation or supervised release should be modified.

''(2) DUTIES OF COURT AT HEARING.—At any hearing described in paragraph (1) at which a victim is present, the court shall—

''(A) address each victim personally; and

''(B) afford the victim an opportunity to be heard on the proposed terms or conditions of probation or supervised release.

''(3) DEFINITION OF VICTIM.—In this rule, the term 'victim' means any individual against whom an offense involving death or bodily injury to any person, a threat of death or bodily injury to any person, a sexual assault, or an attempted sexual assault, has been committed and a hearing pursuant to subsection (a)(2) is conducted, including—

''(A) a parent or legal guardian of the victim, if the victim is less than 18 years of age or is incompetent; or

''(B) 1 or more family members or relatives of the victim designated by the court, if the victim is deceased or incapacitated.''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall become effective as provided in paragraph (3).

(2) ACTION BY JUDICIAL CONFERENCE.—

(A) RECOMMENDATIONS.—Not later than 180 days after the date of enactment of this Act, the Judicial Conference shall submit to Congress a report containing recommendations for amending the Federal Rules of Criminal Procedure to ensure that reasonable efforts are made to notify victims of offenses involving death or bodily injury to any person, or the threat of death or bodily injury to any person, of any revocation hearing held pursuant to rule 32.1(a)(2) of the Federal Rules of Criminal Procedure.

(B) INAPPLICABILITY OF OTHER LAW.—Chapter 131 of title 28, United States Code, does not apply to any recommendation made by the Judicial Conference under this paragraph.

(3) CONGRESSIONAL ACTION.—Except as otherwise provided by law, if the Judicial Conference—

(A) submits a report in accordance with paragraph (2) containing recommendations described in that paragraph, and those recommendations are the same as the amendment made by subsection (a), then the amendment made by subsection (a) shall become effective 30 days after the date on which the recommendations are submitted to Congress under paragraph (2);

(B) submits a report in accordance with paragraph (2) containing recommendations described in that paragraph, and those recommendations are different in any respect from the amendment made by subsection (a), the recommendations made pursuant to paragraph (2) shall become effective 180 days after the date on which the recommendations are submitted to Congress under paragraph (2), unless an Act of Congress is passed overturning the recommendations; and

(C) fails to comply with paragraph (2), the amendment made by subsection (a) shall become effective 360 days after the date of enactment of this Act.

(4) APPLICATION.—Any amendment made pursuant to this section (including any amendment made pursuant to the recommendations of the United States Sentencing Commission under paragraph (2)) shall apply in any proceeding commenced on or after the effective date of the amendment.

Subtitle C—Amendment to Federal Rules of Evidence

SEC. 131. ENHANCED RIGHT TO BE PRESENT AT TRIAL.

(a) IN GENERAL.—Rule 615 of the Federal Rules of Evidence is amended—

(1) by striking ''At the request'' and inserting the following:

''(a) IN GENERAL.—Except as provided in subsection (b), at the request'';

(2) by striking ''This rule'' and inserting the following:

''(b) EXCEPTIONS.—Subsection (a)'';

(3) by striking ''exclusion of (1) a party'' and inserting the following: ''exclusion of—

''(1) a party'';

(4) by striking ''person, or (2) an officer'' and inserting the following: ''person;

''(2) an officer'';

(5) by striking ''attorney, or (3) a person'' and inserting the following: ''attorney;

''(3) a person'';

(6) by striking the period at the end and inserting ''; or''; and

(7) by adding at the end the following:

''(4) a person who is a victim (or a member of the immediate family of a victim who is deceased or incapacitated) of an offense involving death or bodily injury to any person, a threat of death or bodily injury to any person, a sexual assault, or an attempted sexual assault, for which a defendant is being tried in a criminal trial, unless the court concludes that—

''(A) the testimony of the person will be materially affected by hearing the testimony of other witnesses, and the material effect of hearing the testimony of other witnesses on the testimony of that person will result in unfair prejudice to any party; or

''(B) due to the large number of victims or family members of victims who may be called as witnesses, permitting attendance in the courtroom itself when testimony is being heard is not feasible.

''(c) DISCRETION OF COURT; EFFECT ON OTHER LAW.—Nothing in subsection (b)(4) shall be construed—

''(1) to limit the ability of a court to exclude a witness, if the court determines that such action is necessary to maintain order during a court proceeding; or

''(2) to limit or otherwise affect the ability of a witness to be present during court proceedings pursuant to section 3510 of title 18, United States Code.''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsection (a) shall become effective as provided in paragraph (3).

(2) ACTION BY JUDICIAL CONFERENCE.—

(A) RECOMMENDATIONS.—Not later than 180 days after the date of enactment of this Act, the Judicial Conference shall submit to Congress a report containing recommendations for amending the Federal Rules of Evidence to provide enhanced opportunities for victims of offenses involving death or bodily injury to any person, or the threat of death or bodily injury to any person, to attend judicial proceedings, even if they may testify as a witness at the proceeding.

(B) INAPPLICABILITY OF OTHER LAW.—Chapter 131 of title 28, United States Code, does not apply to any recommendation made by the Judicial Conference under this paragraph.

(3) CONGRESSIONAL ACTION.—Except as otherwise provided by law, if the Judicial Conference—

(A) submits a report in accordance with paragraph (2) containing recommendations described in that paragraph, and those recommendations are the same as the amendments made by subsection (a), then the amendments made by subsection (a) shall become effective 30 days after the date on which the recommendations are submitted to Congress under paragraph (2);

(B) submits a report in accordance with paragraph (2) containing recommendations described in that paragraph, and those recommendations are different in any respect from the amendments made by subsection (a), the recommendations made pursuant to paragraph (2) shall become effective 180 days after the date on which the recommendations are submitted to Congress under paragraph (2), unless an Act of Congress is passed overturning the recommendations; and

(C) fails to comply with paragraph (2), the amendments made by subsection (a) shall become effective 360 days after the date of enactment of this Act.

(4) APPLICATION.—Any amendment made pursuant to this section (including any amendment made pursuant to the recommendations of the United States Sentencing Commission under paragraph (2)) shall apply in any proceeding commenced on or after the effective date of the amendment.

Subtitle D—Remedies for Noncompliance

SEC. 141. REMEDIES FOR NONCOMPLIANCE.

(a) GENERAL LIMITATION.—Any failure to comply with any amendment made by this Act shall not give rise to a claim for damages, or any other action against the United States, or any employee of the United States, any court official or officer of the court, or an entity contracting with the United States, or any action seeking a rehearing or other reconsideration of action taken in connection with a defendant.

(b) REGULATIONS TO ENSURE COMPLIANCE.—

(1) IN GENERAL.—Notwithstanding subsection (a), not later than 1 year after the date of enactment of this Act, the Attorney General and the Chairman of the United States Parole Commission shall promulgate regulations to implement and enforce the amendments made by this title.

(2) CONTENTS.—The regulations promulgated under paragraph (1) shall—

(A) contain disciplinary sanctions, including suspension or termination from employment, for employees of the Department of Justice (including employees of the United States Parole Commission) who willfully or repeatedly violate the amendments made by this title, or willfully or repeatedly refuse or fail to comply with provisions of Federal law

pertaining to the treatment of victims of crime;

(B) include an administrative procedure through which parties can file formal complaints with the Department of Justice alleging violations of the amendments made by this title;

(C) provide that a complainant is prohibited from recovering monetary damages against the United States, or any employee of the United States, either in his official or personal capacity; and

(D) provide that the Attorney General, or the designee of the Attorney General, shall the ultimate arbiter of the complaint, and there shall be no judicial review of the final decision of the Attorney General by a complainant.

TITLE II—VICTIM ASSISTANCE INITIATIVES

SEC. 201. INCREASE IN VICTIM ASSISTANCE PERSONNEL.

There are authorized to be appropriated such sums as may be necessary to enable the Attorney General to—

(1) hire 50 full-time or full-time equivalent employees to serve victim-witness advocates to provide assistance to victims of any criminal offense investigated by any department or agency of the Federal Government; and

(2) provide grants through the Office of Victims of Crime to qualified private entities to fund 50 victim-witness advocate positions within those organizations.

SEC. 202. INCREASED TRAINING FOR STATE AND LOCAL LAW ENFORCEMENT, STATE COURT PERSONNEL, AND OFFICERS OF THE COURT TO RESPOND EFFECTIVELY TO THE NEEDS OF VICTIMS OF CRIME.

Notwithstanding any other provision of law, amounts collected pursuant to sections 3729 through 3731 of title 31, United States Code (commonly known as the ''False Claims Act''), may be used by the Office of Victims of Crime to make grants to States, units of local government, and qualified private entities, to provide training and information to prosecutors, judges, law enforcement officers, probation officers, and other officers and employees of Federal and State courts to assist them in responding effectively to the needs of victims of crime.

SEC. 203. INCREASED RESOURCES FOR STATE AND LOCAL LAW ENFORCEMENT AGENCIES, COURTS, AND PROSECUTORS' OFFICES TO DEVELOP STATE-OF-THE-ART SYSTEMS FOR NOTIFYING VICTIMS OF CRIME OF IMPORTANT DATES AND DEVELOPMENTS.

(a) IN GENERAL.—Subtitle A of title XXIII of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322; 108 Stat. 2077) is amended by adding at the end the following:

''SEC. 230103. STATE-OF-THE-ART SYSTEMS FOR NOTIFYING VICTIMS OF CRIME OF IMPORTANT DATES AND DEVELOPMENTS.

''(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Office of Victims of Crime of the Department of Justice such sums as may be necessary for grants to State and local prosecutors' offices, State courts, county jails, State correctional institutions, and qualified private entities, to develop and implement state-of-the-art systems for notifying victims of crime of important dates and developments relating to the criminal proceedings at issue.

''(b) FALSE CLAIMS ACT.—Notwithstanding any other provision of law, amounts collected pursuant to sections 3729 through 3731 of title 31, United States Code (commonly known as the 'False Claims Act'), may be used for grants under this section.''.

(b) VIOLENT CRIME REDUCTION TRUST FUND.—Section 310004(d) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14214(d)) is amended—

(1) in the first paragraph designated as paragraph (15) (relating to the definition of the term ''Federal law enforcement program''), by striking ''and'' at the end;

(2) in the first paragraph designated as paragraph (16) (relating to the definition of the term ''Federal law enforcement program''), by striking the period at the end and inserting ''; and''; and

(3) by inserting after the first paragraph designated as paragraph (16) (relating to the definition of the term ''Federal law enforcement program'') the following:

''(17) section 230103.''.

SEC. 204. PILOT PROGRAMS TO ESTABLISH OMBUDSMAN PROGRAMS FOR CRIME VICTIMS.

(a) DEFINITIONS.—In this section:

(1) DIRECTOR.—The term ''Director'' means the Director of the Office of Victims of Crime.

(2) OFFICE.—The term ''Office'' means the Office of Victims of Crime.

(3) QUALIFIED PRIVATE ENTITY.—The term ''qualified private entity'' means a private entity that meets such requirements as the Attorney General, acting through the Director, may establish.

(4) QUALIFIED UNIT OF STATE OR LOCAL GOVERNMENT.—The term ''qualified unit of State or local government'' means a unit or a State or local government that meets such requirements as the Attorney General, acting through the Director, may establish.

(5) VOICE CENTERS.—The term ''VOICE Centers'' means the Victim Ombudsman Information Centers established under the program under subsection (b).

(b) PILOT PROGRAMS.—

(1) IN GENERAL.—Not later than 12 months after the date of enactment of this Act, the Attorney General, acting through the Director, shall establish and carry out a program to provide for pilot programs to establish and operate Victim Ombudsman Information Centers in each of the following States:

(A) Iowa.
(B) Massachusetts.
(C) Ohio.
(D) Tennessee.
(E) Utah.
(F) Vermont.

(2) AGREEMENTS.—

(A) IN GENERAL.—The Attorney General, acting through the Director, shall enter into an agreement with a qualified private entity or unit of State or local government to conduct a pilot program referred to in paragraph (1). Under the agreement, the Attorney General, acting through the Director, shall provide for a grant to assist the qualified private entity or unit of State or local government in carrying out the pilot program.

(B) CONTENTS OF AGREEMENT.—The agreement referred to in subparagraph (A) shall specify that—

(i) the VOICE Center shall be established in accordance with this section; and

(ii) except with respect to meeting applicable requirements of this section concerning carrying out the duties of a VOICE Center under this section (including the applicable reporting duties under subsection (c) and the terms of the agreement) each VOICE Center shall operate independently of the Office; and

(C) NO AUTHORITY OVER DAILY OPERATIONS.—The Office shall have no supervisory or decisionmaking authority over the day-to-day operations of a VOICE Center.

(c) OBJECTIVES.—

(1) MISSION.—The mission of each VOICE Center established under a pilot program under this section shall be to assist a victim of a Federal or State crime to ensure that the victim—

(A) is fully apprised of the rights of that victim under applicable Federal or State law; and

(B) participates in the criminal justice process to the fullest extent of the law.

(2) DUTIES.—The duties of a VOICE Center shall include—

(A) providing information to victims of Federal or State crime regarding the right of those victims to participate in the criminal justice process (including information concerning any right that exists under applicable Federal or State law);

(B) identifying and responding to situations in which the rights of victims of crime under applicable Federal or State law may have been violated;

(C) attempting to facilitate compliance with Federal or State law referred to in subparagraph (B);

(D) educating police, prosecutors, Federal and State judges, officers of the court, and employees of jails and prisons concerning the rights of victims under applicable Federal or State law; and

(E) taking measures that are necessary to ensure that victims of crime are treated with fairness, dignity, and compassion throughout the criminal justice process.

(d) OVERSIGHT.—

(1) TECHNICAL ASSISTANCE.—The Office may provide technical assistance to each VOICE Center.

(2) ANNUAL REPORT.—Each qualified private entity or qualified unit of State or local government that carries out a pilot program to establish and operate a VOICE Center under this section shall prepare and submit to the Director, not later than 1 year after the VOICE Center is established, and annually thereafter, a report that—

(A) describes in detail the activities of the VOICE Center during the preceding year; and

(B) outlines a strategic plan for the year following the year covered under subparagraph (A).

(e) REVIEW OF PROGRAM EFFECTIVENESS.—

(1) GAO STUDY.—Not later than 2 years after the date on which each VOICE Center established under a pilot program under this section is fully operational, the Comptroller General of the United States shall conduct a review of each pilot program carried out under this section to determine the effectiveness of the VOICE Center that is the subject of the pilot program in carrying out the mission and duties described in subsection (c).

(2) OTHER STUDIES.—Not later than 2 years after the date on which each VOICE Center established under a pilot program under this section is fully operational, the Attorney General, acting through the Director, shall enter into an agreement with 1 or more private entities that meet such requirements the Attorney General, acting through the Director, may establish, to study the effectiveness of each VOICE Center established by a pilot program under this section in carrying out the mission and duties described in subsection (c).

(f) TERMINATION DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), a pilot program established under this section shall terminate on the date that is 4 years after the date of enactment of this Act.

(2) RENEWAL.—If the Attorney General determines that any of the pilot programs established under this section should be renewed for an additional period, the Attorney General may renew that pilot program for a period not to exceed 2 years.

(g) FUNDING.—Notwithstanding any other provision of law, an aggregate amount not to exceed $5,000,000 of the amounts collected

pursuant to sections 3729 through 3731 of title 31, United States Code (commonly known as the ''False Claims Act''), may be used by the Director to make grants under subsection (b).

SEC. 205. AMENDMENTS TO VICTIMS OF CRIME ACT OF 1984.

(a) CRIME VICTIMS FUND.—Section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601) is amended—

(1) in subsection (b)—

(A) in paragraph (3), by striking ''and'' at the end;

(B) in paragraph (4), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(5) any gifts, bequests, and donations from private entities or individuals.''; and

(2) in subsection (d)—

(A) by striking paragraph (1) and inserting the following:

''(1) All unobligated balances transferred to the judicial branch for administrative costs to carry out functions under sections 3611 and 3612 of title 18, United States Code, shall be returned to the Crime Victims Fund and may be used by the Director to improve services for crime victims in the Federal criminal justice system.''; and

(B) in paragraph (4), by adding at the end the following:

''(C) States that receive supplemental funding to respond to incidents or terrorism or mass violence under this section shall be required to return to the Crime Victims Fund for deposit in the reserve fund, amounts subrogated to the State as a result of third-party payments to victims.''.

(b) CRIME VICTIM COMPENSATION.—Section 1403 of the Victims of Crime Act of 1984 (42 U.S.C. 10602) is amended—

(1) in subsection (a)—

(A) in each of paragraphs (1) and (2), by striking ''40'' and inserting ''60''; and

(B) in paragraph (3), by inserting ''and evaluation'' after ''administration''; and

(2) in subsection (b)(7), by inserting ''because the identity of the offender was not determined beyond a reasonable doubt in a criminal trial, because criminal charges were not brought against the offender, or'' after ''deny compensation to any victim''.

(c) CRIME VICTIM ASSISTANCE.—Section 1404 of the Victims of Crime Act of 1984 (42 U.S.C. 10603) is amended—

(1) in subsection (c)—

(A) in paragraph (1)—

(i) by striking the comma after ''Director'';

(ii) by inserting ''or enter into cooperative agreements'' after ''make grants'';

(iii) by striking subparagraph (A) and inserting the following:

''(A) for demonstration projects, evaluation, training, and technical assistance services to eligible organizations;'';

(iv) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(v) by adding at the end the following:

''(C) training and technical assistance that address the significance of and effective delivery strategies for providing long-term psychological care.''; and

(B) in paragraph (3)—

(i) in subparagraph (C), by striking ''and'' at the end;

(ii) in subparagraph (D), by striking the period at the end and inserting ''; and''; and

(iii) by adding at the end the following:

''(E) use funds made available to the Director under this subsection—

''(i) for fellowships and clinical internships; and

''(ii) to carry out programs of training and special workshops for the presentation and dissemination of information resulting from demonstrations, surveys, and special projects.''; and

(2) in subsection (d)—

(A) by striking paragraph (1) and inserting the following:

''(1) the term 'State' includes—

''(A) the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, and any other territory or possession of the United States; and

''(B) for purposes of a subgrant under subsection (a)(1) or a grant or cooperative agreement under subsection (c)(1), the United States Virgin Islands and any agency of the government of the District of Columbia or the Federal Government performing law enforcement functions in and on behalf of the District of Columbia.'';

(B) in paragraph (2)—

(i) in subparagraph (C), by striking ''and'' at the end; and

(ii) by adding at the end the following:

''(E) public awareness and education and crime prevention activities that promote, and are conducted in conjunction with, the provision of victim assistance; and

''(F) for purposes of an award under subsection (c)(1)(A), preparation, publication, and distribution of informational materials and resources for victims of crime and crime victims organizations.'';

(C) by striking paragraph (4) and inserting the following:

''(4) the term 'crisis intervention services' means counseling and emotional support including mental health counseling, provided as a result of crisis situations for individuals, couples, or family members following and related to the occurrence of crime;'';

(D) in paragraph (5), by striking the period at the end and inserting ''; and''; and

(E) by adding at the end the following:

''(6) for purposes of an award under subsection (c)(1), the term 'eligible organization' includes any—

''(A) national or State organization with a commitment to developing, implementing, evaluating, or enforcing victims' rights and the delivery of services;

''(B) State agency or unit of local government;

''(C) tribal organization;

''(D) organization—

''(i) described in section 501(c) of the Internal Revenue Code of 1986; and

''(ii) exempt from taxation under section 501(a) of such Code; or

''(E) other entity that the Director determines to be appropriate.''.

(d) COMPENSATION AND ASSISTANCE TO VICTIMS OF TERRORISM OF MASS VIOLENCE.—Section 1404B of the Victims of Crime Act of 1984 (42 U.S.C. 10603b) is amended—

(1) in subsection (a), by striking ''1404(a)'' and inserting ''1402(d)(4)(B)''; and

(2) in subsection (b), by striking ''1404(d)(4)(B)'' and inserting ''1402(d)(4)(B)''.

SEC. 206. SERVICES FOR VICTIMS OF CRIME AND DOMESTIC VIOLENCE.

Section 504 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1996 (110 Stat. 1321–53) may not be construed to prohibit a recipient (as that term is used in that section) from using funds derived from a source other than the Legal Services Corporation to provide related legal assistance (as defined in section 502(b) of Public Law 105–119 (111 Stat. 2511)) to any person with whom an alien (as that term is used in subsection (a)(11) of that section) has a relationship covered by the domestic violence laws of the State in which the alien resides or in which an incidence of violence occurred.

SEC. 207. PILOT PROGRAM TO STUDY EFFECTIVENESS OF RESTORATIVE JUSTICE APPROACH ON BEHALF OF VICTIMS OF CRIME.

(a) IN GENERAL.—Notwithstanding any other provision of law, amounts collected pursuant to sections 3729 through 3731 of title 31, United States Code (commonly known as the ''False Claims Act''), may be used by the Office of Victims of Crime to make grants to States, units of local government, and qualified private entities for the establishment of pilot programs that implement balanced and restorative justice models.

(b) DEFINITION OF BALANCED AND RESTORATIVE JUSTICE MODEL.—In this section, the term ''balanced and restorative justice model'' means an approach to criminal justice that promotes the maximum degree of involvement by a victim, offender, and the community served by a criminal justice system by allowing the criminal justice system and related criminal justice agencies to improve the capacity of the system and agencies to—

(1) protect the community served by the system and agencies; and

(2) ensure accountability of the offender and the system.

SEC. 208. VICTIMS OF TERRORISM.

(a) IN GENERAL.—Section 1404B of the Victims of Crime Act of 1984 (42 U.S.C. 10603b) is amended to read as follows:

''SEC. 1404B. COMPENSATION AND ASSISTANCE TO VICTIMS OF TERRORISM OR MASS VIOLENCE.

''(a) IN GENERAL.—The Director may make grants, as provided in either section 1402(d)(4)(B) or 1404—

''(1) to States, which shall be used for eligible crime victim compensation and assistance programs for the benefit of victims described in subsection (b); and

''(2) to victim service organizations, and public agencies that provide emergency or ongoing assistance to victims of crime, which shall be used to provide, for the benefit of victims described in subsection (b)—

''(A) emergency relief (including compensation, assistance, and crisis response) and other related victim services; and

''(B) emergency response training and technical assistance.

''(b) VICTIMS DESCRIBED.—Victims described in this subsection are victims of a terrorist act or mass violence, whether occurring within or outside the United States, who are—

''(1) citizens or employees of the United States; and

''(2) not eligible for compensation under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986.''.

(b) APPLICABILITY.—The amendment made by this section applies to any terrorist act or mass violence occurring on or after December 20, 1989.

SECTION-BY-SECTION SUMMARY OF THE CRIME VICTIMS ASSISTANCE ACT

TITLE I—VICTIMS RIGHTS IN THE FEDERAL SYSTEM

Title I reforms federal law and the federal rules of evidence to provide enhanced protections to victims of federal crime, from the time of the defendant's arrest through sentencing, including post-sentencing hearings.

Subtitle A. Amendments to Title 18

Sec. 101. Right to be Notified of Detention Hearing and Right to be Heard on the Issue of Detention

Section 101 amends federal law to establish a victim's right to be notified of a detention hearing, to attend the detention hearing, and be heard on the issue of detention. No such right currently exists in federal law.

In cases where identification of the defendant remains at issue, section 101 provides flexibility to the presiding judge to protect the integrity of the identification.

Sec. 102. Right to a Speedy Trial and Prompt Disposition Free From Unreasonable Delay

Section 102 amends the Speedy Trial Act to require the Court to take into account the interests of the victim in the prompt and appropriate disposition of the case, free from unreasonable delay when considering a motion to continue a trial.

Sec. 103. Enhanced Right to Order of Restitution

Section 103 amends federal law to ensure that the victim has the right to attend a sentencing hearing and to make a statement to the court at sentencing.

Sec. 104. Right to be Notified of Escape or Release from Prison

Section 104 amends the Victims Rights and Restitution Act of 1990 to expand the victim's right to be notified of an offender's release or escape from custody. Specifically, this section clarifies that a victim has the right to be notified of the offender's escape or release from a psychiatric institution. Current law does not address this potentially critical issue.

Sec. 105. Enhanced Penalties for Witness Tampering

Section 105 amends a federal witness tampering statute (18 U.S.C. §1512) to raise the statutory maximum penalties in witness tampering cases involving the use or threatened use of physical force from 10 years to 20 years.

Subtitle B. Amendments to Federal Rules of Criminal Procedure

Sec. 121. Right to be Notified of Plea Agreement and to be Heard on Merits of the Plea Agreement

Section 121 (a) amends Rule 11 of the Federal Rules of Criminal Procedure (governing pleas) to require the government to make a reasonable effort to notify the victim of an upcoming plea hearing, and of the victim's right to be heard at the plea hearing. In cases involving more than 15 victims, the Court, after consultation with the government and the victims, may appoint a number of victims as representatives of the victims' interests.

Section 121 (b) provides a timetable for the implementation of the amendments to Rule 11, taking into consideration the recommendations of the United States Judicial Conference.

Sec. 122. Enhanced Rights of Notification and Allocution at Sentencing

Section 122 (a) amends Rule 32 of the Federal Rules of Criminal Procedures (Sentencing) to provide for enhanced opportunities for victims to participate in the criminal sentencing process. Specifically, section 122(a) amends Rule 32 to require that presentence reports contain very specific information about victim impact. Probation officers are required to make reasonable efforts to notify the victim about the preparation of the presentence reports, and must provide victims with an opportunity to submit oral or written statements, including statements on audio or videotape, describing the impact of the offense on the victim. In addition, Rule 32 is amended to require the government to make a reasonable effort to notify the victim of the time and place of sentencing, and the victim's right to be heard at sentencing. These provisions are intended to insure that victims remain actively involved throughout the criminal process.

Section 122(b) provides a timetable for the implementation of the amendments to Rule 32, taking into consideration the recommendations of the United States Judicial Conference.

Sec. 123. Rights of Notification and Allocution At a Probation Revocation Hearing

Section 123(a) amends Rule 32.1 of the Federal Rules of Criminal Procedure (Probation Revocation or Modification of Supervised Release) to provide enhanced opportunities for victims to be notified of and participate in revocation hearings. Often times, when a defendant is taken into custody for violating conditions of release or conditions of probation, a victim is unaware of these important developments. Section 123 (a) amends Rule 32.1 to direct the government to make a reasonable effort to notify the victim of the impending revocation hearing, and to notify the victim of his or her right to attend the hearing and address the court.

Section 123(b) provides a timetable for the implementation of the amendments to Rule 32.1, taking into consideration the recommendations of the United States Judicial Conference.

Subtitle C. Amendment to Federal Rules of Evidence

Sec. 131. Enhanced Right to Be Present At Trial

Section 131 amends Rule 615 of the Federal Rules of Evidence (Witness Sequestration) to establish a statutory right for crime victims to attend court proceedings, including trials. Currently, victims are routinely prevented from being present at trials, except during their own testimony. Section 131(a) amends Rule 615 to permit crime victims to attend trials and other court proceedings, unless the court makes a finding that the testimony of the person will be materially affected by hearing the testimony of other witnesses, and the material effect will result in unfair prejudice to any party, or that due to large numbers of victims or family members of victims who may be called as witnesses, permitting attendance in the courtroom when testimony is being heard is not feasible.

Section 131(b) provides a timetable for the implementation of the amendment to Rule 615, taking into consideration the recommendations of the United States Judicial Conference.

Subtitle D. Remedies for Noncompliance

Sec. 141. Remedies for Noncompliance

Section 141 establishes a mechanism for addressing violations of the newly created statutory rights of crime victims. Section 141(a) clarifies that no party can file a civil action for damages or injunctive relief against the U.S., any employee of the U.S., any officer of the court, nor any entity contracting with the U.S., for failure to comply with any amendment in this Act.

Section 141(b) directs the Attorney General and the Chair of the U.S. Parole Commission to establish a workable regulatory scheme that will permit the effective administrative enforcement of victims rights. These regulations must contain disciplinary sanctions, including termination for employees of the Department of Justice who willfully violate or refuse to comply with Federal provisions pertaining to the treatment of victims of crime. These regulations must also include an administrative procedure through which formal complaints with the Department of Justice alleging violations of this title can be filed. Under the proposed administrative scheme a complainant is prohibited from recovering any monetary damages against the United States.

This subsection states that the Attorney General is the ultimate arbiter of the complaint, and there will be no judicial review of the final decision of the Attorney General.

TITLE II—VICTIM ASSISTANCE INITIATIVES

Title II contains a series of provisions designed primarily to assist victims of state crime, and to ensure that victims participate in the criminal process to the maximum extent.

Sec. 201. Increase in Victim Assistance Personnel

Section 201 authorizes to be appropriated such sums as may be necessary to enable the Attorney General to provide grants through the Office of Victims of Crime (OVC) to qualified private entities to fund 50 victim-witness advocate positions, who can assist victims of state crimes.

This section also authorizes to be appropriated such sums as may be necessary to enable the Attorney General to hire 50 full-time (or full-time equivalent) employees to serve as victim-witness advocates to provide assistance to victims of any federal criminal offense investigation.

Sec. 202. Increased Training for State and Local Law Enforcement, State Court Personnel, and Officers of the Court to Respond Effectively to the Needs of Victims of Crime

Section 202 provides that funds collected pursuant to the False Claims Act (31 U.S.C. 3729–3731) may be used by OVC to make grants to States, units of local government, and qualified private entities, to provide training and information to prosecutors, judges, law enforcement officers, probation officers, and other officers and employees of Federal and State court in order to assist them in responding effectively to the needs of victims of crime.

Sec. 203. Increased Resources for State and Local Law Enforcement Agencies, Courts, and Prosecutors' Offices to Develop State-of-the-Art Systems for Notifying Victims of Crime of Important Dates and Developments

Section 203 amends subtitle A of title 23 of the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103–322; 108 Stat. 2077) by authorizing to be appropriated such sums as may be necessary to OVC to fund grants to State and local prosecutors' offices, State courts, county jails, State correctional institutions, and qualified private entities, to develop and implement state-of-the-art systems for notifying victims of crime of important dates and developments relating to the criminal proceedings at issue.

Section 203 authorizes funds collected pursuant to the False Claims Act (31 U.S.C. 3729–3731) to be used for these grants.

This section also amends Section 310004(d) of the Violent Crime Control and Law Enforcement Act of 1994 to permit funds from the Violent Crime Reduction Trust Fund to be used for grants outlined in this section.

Sec. 204. Pilot Programs to Establish Ombudsman Programs for Crime Victims

Section 204 authorizes pilot programs designed to establish innovative programs to assist victims of both federal and state crime in vindicating their rights. All too frequently, victims do not have a sufficient voice during the criminal process. Some localities have responded to this problem by creating ombudsman programs wherein independent officers are established whose function is to represent the victim's interests. These ombudsmen will educate prosecutors and judges as to their victim-related responsibilities, and will provide helpful guidance and support to crime victims themselves. These programs have shown considerable promise in a number of cities.

Section 204 authorizes the creation of these ombudsman programs. Subsection (a) sets out definitions of the terms ''director,'' ''office,'' ''qualified private entity,'' ''qualified unit of State or local government,'' and ''VOICE Centers'' for the purposes of this section.

Subsection (b) provides that within a year after the enactment of this Act, the Attorney General (acting through the Director of OVC) will establish pilot programs to operate Victim Ombudsman Information Centers (''VOICE'' Centers) in Iowa, Massachusetts, Ohio, Tennessee, Utah, and Vermont.

This subsection also authorizes the Attorney General to enter into agreement with and provide for a grant to assist a qualified private entity or unit of State or local government in carrying out the pilot program. The agreement shall specify that the VOICE Center shall, excepting applicable requirements of this section, operate independently of OVC, and OVC shall have no supervisory or decision making authority over the day-to-day operations of a VOICE Center. The purpose of this provision is to ensure that VOICE centers operate independently.

Subsection (c) provides that the mission of each VOICE Center shall be to ensure that victims of Federal or State crimes are fully appraised of the rights of victims and that the victims participate in the criminal justice process to the fullest extent of the law.

This subsection also sets out the duties of the VOICE Centers. The duties include providing information to victims concerning their right to participate in the criminal justice process; identifying and responding to situations in which rights of victims of crime may have been violated; attempting to rectify violations of victims' rights; educating police, prosecutors, court officials, and employees of jails and prisons about the rights of victims; and taking measures to ensure victims are treated with respect, dignity, and compassion during the justice process.

Subsection (d) authorizes OVC to provide technical assistance to each VOICE Center. Each pilot VOICE Center shall submit an annual report to the Director of OVC detailing the activities of the VOICE Center and the strategic plan for the following year.

Subsection (e) provides that within two years of each VOICE Center's pilot program establishment, the Comptroller General of the U.S. shall review their effectiveness in carrying out their mission and duties as described in subsection (c). This subsection also requires that within two years of each VOICE Center's pilot program establishment, the Attorney General shall have private entities study the effectiveness of the VOICE Centers in carrying out their mission and duties as described in subsection (c).

Subsection (f) states that the pilot program shall terminate 4 years after the date of enactment of the Act. If the Attorney General determines that any of the pilot programs should be renewed for an additional period, they may be renewable for up to two years.

Subsection (g) authorizes an amount not to exceed $5,000,000 of the amounts collected pursuant to the False Claims Act to be used by the Director of OVC to make grants to fund the pilot programs.

Sec. 205. Amendments to Victims of Crime Act of 1994

Section 205 provides for various improvements in the program of federal support for victim assistance and compensation under the Victims of Crime Act.

Subsection (a) authorizes the receipt of private donations to the Crime Victims Fund. It also provides that unobligated funds transferred to the judicial branch for the establishment of the (now defunct) National Fine Center are to be returned to the Crime Victims Fund and may be used for the benefit of federal crime victims. Moreover, it requires states to return to the Crime Victims Fund amounts for which they are reimbursed under subrogation provisions as a result of third party payments to victims, or where the state has received supplemental funding for incidents of terrorism or mass violence. This will help replenish the funds available for assistance to victims of terrorism and mass violence.

Subsection (b) changes the minimum threshold for the annual grant that the Director shall make from the Fund to an eligible crime victim compensation program. The change is from 40 percent of the amounts awarded during the preceding fiscal year to 60 percent.

Subsection (b) also enhances authority and support for demonstration projects, training, technical assistance, and program evaluation, and clarifies that compensation will not be denied to any victim because the identity of the offender was not determined beyond a reasonable doubt in a criminal trial or because criminal charges were not brought against the offender.

Subsection (c) clarifies that the Director may enter into cooperative agreements in addition to making grants; that such cooperative agreements or grants may be for evaluation purposes and training and technical assistance that address the significance of and effective delivery strategies for providing long-term psychological care; that the Director may use funds for fellowships, clinical internships, and programs of training and special workshops for the presentation and dissemination of information resulting from demonstrations, surveys, and special projects. Subsection (c) also tightens some of the definitions in the Victims of Crime Act.

Sec. 206. Services for Victims of Crime and Domestic Violence

Section 206 directs that a specified statute not be construed to prohibit a recipient from using funds derived from a source other than the Legal Services Corporation to provide related legal assistance to any person with whom an alien has a relationship covered by the domestic violence laws of the State in which the alien resides or in which an incidence of violence occurred.

Sec. 207. Pilot Program to Study Effectiveness of Restorative Justice Approach on Behalf of Victims of Crime

Section 207 authorizes the use of funds collected under the False Claims Act by OVC to make grants to States, units of local government, and qualified private entities for the establishment of pilot programs that implement balanced and restorative justice models.

Sec. 208. Victims of Terrorism

Section 208 clarifies the intent of the antiterrorism amendment to the Victims of Crime Act by enabling OVC to assist the victims of terrorist acts or mass violence occurring outside the United States and authorizing it to provide funding directly to nonprofits and other Federal agencies, medical and mental health organizations and others in response to such victims' needs.

Section 208 will also enable OVC to provide assistance to the victims of terrorist acts or mass violence occurring prior to the passage of the Victims of Crime Act, but on or after December 20, 1989. This will allow OVC to assist the family members of those killed in the bombing of Pan Am 103. These family members reside in various states around the country including Alabama, California, Colorado, Connecticut, Hawaii, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Virginia, Washington, and West Virginia.

Mr. KENNEDY. Mr. President, today, Senator LEAHY and I are introducing the Crime Victims Assistance Act. For too long, our criminal justice system has neglected the hundreds of thousands of victims of crime whose lives are shattered by violence or threats of violence each year.

Clearly, the rights of victims deserve better from our criminal justice system. Too often, the system does not provide adequate relief for victims of crime. They are not given basic information about their case—such as the status of the case, scheduling changes in court proceedings, and notice of a defendant's arrest, bail status and release from prison.

Victims deserve to know about their case. They deserve to know about hearings and other court proceedings. They deserve to know when their assailants are being considered for parole. And they certainly deserve to know when their attackers are released from incarceration.

But there is a right way and a wrong way to protect victims' rights. The wrong way is to amend the Constitution. One of the guiding principles that has served the nation well for two hundred years is that if it is not necessary to amend the Constitution, it is necessary not to amend it.

We have amended the Constitution only 17 times in the two centuries since the adoption of the Bill of Rights. We should consider such amendments only in rare instances, when the enactment of a statute is clearly inadequate.

The right way to protect victims' rights is by statute, not by constitutional amendment. One of the most obvious provisions of such a statute is additional resources for courts and prosecutors. These resources can be used to establish better notification, provide better training to deal with victims' needs, and to take all the other steps required to see that the criminal justice system deals fairly with the victims of crime. If Congress is truly committed to victims rights, we can act quickly by statute.

Senator LEAHY and I are proposing a victims rights statute—not a constitutional amendment, because we believe it accomplishes the needed goals. It provides protection for victims now—this year. We do not have to wait for a constitutional amendment that may take years for the States to ratify.

Chief Justice Rehnquist also opposes amending the Constitution. He has specifically stated that a statute, rather than a constitutional amendment, ''would have the virtue of making any provisions in the bill which appeared mistaken by hindsight to be amended by a simple act of Congress.''

Crime victims must be treated with dignity, compassion and understanding. Being victimized by crime is traumatic enough. We must do all we can to see that victims of crime are not victimized again by the criminal justice system.

At the federal level, the system has become more victim friendly. I am

proud to have sponsored the Sentencing Reform Act of 1994, which vastly expanded the authority of the courts to order defendants to pay restitution to the victims. Subsequent laws have given victims the right to be heard at sentencing.

This legislation we are introducing today assures victims of a greater voice in decisions on the detention and prosecution of criminals.

It contains a series of provisions to assist victims of state crimes, and to ensure that victims participate in the criminal justice process to the maximum extent. For example, it provides grants to fund victim-witness advocate positions. It provides training for judges, prosecutors, and law enforcement. It establishes our ombudsman programs.

Legislation on victims' rights deserves high priority in this Congress. I urge the Senate to act swiftly to accomplish the goal we share of genuine protections for victims rights.

By Mr. LUGAR:

S. 935. A bill to amend the National Agricultural Research, Extension, and Teaching Policy Act of 1977 to authorize research to promote the conversion of biomass into biobased industrial products, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

NATIONAL SUSTAINABLE FUELS AND CHEMICALS ACT OF 1999

● Mr. LUGAR. Mr. President, I rise to introduce The National Sustainable Fuels and Chemicals Act, with the goal of advancing biotechnologies likely to offer outstanding benefits in terms of strategic security, reduction of greenhouse gases and healthier rural economies.

At the heart of the National Sustainable Fuels and Chemicals Act is a novel research Initiative, jointly administered by the Secretary of Agriculture and the Secretary of Energy, that authorizes research for the purpose of overcoming technical barriers to low cost biomass conversion and gives priority funding to consortia composed of technical experts from academia, national laboratories, Federal research agencies and industry. By enhancing creative and imaginative approaches toward biomass processing, the Sustainable Fuels and Chemicals Research Initiative will serve to develop the next generation of advanced technologies making possible low cost biobased industrial products.

Innovative in both purpose and structure, the Initiative will promote integrated research partnerships as the best means of overcoming technical challenges that span multiple academic disciplines while also leveraging scarce Federal discretionary spending. 49 million dollars per annum is proposed for the Sustainable Fuels and Chemicals Research Initiative; funding is authorized for six years, through 2005. Given the potential benefits in improved national security, rural development and greenhouse gas reductions, this expenditure represents an investment in America's future and is in line with recommendations from a report of the President's Committee of Advisors on Science and Technology (PCAST).

The legislation will also coordinate and focus Federal research in cellulosic biomass processing through creation of the Sustainable Fuels and Chemicals Board consisting of senior representatives from the National Science Foundation, the Environmental Protection Agency, the Department of the Interior and the White House Office of Science and Technology Policy. Co-chaired by designees of the Secretary of Agriculture and Secretary of Energy, the Board shall coordinate research, development and demonstration activities relating to biobased industrial products between the Departments of Energy and Agriculture which are the two principal agencies for biotechnology research on fuels, chemicals and power. The Board will also serve to coordinate research activities across the many Federal agencies that are involved in research, regulation and policy formulation of fuels, commodity chemicals and power.

To advise the Secretary of Agriculture and Secretary of Energy on the technical focus and direction of the request for proposals issued under the research Initiative, a Sustainable Fuels and Chemicals Technical Advisory Committee is established. Modeled on the National Defense Sciences Board, the Advisory Committee consists of experts from academia, prominent engineers and scientists, representatives from commodity trade organizations and environmental or conservation groups. As an independent panel of technical experts, the Sustainable Fuels and Chemicals Technical Advisory Committee will serve an important role in the strategic planning and oversight of research carried out under the Initiative.

The case for promoting technology that will supply fuels, notably ethanol, chemicals and power from cellulosic biomass can be made independently of whether the world will continue to enjoy cheap oil. However, a wealth of scientific data indicates both that the world's supply of conventional oil is nearly half exhausted and that with each passing year, the demand for petroleum-derived energy increases. History gives us a clear warning that individual oil wells, oil fields, and national petroleum outputs have all shown a decline in production rates when the level of reserves reaches 50 percent. Balanced against both such 'common sense' and Malthusian theory are optimists, including the late economist Julian Simon, who uses energy supplies as one example when arguing that natural resources have become more available rather than more scarce.

I would suggest that cellulosic biomass offers a unique opportunity for consensus between these seemingly unalterable opposing views. No longer is the debate centered on the delicate political and international issue of how best to divide the shrinking pie of world resources. Rather, application of the limitless supply of human ingenuity will be used to create a new and sustainable resource. In this regard, nature offers us the hint of a solution by demonstrating its own methods for harnessing power from the sun, nutrients in the soil and water, in support of a vast array of plant life.

Following nature's elegant example, engineers and scientists have developed biotechnologies capable of breaking down nearly any form of plant, tree or grass into their constituent chemical building blocks, principally in the form of complex sugars. From this intermediate step, a wide variety of biobased industrial products including feed, fuels, chemicals, materials and power can be produced. With this capability, plants, trees, grasses and agricultural residues assume a new significance as a potential source of biobased industrial products. Significantly, cellulosic biomass is the only foreseeable sustainable source of organic fuels, chemicals and materials that find ubiquitous use in any modern economy.

Consider that biobased industrial chemicals can provide functional replacements for essentially all organic chemicals currently derived from petroleum, and have clear potential for product life cycles that are much more environmentally friendly than their fossil fuel counterparts. The new cellulosic conversion technology under development will contribute towards growth of what is now a fledgling industry centered on biobased products—including chemicals, lubricants, plastics, adhesives and building materials—with a market worth an estimated $300 billion per year in its infancy.

Biobased fuels such as ethanol have clear potential to be sustainable, low-cost and high performance, are compatible with both current and future transportation systems, and provide near zero net greenhouse gas emissions. The impact of bioethanol on greenhouse gas emissions is particularly significant because the transportation sector accounts for one-third of the total greenhouse gas emissions. Of the many contributing factors to possible climate change, the transportation sector is our most difficult challenge because of the ubiquitous dependence on greenhouse gas producing fossil fuels. Cellulosic ethanol, a renewable fuel derived from grasses, plants, trees and waste materials, offers a positive long-term approach to the problem of global warming that does not assume a shift from the automobile culture or increased costs for American employers and consumers.

Cellulosic ethanol is a versatile, liquid fuel and consequently will be able to use much of the existing infrastructure built over the last century in support of gasoline and internal combustion engines. The compatibility of water with biomass derived products,

including ethanol, is an important environmental consideration and a powerful demonstration of green chemistry. As my friend Jim Woolsey is fond of saying, ''If a second Exxon Valdez filled with ethanol ran aground off Alaska, it would produce a lot of evaporation and some drunk seals.''

By providing farmers of the world the possibility of additional commodity products, whether dedicated crops or income from collection of agricultural residues, biomass processing can lead to healthier rural economies. A major strength of the new technologies for breaking down cellulosic biomass is that almost any type of plant, tree, or agricultural waste can be used as a source of fuel. This high degree of flexibility allows farmers the possibility of a cash crop simply by collecting their agricultural wastes. Local crops that enrich the soil, prevent erosion and improve local environmental conditions can be planted and then harvested for fuel. My firm belief is that innovations in biotechnology enabling the co-production of food, fuel, chemicals and materials from the sustainable supply of cellulosic biomass, are vital to the future of agriculture.

While undertaking this effort, I remain mindful that biofuels must be produced in ways that enhance overall environmental quality. Sound land-use policies must be followed to protect wildlife habitat and biological diversity concerns. But professional land-use techniques should readily accomplish this.

Providing an alternative fuel that will power the internal combustion engine of the automobile will help reduce our dependence on Middle Eastern oil without necessitating a rebuilding of the massive infrastructure built in support of gasoline. Reliance on the unstable states of the Middle East adversely impacts American strategic security, while massive oil imports skew our balance of payments. With the need for affordable energy rising with increasing population, and the transportation sector fueled almost exclusively by fossil fuels, the Middle East will control something approaching three-quarters of the world's oil in the coming century, providing that unstable region with a disproportionate leverage over diplomatic affairs. At a time when the United States confronts an ill-defined and confused drama of events on the international stage, including an increasingly assertive China, and nuclear and missile technology proliferation to North Korea, it seems clear we should dedicate a relatively small amount of money toward research that could lead to a revolution in the way we produce and consume energy. Or as presented by a distinguished panel of scientists and industrial experts in a recent PCAST report, ''. . . the security of the United States is at least as likely to be imperiled in the first half of the next century by the consequences of inadequacies in the energy options available to the world as by inadequacies in the capabilities of U.S. weapons systems.'' The report succinctly concludes, ''It is striking that the Federal government spends about twenty times more R&D money on the latter problem than on the former.''

Before we are able to reap the significant benefits offered by biobased industrial products, the cost of the new conversion technology must be significantly reduced. Research and development is the only systematic means for creating the innovations and technical improvements that will lower the costs of biomass processing. Given the relatively short-term horizon characteristic of private sector investments, and because many benefits of biomass processing are in the public interest, industry is ill-equipped to fund the necessary fundamental research that will result in cost effective technologies for biomass conversion.

Research activities carried out by the Department of Agriculture, Department of Energy and other Federal agencies are a principal reason for much of the progress witnessed in biomass processing and underscore the future promise if new technology is developed. Nonetheless, coordination among the Federal agencies is disjointed and the research tends to be driven by institutional missions rather than by an overarching strategy to develop cost-effective technologies for biomass conversion. The National Sustainable Fuels and Chemicals Act is designed to overcome these shortcomings and raise the level of the Federal commitment to biotechnologies that are already demonstrating potential as powerful new alternatives to the traditional practices of the past.

In this effort, I am asking for the support of President Clinton and Vice President GORE who have indicated their commitment to the development of sustainable resources. On this issue we can develop a consensus for undertaking research that will improve our national security and balance of payments, reduce greenhouse gas emissions and strengthen rural economies in America and around the world. Working together we can promote the type of innovation-focused research essential for improvements in the utilization of America's biomass resource. It is my firm belief that future Americans will enjoy a rich return on our investment in the promise of a green revolution.●

ADDITIONAL COSPONSORS

S. 98

At the request of Mr. MCCAIN, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 98, a bill to authorize appropriations for the Surface Transportation Board for fiscal years 1999, 2000, 2001, and 2002, and for other purposes.

S. 348

At the request of Ms. SNOWE, the names of the Senator from Kentucky [Mr. BUNNING] and the Senator from Oregon [Mr. WYDEN] were added as cosponsors of S. 348, a bill to authorize and facilitate a program to enhance training, research and development, energy conservation and efficiency, and consumer education in the oilheat industry for the benefit of oilheat consumers and the public, and for other purposes.

S. 414

At the request of Mr. GRASSLEY, the names of the Senator from South Carolina [Mr. THURMOND] and the Senator from California [Mrs. BOXER] were added as cosponsors of S. 414, a bill to amend the Internal Revenue Code of 1986 to provide a 5-year extension of the credit for producing electricity from wind, and for other purposes.

S. 514

At the request of Mr. COCHRAN, the name of the Senator from Nebraska [Mr. KERREY] was added as a cosponsor of S. 514, a bill to improve the National Writing Project.

S. 579

At the request of Mr. BROWNBACK, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 579, a bill to amend the Foreign Assistance Act of 1961 to target assistance to support the economic and political independence of the countries of the South Caucasus and Central Asia.

S. 662

At the request of Mr. CHAFEE, the names of the Senator from Missouri [Mr. BOND] and the Senator from Florida [Mr. GRAHAM] were added as cosponsors of S. 662, a bill to amend title XIX of the Social Security Act to provide medical assistance for certain women screened and found to have breast or cervical cancer under a federally funded screening program.

S. 783

At the request of Mrs. FEINSTEIN, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of S. 783, a bill to limit access to body armor by violent felons and to facilitate the donation of Federal surplus body armor to State and local law enforcement agencies.

S. 880

At the request of Mr. INHOFE, the names of the Senator from Montana [Mr. BURNS] and the Senator from Virginia [Mr. WARNER] were added as cosponsors of S. 880, a bill to amend the Clean Air Act to remove flammable fuels from the list of substances with respect to which reporting and other activities are required under the risk management plan program

S. 918

At the request of Mr. KERRY, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of S. 918, a bill to authorize the Small Business Administration to provide financial and business development assistance to military reservists' small business, and for other purposes.

S. 926

At the request of Mr. WARNER, his name was added as a cosponsor of S. 926, a bill to provide the people of Cuba with access to food and medicines from the United States, and for other purposes.

SENATE RESOLUTION 29

At the request of Mr. ROBB, the name of the Senator from New Hampshire [Mr. GREGG] was added as a cosponsor of Senate Resolution 29, a resolution to designate the week of May 2, 1999, as ''National Correctional Officers and Employees Week''.

SENATE RESOLUTION 33

At the request of Mr. LEAHY, his name was added as a cosponsor of Senate Resolution 33, a resolution designating May 1999 as ''National Military Appreciation Month''.

At the request of Mrs. HUTCHISON, her name was added as a cosponsor of Senate Resolution 33, supra.

At the request of Mr. BRYAN, his name was added as a cosponsor of Senate Resolution 33, supra.

SENATE RESOLUTION 84

At the request of Ms. SNOWE, the name of the Senator from West Virginia [Mr. BYRD] was added as a cosponsor of Senate Resolution 84, a resolution to designate the month of May, 1999, as ''National Alpha 1 Awareness Month''.

NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce that on Wednesday, May 5, 1999, the Committee on Energy and Natural Resources will hold an oversight hearing on Damage to the National Security from Chinese Espionage at DOE Nuclear Weapons Laboratories. The hearing will be held at 9:30 a.m., in room 216 of the Hart Senate Office Building in Washington, DC. A portion of the hearing may be closed for national security reasons.

Those who wish further information may write to the Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C. 20510.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FOREIGN RELATIONS

Mr. SPECTER. Mr. President, I ask unanimous consent that the Foreign Relations Committee be authorized to meet during the session of the Senate on Friday, April 30, 1999, at 11 a.m., to hold a business meeting.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions, Subcommittee on Aging be authorized to meet for a hearing on ''Older Americans Act'' during the session of the Senate on Friday, April 30, 1999, at 11 a.m.

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

ADDITIONAL STATEMENTS

MADE IN USA LABEL DEFENSE ACT—S. 922

● Mr. ABRAHAM. Mr. President, although I had asked yesterday that the full text of my bill, S. 922, the Made in USA Label Defense Act, be printed in the CONGRESSIONAL RECORD along with my introductory statement, a different bill was printed and erroneously labelled S. 922.

Mr. President, to eliminate any confusion, I ask that the actual text of my bill, S. 922, the Made in USA Label Defense Act, be printed in the RECORD.

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

S. 922

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 ''Made in USA Label Defense Act of 1999''.

SEC. 2. RESTRICTIONS ON GOODS IMPORTED FROM NORTHERN MARIANA ISLANDS.

The joint resolution entitled ''Joint Resolution to approve the 'Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America', and for other purposes'', approved March 24, 1976 (48 U.S.C. 1801 et seq.), is amended by adding at the end the following new sections:

''SEC. 7. PROHIBITION ON IDENTIFICATION OF CERTAIN GOODS AS MADE IN THE UNITED STATES.

''Notwithstanding any other provision of law, no product that is made in the Northern Mariana Islands shall have a stamp, tag, label, or other means of identification or substitute therefor on or affixed to the product stating 'Made in the USA' or otherwise stating or implying that the product was made or assembled in the United States.

''SEC. 8. DUTY-FREE TREATMENT OF PRODUCTS PRODUCED BY UNITED STATES CITIZENS.

''Notwithstanding General Note 3(a)(iv) of the Harmonized Tariff Schedule of the United States, any provision of the covenant set forth in the first section of this joint resolution, or any other provision of law, no product that is made in the Northern Mariana Islands shall be admitted free of duty or quotas into the customs territory of the United States as the product of a United States insular possession.''.

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act apply to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of enactment of this Act.●

RECOGNIZING HAWAII'S ENVIRONMENTAL HEROES

● Mr. AKAKA. Mr. President, I rise today to recognize the work and accomplishments of a team of individuals in Hawaii who have been honored by the National Oceanic and Atmospheric Administration (NOAA) as 1999 ''Environmental Heroes.'' We seldom take the time to recognize the outstanding accomplishments of those working at the community level, with high school students, far from Washington, D.C. Their dedication can make a big difference in people's lives and the health of our environment.

Honored in Hawaii were Hawaii Sea Grant's Extension Director Bruce Miller, Hawaii State Representative Brian Schatz, and Youth for Environment Service Coordinator Sean Casey.

This marks the third year that NOAA has recognized individuals and organizations throughout the United States for their ''tireless efforts to preserve and protect the nation's environment.'' The 1999 NOAA Class of Environmental Heroes included 34 individuals or programs, and the honorees are traditionally announced as part of Earth Day activities nationwide. Each honoree was also sent personal commendations from Vice President Al Gore who congratulated this year's heroes for their commitment and accomplishments in protecting the environment of our nation.

The Hawaii team was recognized for their creation of Youth for Environmental Service, called YES. The YES program educates and engages K–12 students in discussions of local environmental issues and activities that sustain the environment. YES gives students a chance to get involved through projects such as restoring trails, planting trees, picking up litter from beaches and streams, and more. To date, YES has given presentations to more than 65,000 students in 450 schools, involved 25,000 students in environmental community service projects, removed 20 tons of debris from Honolulu streams, restored one mile of the most used hiking trail on Oahu; planted approximately 2,000 plants, cleaned 40 beaches, stenciled more than 2,500 storm drains with a ''Dump No Waste'' message, and organized more than 350 other community service projects.

The YES project is an excellent example of the partnering of extension and educational goals through the University of Hawaii's Sea Grant Program. Mr. President, I extend my warmest congratulations to our three Hawaii Environmental Heroes.●

CONGRATULATIONS TO US AIRWAYS

● Mr. SANTORUM. Mr. President, I rise today to congratulate one of the many employers in the Commonwealth of Pennsylvania which, through innovation and dynamic business planning, has recently received prestigious recognition. The W. Frank Barton School of Business at Wichita State University and the University of Nebraska at Omaha Aviation Institute have ranked US Airways number one in their annual ''Airline Quality Rating'' study.

I congratulate the over 16,000 Pennsylvanians who work at US Airways on

their dedication and hard work. I also make special note of President and Chief Executive Officer Rakesh Gangwal, whose ongoing commitment to excellence has had a major impact on this airline, to the great benefit of our Commonwealth.

In my eight years of service in the U.S. House and Senate, I have watched as US Airways (formerly USAir) has struggled through some very difficult times. For this airline to be recognized as number one in quality only a few years after its financial struggles is a true testament to the energy and skill of its workforce and executives. An indication of this is Mr. Gangwal's first comment after learning of the quality rating, ''While we are very proud of our No. 1 ranking and its reflection of accomplishment, there is more to be done in meeting the needs of the traveling public and we are focused on achieving this goal.''

Again, I offer my congratulations to US Airways and its many employees. I look forward to continued work with its executives, management teams, and labor unions.●

EFFORTS TO RESEARCH S.A.D.

● Mr. MURKOWSKI. Mr. President, I rise today to recognize the seventh and eighth graders from Dzantik'i Henni Middle School. They are doing important work by educating the public on something that affects much of Alaska in the winter: Seasonal Affective Disorder or SAD. This disorder causes severe depression during the winter months in Alaska when there can be up to 24 hours of darkness in some places.

About one in three Alaskans suffer from mild to severe Seasonal Affective Disorder. Researchers suggest SAD may play a role in a variety of Alaska's social and medical problems, ranging from spousal abuse to alcoholism.

These incredible students, led by teacher Robert Traul Jones, developed a community health project to combat SAD. The project had two major goals. The first was to educate people about depression and its impact on northern communities and their residents. The second goal was to provide affordable treatment for this condition. The students did this by designing, marketing and building high-intensity light boxes, which they distributed to the surrounding communities. The light boxes combat the daily darkness outside with light therapy.

Their efforts were extraordinarily successful. The students projected 10 units being sold and ended up selling 39 units. The students are currently working with the Juneau Economic Development Commission to transfer their business to a local nonprofit organization.

Mr. President, it is with great pride that I recognize the achievements of these students. Their hard work and dedication is an inspiration to us all. These are the future leaders of our country and our single greatest resource. The seventh and eighth grade students from Dzantik'I Heeni Middle School should be proud of their achievements in combating SAD.●

THE 25TH ANNIVERSARY OF THE BLUE KNIGHTS INTERNATIONAL LAW ENFORCEMENT MOTORCYCLE CLUB

● Mr. CAMPBELL. Mr. President, I would like to take a moment to acknowledge the 25th year anniversary of the Blue Knights International Law Enforcement Motorcycle Club.

The Blue Knights International Law Enforcement Motorcycle Club is a fraternal organization of law enforcement professionals and their families actively serving communities throughout the United States, Canada, Australia, France, England, Belgium, the Netherlands, Luxembourg, Germany, Switzerland, Sweden, Norway and Mexico.

This fraternal organization was established in Bangor, Maine, in 1974 and has grown to more than 10,000 members both male and female. They share a common bond of promoting motorcycling, which includes safety and awareness to the non-motorcycle riding public.

In addition, the Blue Knights also assists many organizations and communities with developing and implementing fund-raising programs such as the March of Dimes ''Bikers for Babies,'' the Muscular Dystrophy Association, the Breast Cancer Foundation's ''Race for the Cure'' and the Blue Knights ''Youth Identification Program.'' The combined efforts of the Blue Knights has made a positive contribution to society.

The Blue Knights began in April 1974 when Ed Gallant, a police officer with the Bangor Police Department, had an idea and several of his colleagues worked with him to see the idea become a reality. The idea was to form a motorcycle club for people in law enforcement. The news of the Blue Knights organization spread after an article in the Bangor Daily News was picked up by U.P.I. inquiries started pouring in and consequently chapters started to form worldwide.

As an honorary member of the Blue Knights, I have had the privilege of meeting numerous members from around the world and participate in many worthy causes. On this, their 25th anniversary, I applaud the efforts of the Blue Knights and look forward to learning of their future successes.●

TRIBUTE TO KEN KNIGHT

● Mr. HATCH. Mr. President, I rise today to recognize and pay tribute to Kenneth Y. Knight, a fellow Utahan whose selfless contributions have benefited many, and whose indelible imprint will be felt for many years to come across the great State of Utah.

Ken Knight is truly a hero to the community of Salt Lake City. His selfless acts of kindness along with his unparalleled wisdom have made him one of the most respected individuals the State of Utah has had the good fortune of calling ''one of its own.''

Ken is truly a ''man for all seasons.'' He is a devoted husband and father, a highly respected businessman, a loyal community servant, and a deeply patriotic and religious leader.

Mr. Knight has had a life full of extraordinary achievement. As a youth, he gained the Boy Scouts of America Eagle Rank—an honor he continues to hold dear—and was elected student body president at his high school. He excelled in academics and athletics as well.

For the past several years, Ken Knight has distinguished himself in business, serving as Vice Chairman of the Board of Sinclair Oil Corporation and Little America. He was instrumental in the remarkable expansion of Sinclair and Little America, and he has mentored and shared his skills with dozens of corporate employees and community leaders.

Mr. Knight's special friend and professional partner R. Earl Holding recognized the value of Ken's service when he stated, ''Perhaps the biggest challenge I faced with Ken—a challenge in which I failed was to keep him to myself. Every organization, every board, and every worthwhile charity you can think of, all wanted him to be part of their cause. His personal contributions—in time and resources—have been profound. He loves the community and the community loves him. And he had the admiration and respect of civic and government leaders throughout the State of Utah.''

Many organizations in Utah have benefited from his service and involvement including—Intermountain Health Care, the Salt Lake City Chamber of Commerce, Brigham Young University, the Salt Lake Convention and Visitors Bureau, the Salt Place Advisory Board, the Utah Travel Council, LDS Hospital, U.S. West, Utah Economic Development Corporation, the LDS Foundation's National Executive Committee for Natural Resources, Utah Youth Village, and the Utah Symphony.

Gordon B. Hinckley, president of the Church of Jesus Christ of Latter-day Saints, described Mr. Knight this way: ''The measure of any man is his contribution to the society of which he is a part. Using that measure, Ken stands very tall. He truly has been a giant in our city. He knows the pulse of the community. He measures well before he leaps. There is nothing impetuous about him. He is quiet and methodical . . . He has been a good friend to each of us. He has been a man of singular accomplishment. We are all indebted to him.''

While serving as Chairman of the Utah Symphony, Mr. Knight was faced with a great challenge. ''Ken is the kind of person who relishes a challenge and it was in that spirit that he took on the chairmanship of the Utah Symphony during its darkest hour, when it

had virtually depleted its reserves after running deficits for a period of several years,'' stated Harris H. Simmons, president and chief executive officer for Zions Bancorporation. To secure its future, he led legislative efforts and a public referendum to permanently devote civic funds for artistic achievement. This action not only saved the symphony, but it also widened cultural opportunities in dance, opera, theater, and other artistic expressions.

''When he was Chairman of the Salt Lake Convention and Visitors Bureau, he was the champion for expansion of the Salt Palace Convention Center, which has had a positive economic impact of hundreds of millions of dollars from increased convention and visitor spending,'' stated Richard E. Davis, president and CEO of the Bureau.

While serving the Chamber of Commerce he helped overhaul the Workers Compensation Fund in Utah. Fred Ball, who was the Executive Director of the Chamber at the time, stated, ''The results of his efforts have now made Utah one of the very best States in the Nation for both rates and for benefits. Costs and claims were reduced dramatically and all agree that without Ken Knight, it would never have happened. Every Utah business, large and small, are enjoying the efforts of Ken Knight.''

Ken and his wife Nancy have raised five wonderful children, all of whom are decent, responsible citizens and—like their parents—achievers. Perhaps the greatest tribute written about Ken comes from his daughter Lucy Knight Andre when she wrote: ''My father is often honored for his many professional and civic accomplishments. While those honors are well-deserved, they do not represent the most important and least known side of my father—his complete devotion to his family. He adores his children and his grandchildren, and everything he has done in his life has been for the ultimate benefit of his family . . . He taught us to work hard, laugh often, and never look at any problem as insurmountable. He has a great love for his Heavenly Father and an absolute commitment to his Church. He taught us by example the importance of service to our God and our fellow men. Whatever his myriad accomplishments in the community might be, those of us in his family have a remarkable legacy of ingenuity, devotion and love.''

These are indeed wonderful words for a truly remarkable man. It is an honor for me to call all of his magnificent achievements to the attention of the Senate.●

SAFE AND DRUG-FREE SCHOOLS AND COMMUNITIES ACT AMENDMENTS

Mr. KYL. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 39, S. 609.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 609) to amend the Safe and Drug-Free Schools and Communities Act of 1994 to prevent the abuse of inhalants through programs under the Act.

There being no objection, the Senate proceeded to consider the bill.

Mr KYL. I ask unanimous consent the bill be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed at this point in the RECORD.

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

The bill (S. 609) was read the third time and passed, as follows:

S. 609

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

SECTION 1. DEFINITIONS.

Section 4131 of the Safe and Drug-Free Schools and Communities Act of 1994 (20 U.S.C. 7141) is amended by adding at the end the following:

''(7) ABUSE.—The term 'abuse', used with respect to an inhalant, means the intentional breathing of gas or vapors from the inhalant for the purpose of achieving an altered state of consciousness.

''(8) DRUG.—The term 'drug' includes a substance that is an inhalant, whether or not possession or consumption of the substance is legal.

''(9) INHALANT.—The term 'inhalant' means a product that—

''(A) may be a legal, commonly available product; and

''(B) has a useful purpose but can be abused, such as spray paint, glue, gasoline, correction fluid, furniture polish, a felt tip marker, pressurized whipped cream, an air freshener, butane, or cooking spray.

''(10) USE.—The term 'use', used with respect to an inhalant, means abuse of the inhalant.''.

SEC. 2. FINDINGS.

Section 4002 of the Safe and Drug-Free Schools and Communities Act of 1994 (20 U.S.C. 7102) is amended—

(1) in paragraph (2), by inserting '', and the abuse of inhalants,'' after ''other drugs'';

(2) in paragraph (5), by striking ''and the illegal use of alcohol and drugs'' and inserting '', the illegal use of alcohol and drugs, and the abuse of inhalants'';

(3) in paragraph (7), by striking ''and tobacco'' each place it appears and inserting '', tobacco, and inhalants'';

(4) in paragraph (9), by striking ''and illegal drug use'' and inserting '', illegal drug use, and inhalant abuse''; and

(5) by adding at the end the following:

''(11)(A) The number of children using inhalants has doubled during the 10-year period preceding 1999. Inhalants are the third most abused class of substances by children age 12 through 14 in the United States, behind alcohol and tobacco. One of 5 students in the United States has tried inhalants by the time the student has reached the 8th grade.

''(B) Inhalant vapors react with fatty tissues in the brain, literally dissolving the tissues. A single use of inhalants can cause instant and permanent brain, heart, kidney, liver, and other organ damage. The user of an inhalant can suffer from Sudden Sniffing Death Syndrome, which can cause a user to die the first, tenth, or hundredth time the user uses an inhalant.

''(C) Because inhalants are legal, education on the dangers of inhalant abuse is the most effective method of preventing the abuse of inhalants.''.

SEC. 3. PURPOSE.

Section 4003 of the Safe and Drug-Free Schools and Communities Act of 1994 (20 U.S.C. 7103) is amended, in the matter preceding paragraph (1), by inserting ''and abuse of inhalants'' after ''and drugs''.

SEC. 4. GOVERNOR'S PROGRAMS.

Section 4114(c)(2) of the Safe and Drug-Free Schools and Communities Act of 1994 (20 U.S.C. 7114(c)(2)) is amended by inserting ''(including inhalant abuse education)'' after ''drug and violence prevention''.

SEC. 5. DRUG AND VIOLENCE PREVENTION PROGRAMS.

Section 4116 of the Safe and Drug-Free Schools and Communities Act of 1994 (20 U.S.C. 7116) is amended—

(1) in subsection (a)(1)(A), by inserting '', and the abuse of inhalants,'' after ''illegal drugs''; and

(2) in subsection (b)—

(A) in paragraph (1)—

(i) by inserting ''and the abuse of inhalants'' after ''use of illegal drugs''; and

(ii) by inserting ''and abuse inhalants'' after ''use illegal drugs''; and

(B) in paragraph (2)—

(i) in the matter preceding subparagraph (A), by inserting ''(including age appropriate inhalant abuse prevention programs for all students, from the preschool level through grade 12)'' after ''drug prevention''; and

(ii) in subparagraph (C), by inserting ''and inhalant abuse'' after ''drug use''.

SEC. 6. FEDERAL ACTIVITIES.

Section 4121(a) of the Safe and Drug-Free Schools and Communities Act of 1994 (20 U.S.C. 7131(a)) is amended, in the first sentence, by striking ''illegal use of drugs'' and inserting ''illegal use of drugs, the abuse of inhalants,''.

SEC. 7. MATERIALS.

Section 4132(a) of the Safe and Drug-Free Schools and Communities Act of 1994 (20 U.S.C. 7142(a)) is amended by striking ''illegal use of alcohol and other drugs'' and inserting ''illegal use of alcohol and other drugs and the abuse of inhalants''.

SEC. 8. QUALITY RATING.

Section 4134(b)(1) of the Safe and Drug-Free Schools and Communities Act of 1994 (20 U.S.C. 7144(b)(1)) is amended by inserting '', and the abuse of inhalants,'' after ''tobacco''.

USE OF THE CAPITOL GROUNDS

Mr. KYL. Mr. President, I ask unanimous consent that H. Con. Res. 49 be discharged from the Rules Committee and, further, the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

A House concurrent resolution (H. Con. Res. 49) authorizing the use of the Capitol Grounds for a bike rodeo to be conducted by the Earth Force Youth Bike Summit.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. KYL. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to and the motion to reconsider be laid upon the table.

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

The concurrent resolution (H. Con. Res. 49) was agreed to.

ORDERS FOR MONDAY, MAY 3, 1999

Mr. KYL. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in adjournment until 12 noon, on Monday, May 3. I further ask that on Monday, immediately following the prayer, the Journal of proceedings be approved to date, the morning hour be deemed to have expired, the time for the two leaders be reserved for their use later in the day, and the Senate begin a period of morning business equally divided between the two parties for 1 hour, with Senators allowed to speak for up to 10 minutes each. I further ask consent that Sunday not count against the provision of the War Powers Act.

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

PROGRAM

Mr. KYL. Mr. President, for the information of all Senators, the Senate will convene on Monday at 12 noon and be in a period of morning business until 1 p.m. Following morning business, the Senate will immediately begin consideration of the McCain resolution, S.J. Res. 20, pursuant to the provisions of the War Powers Act. A rollcall vote on or in relation to S.J. Res. 20, concerning the deployment of U.S. Armed Forces to the Kosovo region in Yugoslavia, is expected to take place at 5:30 on Monday.

For the information of all Senators, consideration of the financial modernization bill is expected to begin on Tuesday and conclude on Thursday evening.

DEPLOYMENT OF U.S. FORCES IN YUGOSLAVIA

(Pursuant to 50 U.S.C. 1545(b), S.J. Res. 20 ''Concerning the Deployment of United States Armed Forces to the Kosovo region in Yugoslavia'' is the pending business.)

ADJOURNMENT UNTIL MONDAY, MAY 3, 1999

Mr. KYL. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 1:02 p.m., adjourned until Monday, May 3, 1999, at noon.

NOMINATIONS

Executive nominations received by the Senate April 30, 1999:

THE JUDICIARY

FRANK H. MCCARTHY, OF OKLAHOMA, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OKLAHOMA, VICE THOMAS RUTHERFORD BRETT, RETIRED.