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Senate

The Senate met at 1 p.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

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

God of hope, make us hopeful thinkers. Hope through us for Your best for the future of America. Often we are infected by negative thinking when we calculate the possible without Your power. Continued conflict over legislation can result in weariness.

We know that authentic hope is based on Your faithfulness and the memory of how You have intervened to help us in the past. Help us to take a backward look to Your past blessings, an upward look to Your grace, and a forward look to the future, expecting the ways You will help us solve problems and grasp potentials. You are a God of progress. You abhor plateaus; You make us bold to claim Your vision. Help the Senators to exemplify the uplifting strength of hope this week. Through our Lord and Savior. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able majority leader, Senator LOTT of Mississippi, is recognized.

Mr. LOTT. Thank you, Mr. President.

SCHEDULE

Mr. LOTT. Mr. President, today the Senate will be in a period of morning business until 2 p.m. Following morning business, the Senate will resume consideration of the tobacco bill. As a reminder to all Senators, any votes ordered today with respect to the bill will occur at 5 p.m. this evening. I believe there is one amendment that there may be a vote on. We should expect a vote at 5 o'clock, and it will probably be very close to 5 in order to accommodate Senators who will have to leave shortly thereafter. It is expected that no more than two votes will be ordered today.

Pending is the amendment of Senator REED of Rhode Island regarding the deductibility of tobacco advertising. We hope to lock in that vote for 5. But we will notify Members if it is going to be any different from that. It is hoped that the next Republican amendment can also be offered today. The vote on that may follow the vote on the Reed amendment. But, again, that has not been locked in yet.

We may also attempt to reach an agreement with regard to the Higher Education Act. We made some progress on that last week. There are some concerns still pending. But we will have the committee chairman and the Members working on the Higher Education Act. We need to get that completed. We have extended the time for the loans and grants under that act for 90 days. We don't have the July 1 deadline that would cause the students not to get their loans and grants, but the program expires July 1. We need to try to get that legislation moved as soon as possible.

We also have the NASA authorization bill and the drug czar office reauthorization bill, as well as other legislation or Executive Calendar items that may be cleared for action.

Any votes with regard to other items on the tobacco bill will occur then on Tuesday morning at a time to be determined by the two leaders—probably around 9:30 or 10. But we will need to see if we have something ready by then.

The official photo for the 105th Congress will take place tomorrow, Tuesday, June 16, at 2:15 p.m. All Senators are asked to be in the Chamber and seated at their desk at that time. Again, at 2:15 tomorrow, Tuesday, we will take the official photograph. This is the best time, looking at everybody's schedules and illnesses that we have been having to work around. But we want to get this done. We plan on doing it tomorrow.

One final point: We expect that the education conference report will be available one day this week—maybe Wednesday. That is the Coverdell A+ issue with some other parts that were added to it in the Senate. I believe this is a conference report that will have broad bipartisan support. We will take that up when the conference report is available.

Observing no Senator wishing to speak, I note the absence of a quorum.

The PRESIDING OFFICER (Mr. KYL). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 2 p.m., with Senators permitted to speak for 5 minutes therein.

THE TOBACCO BILL

Mr. BOND. Mr. President, we are getting into the tobacco wars again today. I know we have made some progress. I have seen in the last week several amendments adopted which I think are very important. As a long-time advocate of assuring full deductibility for

health insurance for the self-employed, I was delighted that, and the marriage penalty provision, survived a vote in the Chamber, and also what we called the Bond-Kerry amendment directing that some of the money paid out to the States be used at the very essential early stages of a child's development through early childhood development, parent education to make their children better students, better people, to accept responsibility for them, and providing child care to assure that children in elementary school are not left alone without supervision before and after school.

These are steps in the right direction. I understand that one of my colleagues, for whom I have great respect, later on today will come to the floor and seek to strike all mandates on States in this bill.

Generally, I have taken the position as a former Governor that we should not be mandating what States do with all of the money that is collected by the Federal Government from our State constituents. In this case, however, I think the situation is a little different because we have been asked by the States to come in and legislate. These actions started off as lawsuits, and it came to the point where they believed that a Federal law was necessary to implement the objectives that the States have and that we share, which is to assure discouraging of teenage smoking. I think that once we go down that path of imposing a major legislative solution—and we are going to be the ones who have to take the responsibility for imposing the fees, for setting up the smoking cessation programs and other things—that there is every reason for us to pose responsible legislative provisions which will have to be agreed to by a majority of both Houses.

I would mention the fact that there has been some controversy. I regret we were not able to place a limit on the amount of fees the lawyers for the States would receive. It seems to me we missed an essential ingredient here. We are talking about imposing a settlement or directing a distribution of sums that is not really a settlement of a lawsuit. We are developing a major proposal which is going to raise large amounts of money, provide some tax relief, send some money back to the States. I think we have every reason to say how much money that lobbyists, who are essentially the attorneys who brought the suits—the lobbyists pushing this legislation—should be able to achieve. Some of the figures that have been expressed on the floor about $80,000 to $90,000 an hour are unconscionable. And the people of my State—and I believe the people of the United States—are very much concerned about what is going to be done with all this money. I share that concern.

I think before this measure passes, or is finally adopted, there ought to be some limitation. Sure, let the people who worked on it get a reasonable return. But there is no reason to give a small group of people, selected by attorneys general, a windfall of literally potentially billions of dollars from our legislative action. The people who are going to have to be paying the higher fees for cigarettes, I think, have a right to ask us not to permit States to go through with the contracts which give essentially judicial contingent-fee-type rewards to people who are, in essence, coming to us, lobbying for us to pass legislation.

I think we ought to be able to establish some conditions on some of the money that goes back to the States. I have said that smoking cessation is important. The educational element is important in ensuring young people at least know the message that smoking can be harmful and that they should not start. I think we need to inform them.

I think, second, It is right and proper that, as we did last week, we support the concept in the Bond-Kerrey proposal, that funds going back to the States should be utilized for expanding child care, for assuring adequate early childhood development to ensure that every family takes responsibility for its child's behavior. We ought to be talking about parental responsibility, about family responsibility, about adult care-giver responsibility.

I will tell you one other thing. There is something that is lacking in this bill, and I intend to offer—I hope it will be tomorrow—an amendment which will deal with one of the areas that this bill, in my view, wrongfully ignores. We are trying to get teenagers to stop smoking. Where is the responsibility on the teenagers themselves? I know teenagers. I happen to have one in my family. Mine is a fine young man. We have these wonderful, bright-eyed, aggressive, intelligent young people here who are working as pages. Yet we are saying we are going to protect them from everybody else—from the sellers, from the tobacco companies—but we are not saying they have to take any responsibility. Young people are old enough to begin taking responsibility. If they drive a car illegally and they get caught, they get sanctioned. If they drive and they are drinking, or if they are using drugs, in my State they can lose their licenses. Young people ought to know they have some limits and some responsibilities. So I am going to offer an amendment to say to the States: If you want to receive money under these block grants, you ought to set up a system for sanctioning teenagers who purchase cigarettes illegally.

We are raising the price, we are providing education, but, as one teenager I talked to said: ''Hey, if all they are doing is saying it's bad and the store that sells it to me is going to be in trouble or the people who make it are going to be in trouble but I can walk scot-free—that's worth a try.'' There are some teenagers who, unfortunatley, in their rebellious teen-age ways—and most of us can still recall when we were teenagers and remember those days—will say, ''That's worth a try.'' If we want to discourage teenage smoking, then there need to be some sanctions on the teenagers.

I would lay out a string of sanctions and say, for the first offense, either a $50 fine or a day's worth of community service. A $50 fine might be really heavy on one teenager, but for another teenager it might not make any difference. But if that young man has to spend a day picking up trash along the highway as part of a community service sanction imposed on him for purchasing cigarettes illegally, I don't think he is going to want to be out there in broad daylight in the hot, broiling sun, with all his buddies going by honking and waving at him picking up trash on the highway.

I would even go so far as to say parents out to get sanctioned, too. We want to hold parents responsible. We want parents to recognize it is not just Government's responsibility, it is their responsibility as parents. Sure, we have all kinds of sanctions on the sellers, mom-and-pop stores that sell a whole range of things, including a legal product, tobacco, saying: You are really going to get it if youi sell to a teenager.

But is it fair to have that penalty only on one side? The amendment I am going to offer, and I hope both sides of the aisle will support, will say: States, you have to come up with a graduated system of sanctions so teenagers will know it is not a risk-free endeavor to try to lure a convenience store operator or a grocery store operator to sell you cigarettes that you should not be buying. Some States are moving ahead and they have sanctions, so they would be in compliance. But I think this bill would be sadly lacking if we set out a system of penalties and tried some educational efforts to convince teenagers they should not do what is illegal, and left them without sanctions.

So I hope we can adopt, tomorrow, a measure which does impose sanctions on teenagers or encourages States to say they must set up a reasonable graduated system of sanctions for anybody who purchases—acquires cigarettes illegally. Thus, I would say, when we come to the point about debating whether this bill should have no sanctions or no limitations or restrictions on the States, I think we have gone past that. Once the States came here and asked us to get involved and to set up a scheme to discourage teenage smoking, to raise the price of cigarettes to provide smoking education, provide research, provide health care benefits, we ought to continue down that road and provide the one element which is lacking in the current scheme, and that is strong incentives for States to punish and to impose a reasonable, graduated system of penalties on those who purchase illegally.

So I ask my colleagues not to support a removal of all requirements on

the States. I ask them—I hope it will be tomorrow when we come forward with our amendment—to support the amendment. My amendment will simply provide incentives for States to impose sanctions on youth who buy or possess tobacco products illegally. We are taking all kinds of steps in the bill to keep cigarettes out of the hands of teens. We are creating new boards and agencies, we are seeking that the tobacco industry limit advertising, we are planning ad campaigns to discourage teens from smoking, we are holding convenience stores accountable for selling cigarettes to teens illegally. About the only people we are not holding responsible are the teens themselves. I ask support for my amendment that will do that.

Teen smoking is on the rise at a time when older adults are reducing tobacco consumption. there is more information out there than ever before about the risks of smoking, but teens continue to smoke. Some of that may be rebelliousness. How should we handle that rebellion? Quite simply, by holding teens accountable for their actions. Teens need to know that their actions have consequences. If they purchase tobacco illegally, they should have a penalty to pay—perform community service or kick in with some money to the General Treasury of the entity involved.

Mr. President, I ask support for my amendment. If others want to cosponsor the amendment, I welcome having them contact us. We are already working with several Members who are interested. I hope we can get this amendment accepted on both sides. I think it is a responsible and appropriate response to the problem that this measure seeks to address.

Mr. President, I yield the floor and, seeing no other Senator present wishing to speak, 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. KYL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

INDIA'S NUCLEAR PROGRAM

Mr. KYL. Mr. President, given the fact that the managers of the tobacco legislation are not here even though the Senate was to begin reconsideration of that proposal at 2 o'clock, I would like to continue to speak in morning business for about 5 minutes to put an article in the RECORD and ask unanimous consent at this time to include that article at the conclusion of my remarks.

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

(See Exhibit 1.)

Mr. KYL. Mr. President, this is an article from the Washington Post by Victor Gilinsky and Paul Leventhal. Victor Gilinsky is an energy consultant, and Paul Leventhal is president of the Nuclear Control Institute. At the time of the 1974 nuclear test by India, they were, respectively, a member of the Nuclear Regulatory Commission and the U.S. Senate staff.

They write about the history of the nuclear program conducted by India, illustrating the complicity that the United States has had in the Indian program and, more importantly, the misplaced reliance that the United States has put in arms control agreements, which in the end never quite seem to bear the fruit that we had hoped for.

In this case, it was part of the Atoms for Peace Program that the United States participated in as a result of a previous treaty, and it was part of the Atoms for Peace Program whereby the United States and Canada and other nuclear powers would provide some material for India for peaceful purposes. They had a reactor built by Canada. It was made essentially operable, according to this article, by the United States providing 21 tons of heavy water. This, of course, was all under a promise that the Indians made to the United States that the reactor would be used only for peaceful purposes. But apparently India used plutonium from this reactor in its 1974 nuclear explosion. What the authors said—I will quote: ''. . .neither capital''—meaning the capital of Canada or the United States—''has uttered a peep about this matter is symptomatic of Western complicity in the South Asian nuclear crisis and of the present paralysis in dealing with it.''

What they are pointing out is that when we negotiate a peace treaty with countries which says, ''You won't develop nuclear weapons—if you will promise not to do that, then we will provide you peaceful nuclear technology,'' it is almost impossible for that peaceful technology to end up in a nuclear weapons program if that is the country's ultimate desire. And, in the case of India, for whatever reasons it decided it was in its national interest to produce a nuclear weapon, apparently it used the product of this Atoms for Peace peaceful nuclear program as part of its weapon program in violation of the treaty.

But for the United States, or Canada, or the other nuclear powers of the world to complain about this would require us to have to admit to something that we are not about to admit; namely, that these treaties don't work; that there is no way to enforce them; and that, in point of fact, a program that we had every hope would be a success—the Atoms for Peace Program—has in fact helped to contribute to the development of a nuclear weapon by the country of India.

The article goes on to make some other points that I think are important; that is, that the country of India has broken several promises here in the development of its nuclear weaponry; that it had always complained about the charter of the new International Atomic Energy Agency in the 1950s.

The article points out:

> It was duplicity in carrying out the Atoms for Peace agreements in the 1960's. It undermined the Nuclear Non-Proliferation Treaty with its ''peaceful'' bomb of 1974.

That is referring to the fact that the Indians got around the violation by claiming that the bomb they exploded was for peaceful purposes. And apparently the United States looked the other way.

But the article goes on to note, ''Despite this history, each new generation of American policymakers thinks that by being a little more accommodating''—for countries like India—we will then gain their restraint and their acceptance of the nuclear controls that we would like to place upon them. Of course, India is not alone in this. I am not being any more critical of India than I would be of other countries that would be engaged in the same kind of conduct.

But what this article concludes is ''. . .American self-deception that stems from a mix of idealism and commercial greed.'' is the reason these countries have been able to get away with this for so long—again, ''. . .American self-deception that stems from a mix of idealism and commercial greed.''

Mr. President, that is exactly what we have seen with the desire to sell virtually anything to nobody, the argument always being, if we will not sell it to them, then someone else will, which is always an excuse for transferring technology. That we have come to learn with some sadness recently. That should not have been transferred to China, for example.

We also find this concept of idealism—that if they will just sign one more treaty, if we will just get one more commitment from a country that it won't engage in conduct that we believe inimical to world peace, that just maybe, therefore, we will have the peace that we so earnestly desire.

The fact of the matter is that when it comes to a nation's self-defense, it is going to do what it deems in its best interest irrespective of a piece of paper, of a treaty, of a commitment, or of a promise to the rest of the world, and it is not going to be swayed by world opinion or even by the punishment that nations or organizations may mete out.

Thus, India and Pakistan were all too willing to suffer the opprobrium of the world community. They were very—I shouldn't say ''happy''—but they were willing to suffer the constraints of the economic sanctions that are automatically imposed upon them as a result of their nuclear programs and their testing, because, first of all, it is domestic politics for them, but, even more importantly, they deem it to be in their national self-interest for the preservation of their countries.

You cannot expect a treaty that has been signed to prevent a country from doing what it believes is in its national self-interest. To think that the United States could, therefore, dissuade a country like North Korea or Iran or Iraq or one of the other so-called rogue nations of the world to forego the development or testing of nuclear weapons if only we could get everybody in the world to sign the Comprehensive Test Ban Treaty is, I think, a ludicrous, self-deceptive, naive thought.

That is why I thought the article these two gentlemen wrote and was published in the Washington Post today is so interesting, because it gives a little bit of perspective. It reminds us of how, with the best intentions, we signed treaties in the past. Part of the terms of those treaties was that we would supply atoms for peace, but when a country deemed it to be in their self-interest to use that largesse to develop their nuclear program, they did it. And after having developed their nuclear program, and this having been a violation of the Nuclear Non-Proliferation Treaty, we should not find it as a surprise that they are then going to test those nuclear weapons which would, if these countries were to sign the CTBT, be a violation of that treaty as well.

Mr. President, I conclude with this point. There has been some talk lately that the explosions of the Pakistani and Indian nuclear devices suggest it is now time for the Senate to take up the CTBT, the Comprehensive Test Ban Treaty.

Exactly the opposite is true, as the distinguished majority leader of the Senate pointed out in a television interview a week ago last Sunday. He said it is 180 degrees wrong. He said the fact is that these two tests demonstrate that a test ban treaty will not have any effect on a country that deems it in its national self-interest to test these weapons; that a piece of paper is not going to stop them.

It is interesting that in the last 2½ years, during the time that the United States has had a moratorium on testing, and that we have supposedly led world opinion in encouraging other nations not to test, five nations have tested nuclear devices—probably five. We know about France and China and now India and Pakistan, and perhaps Russia. But, you see, as to verifying whether Russia actually tested at its test site in the Novaya Zemlya, we don't know for sure whether that happened, or at least we can't discuss it publicly because the means that we have for detecting those explosions is not adequate for the verification that would be called for under the CTBT.

But we know that at least four, if not five, nations have tested, and this is all during the time that the United States has been leading the way by not testing, by having a unilateral moratorium here. The only other, of course, Great Britain, has acknowledged having nuclear weapons that it hasn't tested.

So world opinion, leading by example, sanctions, none of these is sufficient to prevent a country from doing what it believes is in its national self-interest. As this article points out, you just cannot rely upon a treaty or a piece of paper to prevent a country from doing what it believes it has to do to protect its national security. To do so is to fall back on that great American practice of hoping against hope and of putting our reliance in idealism and in treaties when, in fact, the answer is to always be prepared with an adequate military defense. In this case, of course, the defense is the establishment of a missile defense, which we have got to get on with building.

That is a subject for another day, but the bottom line is we can always do what we can do to defend ourselves, such as building a missile defense as opposed to putting our reliance on something over which we have no control, and that is another country's behavior, even in the face of moral condemnation by world opinion and the significant economic sanctions that might be imposed by other countries as well as the United States.

As I said, I will put this article in the RECORD. I urge my colleagues who are interested in the subject to further explore it as we debate the question of whether or not the Senate should take up the CTBT. As I said, I agree with the distinguished majority leader that these tests demonstrate that putting any reliance on that agreement would be folly and therefore far from suggesting this is the time to take it up, I suggest it is time to forget about it.

EXHIBIT 1

[From the Washington Post, June 15, 1998]

INDIA CHEATED

(By Victor Gilinsky and Paul Leventhal)

You wouldn't know it from news reports, but most of the military plutonium stocks India dipped into for its recent nuclear tests came from a research project provided years ago by the United States and Canada. India had promised both countries it would not use this plutonium for bombs.

If Washington and Ottawa were now to keep India to its promise, and verify this, India would lose more than half the weapons-grade plutonium for its nuclear bombs and missiles. The United States and Canada should make this an essential condition for the lifting of economic sanctions.

The plutonium in question is the approximately 600 pounds—enough for about 50 bombs—produced in India's CIRUS research reactor since it began operating in 1960. This was an ''Atoms for Peace'' reactor built by Canada and made operable by an essential 21 tons of heavy water supplied by the United States. In return for this assistance, India promised both suppliers in writing that the reactor would be reserved for ''peaceful purposes.''

India used plutonium from this reactor for its 1974 nuclear explosion. When the facts emerged, Prime Minister Indira Gandhi insisted there had been no violation of the peaceful-use commitments because India had set off a ''peaceful nuclear explosion.'' The Indian scientist then in charge, Raja Ramanna, now has admitted it was a bomb all along. And India now has declared itself a nuclear-weapons state on the basis of its current tests. With the decades-old ''peaceful'' pretense stripped away, the United States and Canada should make unambiguously clear that India may not use CIRUS plutonium for warheads or related research.

The fact that neither capital has uttered a peep about this matter is symptomatic of Western complicity in the South Asian nuclear crisis and of the present paralysis in dealing with it. There is also the matter of a 1963 agreement covering two U.S.-supplied nuclear power reactors at Tarapur and their fuel. The radioactive used fuel from these reactors is in storage and contains most of India's ''reactor-grade'' plutonium. India has said it will reprocess the used fuel to extract the plutonium for use as civilian power-reactor fuel. But reactor-grade plutonium also is explosive and once separated, it could be used by India's scientists for rapid deployment in warheads. There is enough Tarapur plutonium for hundreds of them.

Under the 1963 agreement, India must get U.S. approval to reprocess. India disputes this and insists it is free to reprocess the used fuel at any time. The State Department, historically reluctant to tangle with India, rationalized Tarapur as an unnecessary irritant in U.S.-India relations and put this disagreement in the sleeping-dogs category.

In the history of U.S.-India nuclear relations, nothing stands out so much as India's constancy in pursuing nuclear bomb-making and America's nearsightedness about Indian intentions. India fought to weaken the charter of the new International Atomic Energy Agency in the 1950s. It was duplicitous in carrying out Atoms for Peace agreements in the 1960s. It undermined the Nuclear Non-Proliferation Treaty with its ''peaceful'' bomb of 1974.

Despite this history, each new generation of American policymakers thinks that by being a little more accommodating it will gain Indian restraint and acceptance of nuclear controls. The Indians (they are not alone in this) have for a long time played on that characteristically American self-deception that stems from a mix of idealism and commercial greed. It is not surprising that the Indians expect the game to continue.

The angry congressional reaction to discovering America's role in the 1974 test was the 1978 Nuclear Non-Proliferation Act. This barred nuclear reactor and fuel exports to countries such as India that refuse to accept full international inspections. But the State Department helped India get around the law by arranging for France and later China to continue the Tarapur fuel supply. Is it any wonder the Indians do not take us seriously?

Like India's 1974 test, the 1998 tests present a defining event in U.S. nonproliferation policy. We have failed to react sharply enough to head off Pakistani tests. But we still can be taken seriously in this region and by other aspiring nuclear states such as Iran. At a minimum we should insist that Indian plutonium covered by ''peaceful purposes'' agreements be unavailable for warheads, and that Tarapur fuel is not reprocessed to extract plutonium. This is by no means the whole answer, but there is no point in trying to ''engage'' India is new nuclear limitations if we do not enforce existing agreements.

Mr. KYL. I thank the Chair. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MURKOWSKI. 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. MURKOWSKI. Mr. President, I ask unanimous consent that I may speak as in morning business for 7 minutes.

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

ASIAN FINANCIAL CRISIS

Mr. MURKOWSKI. Mr. President, last Thursday, before Secretary of Treasury Robert Rubin began testifying before the Senate Finance Committee, it is interesting to reflect on the status of the Japanese yen. At that time, it was trading at 141 to the dollar. During the hearing, I had an opportunity to ask Secretary Rubin whether or not the United States would intervene to stabilize the yen, and Secretary Rubin correctly observed that with the hundreds of billions, if not trillions of dollars and yen trading around the world on a daily basis, central bank intervention can only stabilize a currency for a very short period of time. It is further interesting to note, upon the completion of the Secretary's comments the yen fell to 144 to the dollar. So clearly there is a question of confidence.

On Friday, the Government of Japan announced that the Japanese economy had met the standard definition of a recession; that is, two-quarters of negative growth. Unemployment in Japan is at its post-1950s record of 4.1 percent, which in Japan is extraordinarily high, with youth unemployment exceeding 9 percent.

As of this morning, the yen has fallen through the 146 level. The Japanese stock market was within 2 percent of a 52-week low. Moreover, the stock markets—Hong Kong, India, Malaysia, South Korea and Thailand—have all hit 52-week lows. Mr. President, it is clear that Asia has yet to turn itself around from the crisis that started well over a year ago, and the biggest reason Asia is tumbling is because the Japanese Government has failed to face up to the realities of its crumbling economy, especially the dismal state of its banking sector. So long as Japan fails to take decisive action in the banking sector, the yen is very likely to plunge further as lack of confidence prevails, carrying with it the threat to all Asian economies of deflation and further currency devaluations. I think you would agree that all Americans should be very concerned about this crisis in Asia, and particularly in Japan.

Japan is the second largest economy in the world and imports more than $66 billion in goods from the United States. Moreover, Japan is a major importer from the rest of Asia, and if its economy continues in recession, the rest of Asia will remain mired in economic decline which could lead to political instability, not unlike what we recently witnessed in Indonesia.

The reality of the yen decreasing in value is very simple, Mr. President. Eighteen months ago, the yen was about 80. A year ago, it was a little over 100. At that time, it took 80 yen to buy a U.S. lamp. Today, it takes 146 yen. As a consequence, we are not selling any lamps or much of anything else in Japan.

Alan Greenspan recently noted:

> Without first fixing its banking sector, Japan has little hope of fueling economic recovery.

An editorial in today's New York Times, commenting on Japan's recession, states:

> The first priority for Japanese officials must be to save the country's sick banking system.

Ever since the so-called bubble economy burst in Japan 7 years ago, the banking system has been carrying bad loans on its books from the days of heady land and financial speculation.

As a former banker with 25 years of experience in commercial banking, I can tell you what happens when these loans become nonperforming. When the payments cannot be made, of course, the interest can't be paid as well. More often than not, the bank simply adds the past-due interest to the principal and brings the loan current, and the loan appears current on the books when, in reality, it is a nonperforming loan and, in many cases, a loss.

Since 1991, the Japanese Government has promised time and time again to reform financial sectors within the country, but it has yet to fulfill its promise. Instead, I believe that the Government has always believed it could say one thing and do another or, in this case, simply rely on exports to stimulate the economy. The reality is that it will not and has not worked in the past.

In January, Japan's Ministry of Finance announced that the number of problem loans was $577 billion, of which at least $85 billion had already gone bad or were insolvent. The remaining, nearly $500 billion, had the potential to go bad as well. Some analysts believe the value of the problem loans today in Japan is closer to $700 billion.

Following this report, the Japanese Government announced a large bank bailout, but since then almost nothing has been done to implement it. The sick banks stay open and the economy continues to hemorrhage.

In Japan today, short-term interest rates are at their lowest level ever since economic statistics have been recorded. Short-term loans carry interest rates—interest rates, Mr. President—below 1 percent. Imagine that the yield on a long-term, 10-year Japanese Government bond is an incredible 1.3 percent. With interest this low, it is hard to imagine why Japan is sinking into a recession.

Yet, in a recent poll, 95 percent of Japanese companies interviewed complained about the difficulty of receiving loans from Japanese banks. The explanation is simple: The banks are fearful of making new loans. There is a credit crunch in Japan because of the overhang of all the bad debt that is being carried on the banks' books already. So long as this overhang continues, Japan will continue to fall further into recession.

Mr. President, the Japanese can learn a valuable lesson from our bad experience with the failed savings and loans in the United States. When the S&L crisis first began to be felt in 1985, it was debated at great length here on this floor. Congress and the President refused to face the crisis and did not provide the sufficient funds to close the failed S&Ls. This only prolonged the crisis and ballooned the cost of the bailout to the taxpayer.

When we first recognized the difficulty with the failing savings and loans, the estimated loss at that time was $25 billion to $30 billion. But we in the United States did not take our medicine in a timely manner and the S&L bailout ultimately cost the taxpayers of this country more than $200 billion.

We finally did face the S&L problem. The longer we put it off, the more it cost. We created the Resolution Trust Corporation. We closed down the failed banks and consolidated others. After several years, we finally put the S&L crisis behind us, because we recognized that keeping sick financial institutions open only exacerbates the problem and costs more to the taxpayer.

By contrast, the Japanese banks and their regulators have for years tried to hide their financial problems. In order to help cover up the insolvency problems of Japanese banks, just before the end of the fiscal year, in March, the Ministry of Finance changed the accounting rules affecting the so-called BIS ratio, a ratio used by international markets as a bellwether of financial health of the banks. This ratio says that shareholder equity—or assets minus liabilities—should at least equal 8 percent of the weighted assets, or typically the outstanding loans.

The changes allowed the banks to use the purchase price of their stock portfolios as the asset value when the stocks' prices have fallen. Since many of these stocks were bought in the heyday of the Japanese bubble economy, this enabled the Japanese banks to look healthy when, in fact, they were sick. Indeed, they are very sick, Mr. President.

Moreover, the Government attempted to manipulate the end-of-March stock prices by buying up shares on the open market. Neither of these actions suggest that the Japanese Government is serious about making banking changes in conformity with good accounting practices.

Until Japan faces up to its banking crisis, things are going to get worse, not only in Japan but throughout Asia, because of the importance of the Japanese economy to the rest of Asia.

Another looming threat to Asia lies in China which also faces a seriously dangerous banking situation. I was over in Beijing and Shanghai towards

the end of the year. It is amazing to see the number of huge high-rises with very little occupancy as they attempt to negotiate the rent to a level to get people in them, regardless of if it makes financial sense.

By some estimates, China has as much as $250 billion in doubtful loans. The Government-controlled Chinese banking system has been directing funds to favored companies regardless of the economics. In China's case, 70 percent of the state-owned banking loans go to inefficient and near-bankrupt state-owned enterprises. The Government is attempting to encourage foreign ownership coming into China, but there is a great reluctance on the part of U.S. firms to come in and share the debt associated with those opportunities.

In any event, Mr. President, as a result, an estimated three out of four state commercial banks are now believed to be insolvent in China. China has announced their intention to reform their banking system, but with the Asian economy weakening and Japan in recession, China may wait too long to make the tough changes, and then those changes become that much tougher.

In the end, we could find the two largest economies in Asia in recession, and I think this is very likely. My experience in finance tells me that when you have bad financial news, if you can take the hit up front and get on with it, as opposed to bearing it and putting it off, you will be much better off. That is not what is happening in Asia in either the case of China or Japan. There is a great reluctance to face up to the realities and take the medicine to change the banking system and get them back on a functional basis. This would shore up the economy in Asia.

Finally, Mr. President, our own U.S. economy is, more than ever, linked to the world economy. So I can only hope that the Japanese Government and the Chinese Government will accept the problems in their system and make the necessary changes before the cost becomes too great, before the cost affects the U.S. economy and the U.S. taxpayer.

Mr. President, neither Japan nor China is going to survive this crisis merely by devaluing their currency and trying to export their way out of their economic problems. When we see both countries taking serious steps to address their failed financial institutions, as they are currently structured, and bringing greater transparency to their banking systems, then at last we will know that Asia is beginning to turn the corner.

Mr. President, I suggest they start now without further delay.

I thank the Chair and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The PRESIDING OFFICER. The clerk will report the pending business.

The legislative clerk read as follows:

A bill (S. 1415) to reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Gregg/Leahy amendment No. 2433 (to amendment No. 2420), to modify the provisions relating to civil liability for tobacco manufacturers.

Gregg/Leahy amendment No. 2434 (to amendment No. 2433), in the nature of a substitute.

Gramm motion to recommit the bill to the Committee on Finance with instructions to report back forthwith, with amendment No. 2436, to modify the provisions relating to civil liability for tobacco manufacturers, and to eliminate the marriage penalty reflected in the standard deduction and to ensure the earned income credit takes into account the elimination of such penalty.

Daschle (for Durbin) amendment No. 2437 (to amendment No. 2436), relating to reductions in underage tobacco usage.

Reed amendment No. 2702 (to amendment No. 2437), to disallow tax deductions for advertising, promotional, and marketing expenses relating to tobacco product use unless certain requirements are met.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent, on behalf of the leader, that at 5 p.m. today the Senate proceed to a vote on or in relation to the Reed amendment No. 2702 regarding tobacco advertising. I further ask unanimous consent that Senator MCCAIN have 5 minutes and Senator REED have 5 minutes for closing remarks just prior to the vote.

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

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, a couple of weeks ago a couple of Members of Congress came to the floor of the Congress to announce Bob Hope's death. Bob Hope was having breakfast in California at the time. This weekend, we had some legislators talking about the tobacco bill and predicting that the tobacco bill was dead. Well, the tobacco bill, or the tobacco legislation, that is being debated by the U.S. Senate is not exactly having breakfast—clearly, this has been a struggle to get a piece of legislation through the Senate dealing with the tobacco issue—but, the tobacco bill is not dead by any means. I hope that those who tell the American people that the Senate cannot pass a tobacco bill will understand that the Senate fully intends to pass legislation dealing with tobacco.

I want to describe just for a moment why I think those who predict its death are wrong, and why those who call this a bad bill are wrong, and why those who believe that Congress will eventually not act on tobacco are wrong.

Let me go back to the start of this issue. Why are we debating a tobacco bill? Why tobacco legislation? Simply put, it is because we now know things we did not know 25, 50, and 100 years ago about tobacco. We know that tobacco can kill you. The use of tobacco, we know, causes from 300,000 to 400,000 Americans a year to die from smoking and smoking-related causes.

Tobacco is a legal product and will remain a legal product. But we also know that it is illegal for kids to smoke, and we know that tobacco companies have targeted our children to addict them to nicotine.

The majority leader this weekend said, ''Well, the tobacco bill is so bad that it should not be passed in its current form,'' and so on and so forth, and ''If we can't get to a conclusion on it this week, we've got to move on.'' That is another way of saying, ''We're going to leave this carcass in the middle of the road and just drive forward.''

Fortunately, we learn a lot as we go along here in this country and in life. One of the things we ought to learn is, this piece of legislation dealing with tobacco, and especially dealing with the tobacco industry targeting America's children—we must resolve this issue; we must pass this legislation.

Let me describe for my colleagues some of the evidence that has been unearthed from depositions and from court suits, and so on, in recent months.

A 1972 document by a tobacco company, Brown & Williamson. It says:

It's a well-known fact that teenagers like sweet products. Honey might be considered.

Talking about sweetening cigarettes because teenagers like sweeter products—does that sound like a company that is interested in addicting kids to their product?

How about Kool—the cigarette Kool?

KOOL has shown little or no growth in share of users in the 26 [and up] age group.

This was written by a Brown & Williamson person. It is a memo from 1973. It says:

. . . at the present rate, a smoker in the 16–25 year age group will soon be three times as important to KOOL as a prospect in any other . . . age category.

Talking about their 16-year-old customers for Kool cigarettes.

Marlboro's phenomenal growth rate in the past has been attributable in large part to our high market penetration among young smokers . . . 15 to 19 years old . . .

This is according to a report by a Philip Morris researcher.

You say that they are not targeting kids?

1974, R.J. Reynolds. A marketing plan submitted to the board of directors of the company says:

As this 14–24 age group matures, they will account for a key share of the total cigarette volume—[in the] next 25 years.

Or if you are still unconvinced—that there is no need here; that the industry has not targeted our children—how about a Lorillard executive, a cigarette company executive, in 1978:

The base of our business is the high-school student.

A cigarette company executive saying, ''The base of our business is the high-school student.''

Philip Morris, 1979, says:

Marlboro dominates in the 17 and younger category, capturing over 50 percent of this market.

It is like they should have a fiesta here. They capture over 50 percent of the 17-year-old and under market. And you say the industry isn't targeting kids?

Well, cigarette smoking is addictive. It is legal but addictive.

Here is something that was picked up this morning. It is actually a piece from Marlboro. It talks about river rafting, cookouts, fly-fishing, bonfires, mountain biking, and bands. And it is advertising, of course, cigarettes. It has the warning, as we require by law, ''Surgeon General's warning: Smoking causes lung cancer, heart disease, emphysema, and may complicate pregnancy.''

The question for the Congress is: Do we want an industry to try to addict our children to this product? And the answer is no. And if not, if we do not want the industry to continue to do that—and they have in the past; the evidence is quite clear—if we do not want them to continue to do that, if it is our position that it is wrong for the industry to target children—and that is our position—then the question is, What are we going to do about that? Is the Congress going to pass a piece of legislation that prohibits this industry from targeting our children? And that is the legislation that is on the floor of the Senate.

Some do not like it; and some, for their own reasons, want to kill it. But they will be on the wrong side of history if they succeed in killing this legislation.

Oh, we have done a lot of things over the years that were controversial at the time we did them. Even things like giving women the right to vote in this country was controversial, wasn't it? For more than half of this country's history, women were not allowed to vote. Or skip forward to the Civil Rights Act of the early 1960s. Who in this Chamber now would decide that the things that we provided for in the Civil Rights Act in the early 1960s they would now support? A good number of them opposed it back then.

Things like requiring labels on food—that was controversial. Requiring companies that produce our food in the grocery store to actually put something on the label that states the fat content, the sodium content, or the carbohydrates—that was big government intruding on those who manufacture the food. How could we require that someone put on the can of peas what is in that can of peas? We did it.

Now you can go down the grocery store aisle and see traffic jams of people, taking that can or package, and trying to figure out what is in it, how much fat it contains, how much sodium is in a product. It was controversial at the time.

A lot of things that were controversial at the time turned out to have been the right thing. The tobacco bill will turn out to be the right piece of legislation for this country.

How many in this Chamber who spend a lot of time on airplanes remember, going back 10 or 20 years, getting in the middle seat of a 727 and as the airplane takes off, the person in the seats on the right-hand side and the left-hand side light up their cigarettes. Because then there were no restrictions on smoking anywhere on airplanes? Eventually they put the smokers in the back of the plane. That meant everybody breathed the same smoke, although they were separated by distance. Then, finally, you shall not smoke on airplanes in this country. It was controversial at the time. I voted for that. It was the right thing to do.

This piece of legislation on the floor of the Senate talks of a range of issues, most especially the issue of teen smoking. In an industry that knows the only customers it has access to are kids—because almost no one reaches adult age in this country and tries to figure out what they have missed in life and comes up with the idea of smoking; nobody 30 or 40 years old says what will really enrich my life is if I started smoking—kids are the only source of new customers for tobacco companies. The tobacco companies say it themselves in the research material we have provided.

This legislation provides a range of programs, including providing smoking cessation programs, trying to help people who are now addicted to quit; prohibits advertising that targets our children; provides for counteradvertising, that actually tells our kids that smoking is not cool and that smoking can cause lung cancer, heart disease, emphysema and so on.

The resources in this bill help us invest in the National Institutes of Health to continue to develop the breathtaking achievements in medical research that we see day after day and month after month in the National Institutes of Health. It seems to me this is a remarkable bargain for the American people.

This legislation, I think viewed 10 years from now, will be seen as something that was right for the time. Ten years from now, those who vote against this legislation will say, ''How on Earth did I ever come to that conclusion?'' Of course it made sense for us as a country to decide cigarette companies cannot target our children. Of course it made sense for us to have counteradvertising and smoking cessation programs and more investment in the National Institutes of Health to deal with the range of medical problems caused by smoking. Of course that made sense.

So let me conclude by saying that those who this weekend were on the talk shows and were speaking to the press about what will happen to this tobacco bill, they have prematurely announced its death. This tobacco bill is not dead. There are some who wish it were dead. There are some who this week will work against it and will try with every bit of energy they have to kill it, but they will not succeed because this is the right thing to do. We have made the case effectively that at this time in this country we ought not allow the tobacco industry to target our kids to the addiction of cigarettes. This piece of legislation moves us in that direction in a very, very significant way.

The majority leader and others who speak about this legislation need now, I think, to provide some leadership to help us pass this legislation. A bipartisan group of Senators, including Senator MCCAIN, who has spent a great deal of time on this legislation and someone for whom I have great admiration and I commend him for his work, Senator CONRAD on our side and others, a great many people have spent a lot of time crafting this in a bipartisan way. Now we need this week to finish a job and pass it through the Senate and get it to a conference with the House so that the American people can look at the job the Congress has done. And then make the judgment that they have done a good job on behalf of our children, they have stood up for our children and have told an industry that addicted our children, you can't do that anymore; we are not going to let you do that anymore. That is the right position for our country.

I know that the Senator from Rhode Island is about to talk about an amendment, I think, that he has pending in the Senate. Let me, as I conclude, also commend him for the work he has done. The Senator from Rhode Island, the Senator from Illinois, Senator DURBIN, and a number of others have worked a great deal on this legislation, including the Senator from Massachusetts, and I mentioned the Senator from Arizona, Senator MCCAIN.

This is a tough piece of legislation. The toughest thing in the world is to propose. The easiest thing in the world is to oppose. It doesn't take any skill to oppose. I think it was Mark Twain who once was asked if he would be involved in a debate and he immediately accepted, ''provided I can take the opposing side.'' They said, ''You don't even know the subject of the debate,'' and he says, ''I don't have to, as long as I am on the opposing side.''

It takes no time to prepare. We are proposing a piece of legislation in the Senate dealing with smoking, tobacco and children that is right for the time. Those who stand in its way will be on the wrong side of history. Those who predict its death are dead wrong, because we fully aim, this week or next

week, to pass this legislation through the U.S. Senate.

I yield the floor.

The PRESIDING OFFICER (Mr. GORTON). The Senator from Rhode Island.

Mr. REED. As an initial point, I ask unanimous consent to add Senator TIM JOHNSON as a cosponsor of the Reed amendment, amendment numbered 2702.

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

Mr. REED. Mr. President, first let me commend my colleague, the Senator from North Dakota, for his fine words and also for his commendation. He has been, also, a leader in this effort to try to pass a balanced, yet very effective, tobacco legislation.

AMENDMENT NO. 2702

Mr. REED. Mr. President, before this body today is my amendment which would deny the deductibility of advertising expenses to the tobacco industry if they did not follow the FDA rules with respect to advertising.

The FDA, after very careful rulemaking, promulgated a series of rules which would proscribe advertising directed at children. Among these rules are limiting tobacco billboards to a distance further than 1,000 feet from a school. It will require the publication of advertisements in youth-oriented magazines to be in black and white text only. It would dispense with some of the other staples of advertising that the industry is using.

As the Senator from North Dakota has pointed out and as I pointed out in my remarks last Friday, there is clear, convincing, overwhelming evidence that for decades the tobacco industry has deliberately, relentlessly, and ruthlessly targeted children in their advertising. It is not an accident. It is not a coincidence. It is not the collateral effect of trying to reach the 21- to 25-year-old market. It is very purposeful, very deliberate, and, regrettably, very effective.

In the course of the debate over the last several weeks we have taken diversions through many different areas. We are talking about tax policy. We are talking about child care policy. We are talking about how we spend these resources, whether this is an inappropriate tax. I think it is helpful to refocus why we are here. We are here because the tobacco industry, as I mentioned before, has, over decades, targeted young people for their advertising. They are attempting, and succeeding too well, to literally entice young people as young as 12 and 13 years old into smoking cigarettes and using other tobacco products.

I think that is wrong. I think the vast majority of the Americans think that is wrong. I think the vast majority of my colleagues in the Senate feel it is wrong. We can do something about it. As we have discussed all of these different issues of tax policy, fiscal policy, regulatory policy, it sometimes helps to remind all of us what the industry is doing.

I had a very graphic reminder sent to me by one of my constituents from Rhode Island. I mentioned this last week. This is a very slick, sophisticated, mailing piece, sent to his son, a 16-year-old junior in high school. I have blown it up here so the audience can see in larger detail what I am talking about. Again, this was sent to a 16-year-old. It was sent addressed to him, personally. It wasn't ''occupant,'' or ''resident.'' It was addressed to him.

As a first point, I can recall as a youngster when I ever got mail it was a big occasion. To think that someone would actually want to send me a letter, particularly a big company like the Brown & Williamson Tobacco company was a big occasion.

The first part of it grabs your attention: ''We know you like it loud.'' How do they know they like it loud? Because he essentially was contacted and solicited because this young man went to a rock concert which Brown & Williamson sponsored the preceding summer. This is not coincidence, either. Their decision to sponsor a rock concert that attracts, as the father said in the letter, a majority of the audience being 18 or younger, much younger in some cases, was very deliberate. It wasn't spur of the moment. They sat around a conference room on Wall Street and Madison Avenue saying, ''How do we get our target population? How do we reach them and make contact with them? And, oh, by the way, how do we draw them into this addiction of smoking?''

So he received this mailing at home. You open it up. It is three dimensional. I know in the course of some of my campaigns I have used them in mailings to my constituents. This is a very expensive, very professional, and very sophisticated mailing. It is a very targeted mailing.

Then you read the narrative. ''You like it loud''; and ''very, very smooth.'' ''Kick back today and enjoy a bold treat. Refreshing menthol, and a coupon to save you some change. Relax with Kool, and slip into something smooth.''

You are overwhelmed by this message. The message is not about the statistics, or the smoking, or the dangers of smoking, the information he or she would want as a rationale consumer if he or she were making a decision to smoke. You are being overwhelmed by I would argue misinformation. Oh, yes, there is the required Surgeon General warning here. ''Warning: Smoking greatly increases serious risk to your health.''

If you are 16 years old, do you really believe that, when everything else is talking about your favorite rock group, talking about how ''we support'' that rock group in the concert, how you are part of this ''loud'' generation, how you like it ''smooth'' personally directed to you? I don't think so. And the most ironic part of all of this is this message says ''quitting smoking'' will help your health. This message down here says, ''We will give you a buck, kid, if you buy two packs of our cigarettes.'' What a deal.

This is what we are talking about in this tobacco bill. We are talking about an industry that has deliberately, repeatedly attempted to market the kid shamelessly; without shame.

This took place 6 months ago at the same time they were talking about their arrangement with the attorneys general; at the same time they knew we were going to be debating tobacco legislation on the floor of the U.S. Senate. And yet they continued to try to sell their ware to kids.

You know, people get addicted to cigarettes. I think the industry is addicted to children. They just can't leave them alone. They just have to keep selling to them, even when common sense would say let off while the smoke clears. No pun intended. They can't stop because their customer base is hooking these kids. You hook a 16-year-old child, and that is 10, 20, 30 years of customer for your brand. Of course, we know that one out of three of these children will die prematurely. We know that 5 million people under 18 years of age today will die prematurely because they are addicted to cigarettes and other tobacco. But they don't want you to know that. They want you to think this is cool, this is smooth, and there is the whole adult world opening up for you. ''You can be as successful and as attractive and as desirable as any rock star. You just have to smoke our cigarettes.'' That is wrong.

This is just one example of what goes on. It is ubiquitous throughout. This is a promotion by Winston. Winston's, by the way, are the new health food of America. You see their ads. Smoking it is like eating health food; no additives; no anything; it is macrobiological; whatever. Again, they are taking an approach now with their campaign, which is making their product look like it is healthy for you; it is what you would buy if you were a research scientist trying to develop the best diet in the world. But they have sponsorship for NASCAR racing, which is a venerable tradition in this country. For the Winston Cup, they are sponsoring it. Not all; you could not argue that all of the people who attend these races are young people. But we also must recognize that this is a very attractive event for young people. There must be something here.

I read a few weeks ago in the New York Times that Mattel, Inc., is thinking of creating a NASCAR Barbie doll, the most popular toy in the world, because they figured it out, too. There are lots of young girls who are attracted to this whole scene of NASCAR racing and a NASCAR Barbie is going to be a very popular toy. The same type of calculations that are going on at Mattel are going on in some cases up in the cigarette headquarters of the world. But one should say, of course,

that the Barbie doll is a much more benign figure in American life than cigarettes. But this is ubiquitous. Our children are being subjected to this constantly.

My amendment simply says, listen, the FDA, after rulemaking at length, has come up with very reasonable restraints on tobacco advertising. If you follow those restraints, you will receive your full deduction. But if you violate them, you will lose your deduction. I believe most of my constituents would say the same thing, that we should not be subsidizing the tobacco industry as they attempt to lure our children into smoking. The industry spends about $5.9 billion a year on advertising. We kick back, if you will, about $1.6 billion through the deduction. That is money that, I think, is poorly spent. But as long as the industry is willing to refrain from targeting children I don't think we can object because it is available to other industries. But if they persist in targeting children and not following FDA regulations, then I believe we should act very strongly, very vigorously, and deny them this deduction.

By the way, too, independently, my amendment would not restrict speech whatsoever. Of course we have tobacco concerned any time the Government attempts to invoke any type of restriction on speech. But taken by itself, my amendment would simply say you can say anything you want. You can even promote your product using this. But don't charge the Government for your deduction. You can do it on your own money.

My amendment has been criticized on a couple of points, which I would like to respond to. First, there are many of my colleagues who say we shouldn't really do anything unless it is voluntary, because, if we do, the tobacco industry will sue us and we will be tied up in court for 10 years.

The reality is the tobacco industry is already suing the FDA, and not just the tobacco industry, but the advertising interests are all there, and it is absolutely their right. They feel strongly that not only commercial interests are at stake but also constitutional interests. But to deflect or defer from doing something today vigorously about tobacco access to children simply because we might be sued is absolutely, I think, an implausible and inappropriate comment. We will be sued perhaps, but we have to act to ensure that we do what is right for the children of America.

The other approach is suggesting that the Supreme Court decisions place a much higher standard when you come to restricting commercial speech. Specifically, the case of 44 Liquormart, Inc. versus Rhode Island. I feel somewhat familiar with the case. It originated in my home State. Actually it originated and the legislation was passed in 1956 in Rhode Island. Although I served in the assembly in Rhode Island, I was not there in 1956. I was in grammar school in 1956. But this legislation that Rhode Island passed prevented the publication of price information with respect to liquor advertising.

Stepping back a bit, I think the judges probably got the same sense that I did when I read the statute in this case and realized what might be afoot; that it is equally likely that this legislation was passed 40 years ago not so much to increase temperance in Rhode Island but simply to prevent discount liquor stores from encroaching on established liquor stores. So right away, there is a suspicion about the underlying statute in 44 Liquormart.

But, first, let me say something about that case. The Supreme Court reaffirmed the doctrine associated with Central Hudson, which is the leading case on commercial speech, and they said essentially one may restrict commercial speech, first, if it is unlawful; or, it misrepresents significantly the product. Even if it doesn't do so, one may restrict it if there is a substantial governmental interest at stake. The legislation directly affects that interest. And the means are no more restrictive than necessary to accomplish the governmental interests. So the Central Hudson test is in place and remains.

In 44 Liquormart, the Court found essentially that the State of Rhode Island made no showing that their proposed legislation materially and directly advanced the goal of decreasing the consumption of alcohol. In fact, there was no evidence submitted in the record to show that this would have any effect at all on alcohol consumption in the State of Rhode Island. Alternatively, the Court discussed the fact that there were other means possibly available that had not even been used. On those factual bases, together with the Central Hudson doctrine, they declared that the statute was impermissible encroachment on commercial speech.

The case is much different here. The FDA has established a record that advertising decisively affects children's choices to begin to smoke cigarettes, and by maintaining appropriate restrictions on advertising, we can, in fact, directly affect the behavior of children with respect to cigarettes. This is not based upon whimsy. The FDA relied on at least two major studies: a study at the Institute of Medicine in 1994, and the Surgeon General's report in 1994. Both concluded that advertising was an important factor in young people's tobacco use. Moreover, these reports indicated that advertising restrictions must be a part of any meaningful approach to reduce underage smoking.

So this is not a situation of trying something that has not been tested or has not been tried by other means. Their conclusion authoritatively is that these types of restrictions must be in place.

I should also remind you that we have tried other ways to moderate the consumption of tobacco products in this country. In the early 1970s, we banned television advertising of tobacco products.

But as Robert Pitofsky, the Chairman of the Federal Trade Commission, pointed out, what happened is the industry simply shifted to other forms of advertising. When I was a kid back in the 1950s and the 1960s, you would see TV advertising, but you would be very, very shocked if you could have a record of direct mail pieces sent to 16-year-olds, as happens today. And the sponsorship of NASCAR racing—all of these things are a direct result. In fact, cigarette advertising has exploded. From 1975 to 1995, 20 years, it has increased manyfold—going into not only these types of promotions, but also all the gadgets and all the other rigmarole that the industry is promoting.

This is a Camel cash collectible. Now you can get Joe Camel T-shirts, and Joe Camel lighters, and Joe Camel dart boards, and Joe Camel posters, and Joe Camel everything—wristwatches, you name it. That, too, is part of the ubiquitous promotion of tobacco. And although it says very precisely, ''Offer restricted to smokers 18 years of age or older,'' I dare say I see more kids with Joe Camel T-shirts and bicycle caps and things like that than I do 40-year-olds, 30-year-olds, or even 20-year-olds.

So what the intent is, we will let the consumer decide.

Furthermore, when the FDA promulgated its regulations, they went on very clearly to state what was happening here.

> Collectively, the studies show that children and adolescents are widely exposed to, aware of, respond favorably to, and are influenced by cigarette advertising. One study found that 30 percent of 3-year-olds and 91 percent of 6-year-olds identified Joe Camel as a symbol of smoking.

Thirty percent of 3-year-old toddlers knew that Joe Camel, that cuddly cartoon character, was associated with smoking. Ninety-one percent of 6-year-olds, in the first grade of school, might not know their ABCs, but they know that Joe Camel and smoking go together.

That is not good. That is what we are talking about here, and that is why, unless we effectively and dramatically affect the advertising of tobacco products to children, we will never turn the table on this epidemic of smoking among young people.

Mr. President, I have other comments I wish to make, but I notice that my colleague, the Senator from South Dakota, is here, and I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. JOHNSON. I thank the Chair.

I thank the Senator from Rhode Island, my friend and colleague, Mr. REED. I commend him for this particular amendment. I am proud to be a cosponsor of this amendment.

If you were to talk to a typical South Dakotan and say, ''You know, the Federal budget is tight this year; we may

not have the resources we need to do all we would like to do in terms of cancer or heart research at the National Institutes of Health; we may not be able to do all we would like to do for education, for health care; we may not be able to do all that we want for child care; and, oh, by the way, we do have some $1.6 billion of your tax money we are going to turn back to the tobacco industry as a subsidy for their marketing messages to our children,'' I guarantee you, the typical South Dakotan would be appalled. He would be amazed that any institution could possibly have come up with a priority as wrong-headed as that.

And so, Mr. President, I rise today to express my support for the Reed amendment which would deny tobacco companies any tax deduction for their advertising and promotional expenses when those ads are aimed at America's most impressionable group, its children. This amendment has the overwhelming support of the public health community, and it would greatly strengthen the underlying McCain bill. I congratulate my colleague from Rhode Island on this amendment.

It is almost incomprehensible to me that taxpayers actually subsidize the tobacco industry's promotional efforts even as we go about forming a consensus on the dangers of smoking and the problems created by the industry's efforts to target children.

Numerous studies have implicated the tobacco industry's advertising and promotional activities as the cause of continued increases in youth smoking rates in recent years. Research on smoking demonstrates that increases in youth smoking directly coincide with effective tobacco promotional campaigns.

We simply have to address the industry's ceaseless efforts to market to children. It is time for this Congress to put a stop to the industry's practice of luring children into what is an untimely progression of disease and death.

Under this amendment, if the tobacco manufacturers do not comply with the advertising restrictions as promulgated by the FDA, the manufacturer's ability to deduct the cost of tobacco advertising and promotional expenses will then be disallowed for that particular year. This approach has overwhelming support of the public health community, supported by Dr. C. Everett Koop, the American Lung Association, the Center for Tobacco-Free Kids, and ENACT Coalition, a coalition comprised of leading public health groups including the American Cancer Society, American Heart Association, and many others.

Mr. President, the importance of this issue is simply enormous. The facts speak for themselves. Today, some 50 million Americans are addicted to tobacco. One of every three long-term users of tobacco will die from a disease related to their tobacco use. About three-quarters, 70 percent, of smokers want to quit, but fewer than one-quarter are successful in doing so. Tobacco addiction is clearly a problem that begins with children. Almost 90 percent of adult smokers started using tobacco at or before the age of 18. The average youth smoker begins at age 13 and becomes a daily smoker by 14½.

Each year, 1 million children in our Nation become regular smokers. One-third of them will die prematurely of lung cancer, emphysema, and similar tobacco-caused diseases. Unless current trends are reversed, 5 million kids currently under 18 will die prematurely from tobacco-related disease.

So, Mr. President, this is a public health crisis. A recent survey by the University of Michigan found that daily smoking among 12th graders increased from 17.2 percent in 1992 to 22.2 percent in 1996 and continued to climb in 1997 to 24.4 percent. This represents a cumulative 43-percent increase in daily smoking among our Nation's high school seniors just over these past 5 years.

One of the advertising campaigns most markedly aimed at young people is the now notorious Joe Camel campaign that my colleague has alluded to. After R.J. Reynolds introduced this campaign, Camel's market share among underage smokers jumped from 3 percent to over 13 percent in just 3 years. Although Congress had banned cigarette advertising on TV in 1970, tobacco companies routinely circumvented this restriction through sponsorship of sporting events that gave their products exposure through television.

The Federal Government subsidizes advertising through a tax deduction, generally a 35-percent deduction, for advertising expenses. In 1995, this subsidy cost the American taxpayers approximately $1.6 billion. In terms of lost revenue to the Federal Treasury, this is a very significant sum of money. In effect, the Federal Government is subsidizing industry's advertising costs. For example, in 1995 the cost of the cigarette advertising deduction covered the total amount spent by the industry on coupons, multipack promotions, and retail value-added items such as key chains and other point-of-sale advertising, the kind of items that are most attractive to children.

In 1995, the tobacco industry spent $4.9 billion on advertising, double the total Federal Government appropriation for the National Cancer Institute in fiscal year 1995, $2.1 billion, and almost four times the National Heart, Lung and Blood Institute appropriation, which totaled $1.3 billion that year. In 1995, the tobacco industry spent this $4.9 billion on advertising, 40 times the amount spent by the NIH on lung cancer research during that year.

It is certain that Congress has authority over the Tax Code. We understand the first amendment, free speech rights of any individual, and even in the case of commercial speech. We are very much aware of that. But there is no constitutional right to have the expense of a corporation's speech subsidized by the taxpayers. So, while I concur that within some limits, which the Senator from Rhode Island has outlined relative to commercial speech, there is a first amendment right that is at the heart of all of our concern about advertising, that certainly there is no constitutional right to taxpayer subsidy. When a message is designed to addict vulnerable youth to a deadly product, it is absolutely imperative for Congress to act with great urgency.

So, again, I commend the Senator from Rhode Island for this amendment, for his excellent outline of the legal history of how we have arrived at where we are today. But it would seem in the course of all the contentious amendments that we have dealt with on this floor over the last several weeks, and will still in the week to come, that this ought to be an amendment around which there would be great bipartisan, commonsense support. I challenge any Member of this body to go home to his or her State and explain to constituents that at the same time we are trying to come up with ways to reduce youth addiction to tobacco products, that we continue to spend in the range of $1.5 billion of the taxpayers' dollars—dollars that could be better used for medical research, for education, that could go back into the pockets of the taxpayers in the form of tax cuts, for that matter. Almost any other use would be more productive than to use it in such a negative way as a subsidy for marketing techniques directed at our youth.

Again, I commend the Senator from Rhode Island. I commend this amendment to my colleagues and yield my time back to the Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, first I thank the Senator from South Dakota for his fine words and support of this amendment and also for his effort in this legislative process. He has been there every step of the way, working very closely to ensure that we develop legislation that will work for the children of this country, their parents, and for all Americans. I thank him for that and for his kind words today.

Again, continuing to respond to some of the issues that were raised today with respect to my amendment, there are suggestions that under the latest case, 44 Liquormart, there has to be a material showing that the regulation proposed, the proposed restriction on speech, will significantly and materially advance the underlying Government objective. Once again, in that particular case they do not find such significance. In this situation, the significance is obvious and compelling. The FDA, after its extensive rulemaking, concluded that limits on advertising will avert the addiction of anywhere between 25 percent and 50 percent of the children at risk. So, literally, we have within our power the

ability to save 250,000 a year from the ravages of smoking. That is not hypothetical. That is not conjecture. That is based upon sound analysis by the FDA. And that is material and significant.

Consequently, all the criticism directed to the amendment with respect to the first amendment, and particularly with respect to 44 Liquormart, failed, I believe, and we are left with legislation that is focused, that deals with a very substantial national interest—the reduction of teen smoking—that directly affects that interest, that will produce significant material beneficial results, and also one that is used now after several other attempts have failed—noticeably warning labels, noticeably banning certain types of advertising, television advertising.

So I believe we are on sound constitutional grounds and very, very sound policy grounds, because intuitively I think we all grasp that this barrage of advertising images has an overwhelming and upsetting effect on children. If 90 percent of 6-year-olds recognize Joe Camel and smoking, then that is pretty compelling evidence that we have to do something to restrain the way cigarettes are advertised and marketed in this country. That is what this amendment proposes to do.

Let me also suggest that within the FDA regulations there are provisions which are not particularly novel. All of these discussions about restricting speech, I think, fail to recognize the fact that many States already put significant restrictions on cigarette advertising. For example, in California the State prohibits advertising of tobacco products within 1,000 feet of any public or private school playground. The statute also allows local ordinances to be more restrictive.

A second statute makes it clear that one cannot sell, lease, rent, provide any video game which will primarily be used by minors if the game contains any paid commercial advertisement for tobacco products.

In Indiana, the State prevents nonpoint-of-sale advertisements for tobacco within 200 feet of a school. In Kentucky, the State has banned tobacco billboard advertising within 500 feet of a school. In Texas, the State prevents tobacco advertising within 1,000 feet of a school or church. In Utah, the State law bans all tobacco advertising on ''any billboard, street car, sign, bus placard or any other object or place of display.'' In fact, the Utah statute originates from 1929.

All of these States have, by their State laws, imposed restrictions on tobacco advertising. The justification, of course, is that they are protecting children. They have been on the books, in some cases, as in the case of Utah, for 60-plus years. So we are not breaking new ground. What we are doing, finally, is assembling a coherent set of rational regulations based on extensive findings by the FDA which will, we hope, for the first time ensure that children are not the objects of tobacco advertising.

The other aspect or complaint that has been made about the amendment is that it might not work out well, it is using the Tax Code to enforce a public policy.

Lately, this body has been preoccupied with using the Tax Code to enforce public policy positions of the various parties, so that is not a novel idea. But one aspect of this legislation which I think is very commendable is that essentially what will happen is that the industry itself will have to police itself. Today, the FTC, the Federal Trade Commission, could come in and take any one of these ads and say, ''This is false and misleading. You have no evidence to say it's smooth. This is just totally misleading.'' They can do that.

It will take 2 years of administrative procedures to work through the administrative law judge level. And at the end of those 2 years, if the company is distressed with the outcome, they will simply sue and go to the court of appeals, claiming that the ALJ's decision was arbitrary, capricious, et cetera, and that appeal will be stretched out.

In the world of advertising, the product life of an advertising campaign is measured probably in a month, maybe a year; there are perennials that last a long time. But that particular advertising will be old hat in a matter of months, so there is every incentive, when there is a question about whether they are pushing across the line or not, to go ahead and advertise, because, remember, if you hook that 16-year-old, you have a faithful customer for 30 years maybe.

In this situation, they are going to have to look very carefully, because the consequence of violating this amendment is that they lose their tax deduction, it goes right to the bottom line, and it is something that if they choose to litigate for years or months and, at the end, they are found liable, not only do they pay the taxes owed, but also interest and penalties. They are very much concerned, as they should be.

This is an effective enforcement device. I believe we need effective enforcement devices. We have tried other approaches—the advertising ban on television, the warning labels, even FTC jurisdiction to ferret out individual ads—but still we are seeing our young people deluged by these advertisements and, again, remarkably, 90 percent of 6-year-olds being able to recognize Joe Camel as a symbol for cigarette smoking in the United States. So I believe we need this amendment very, very much.

Let me suggest also there has been another general argument against the amendment, and that argument has essentially been: Well, the sky's falling, the slippery slope; if you do this, you will enforce every Federal regulatory policy with the Tax Code, and that will be a terrible thing. Again, I think that is more alarmism than rational.

The reason I am here today is that central to the business of tobacco is the business of promoting it through advertising. People smoke cigarettes like this not because they have, I think, some need to do it, but they have been subjected to this type of advertising over many, many years. Advertising and cigarette promotions have been hand in hand for as long as anyone can remember.

If you go back far enough, the industry was much more aggressive in some respects, and blatant. They put in magazines pictures of doctors smoking away, suggesting that cigarette smoking was really good for them; they put in photographs, pictures, drawings of very attractive, sophisticated young women, suggesting that smoking was good to control weight—none of which, of course, was buttressed by the fact that smoking is an addiction that ultimately prematurely kills people.

There is such a logical connection, an inextricable connection, between advertising, the way they do it, and the promotion of a tobacco product that it is logical to take this step. It is not logical to suggest that FDA regulations will be enforced by denying deductibility or any other type of regulatory policy. So the whole issue of, this is just the first step on a very slippery slope is, I think, refutable on its face.

We have before us the opportunity to pass significant legislation which will materially, effectively improve the public health of this country. We have to recognize—I think so many of us do—that cigarettes probably are the No. 1 pediatric disease in the country. It affects kids adversely. It takes it a while to catch up with them, but it affects kids adversely. Ninety percent of smokers begin before they are 18 years old. This is a pediatric health crisis, and we are responding.

The fear I have is, if we don't respond in this manner, that we really won't be able to effectively accomplish what we want to do. Even if we pass this legislation—and Senator MCCAIN has done a remarkable thing moving this legislation through; his perseverance and strength, along with Senator KERRY and along with so many of my colleagues, has been remarkable—even if we pass legislation that has increases on the price of cigarettes, that has effective funding for a public health program, if we do that and yet we still have no real check on advertisements like this aimed at young people, I believe we will end up not doing what we are setting out to do: to restrict smoking among underage Americans.

I think we should do it, I think we must do it, and I urge careful consideration and support for this amendment.

Mr. President, I yield the floor.

Mr. ABRAHAM. Mr. President, I rise to raise concerns about the Reed amendment to the pending tobacco legislation. The amendment offered by the Senator from Rhode Island may sound appealing on first impression, but

could have some harmful consequences. While I believe that the amendment is offered in all sincerity, in my view it would be wrong for us to take this approach to tobacco use. In particular, this amendment would establish a dangerous precedent by using federal tax policy as the primary enforcement penalty for federal agency rules issued by an agency other than the IRS.

Let me give a few examples to highlight the concerns I have:

First, imagine that General Motors has announced its fall line of new Chevrolets, but that the Department of Transportation determines that the cars fail to meet the minimum fuel consumption standards. Now imagine that the Department of Transportation could instruct the Internal Revenue Service to disallow as a business deduction the cost of all General Motors advertising for 1998. That could be devastating, and it would place tremendous and potentially destructive power in the hands of the federal government.

Another example: Say the Department of Agriculture conducts a routine inspection of one of the nation's largest food processing facilities in the Midwest. Upon finding unsanitary conditions, the Secretary of Agriculture might announce under a similar regulation that the food processing company that operates the plant and every company that markets its products will be punished by losing the entire deduction for 1998 of all of their food product marketing and advertising costs. Again, the result could be disastrous.

The pending amendment would make such scenarios all the more likely.

Under the Reed amendment, if the FDA found that one advertisement of a tobacco product failed to comply with marketing and advertising rules issued by the FDA nearly two years ago and still under litigation, the offending company would lose the entire business expense deduction for all of its advertising. This is unsound public policy, unsound tax policy, and an unwise expansion of federal regulatory authority.

Federal agency rules are generally enforced with other fines or penalties that are tailored to the violation. The Reed amendment would allow the same result—a higher tax payment, which could in some cases be quite substantial—regardless of whether a violation was inadvertent or inconsequential.

In addition, the financial impact could itself be tremendous and could get into the hundreds of millions of dollars. The Congress should not be giving the FDA such expansive and punitive authority. The possibility of such a penalty could chill advertising and deter legitimate, protected speech. In my view, this raises constitutional concerns and liberty interests that should at a minimum be seriously considered in the appropriate committees, including the Finance and Judiciary Committees, before we consider placing such an unprecedented and potentially damaging provision in the pending legislation.

We should be especially careful about creating a precedent that will not only distort the Tax Code but will lead to more expansive and intrusive authority on the part of regulatory agencies. Mr. President, I ask unanimous consent to have printed in the RECORD a letter by Grover Norquist, President of Americans for Tax Reform, expressing strong concerns about the tax implications of the Reed amendment and about the significant increase in governmental authority contemplated by that amendment as well.

While I believe Senator REED to be well-intentioned, I urge my colleagues to oppose the amendment.

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

AMERICANS FOR TAX REFORM,
Washington, DC, June 12, 1998.

Hon. SPENCER ABRAHAM,
U.S. Senate,
Washington, DC.

DEAR SENATOR ABRAHAM: I am writing to express my strong opposition to an amendment that Senator JACK REED (D–RI) is offering to the anti-tobacco legislation (S. 1415). This fatally flawed amendment would for the first time in our nation's history link the denial of a necessary and ordinary business expense deduction to complying with rules issued by a federal regulatory agency. It is my understanding the Reed amendment will be debated today and possibly voted on next Monday evening.

The Reed amendment, which would eliminate the ability of tobacco companies to deduct all advertising, marketing, and promotion costs if only one advertisement violates regulations promulgated by the Food and Drug Administration, is a reckless attempt to use the Tax Code for a purpose for which it was never intended. I can find no sound public policy reason to start using the Tax Code to help enforce FDA regulation, which by the way have been declared illegal by a Federal District Court.

This amendment, if adopted, could establish an unacceptable precedent of granting power to such agencies as the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), the Equal Employment Opportunity Commission (EEOC), the Federal Trade Commission (FTC), or any other government agency that issues regulations to increase taxes on businesses by millions of dollars for technical violations of rules that are highly complex and confusing.

For example, would it be proper to allow OSHA to deny the ability of a large consumer product manufacturer from deducting its advertising costs simply because a building among its many facilities around the country violates one OSHA standard? Or another example, should EPA be permitted to use the Tax Code against a small business, which greatly depends on advertising to stay in business, because the small businessperson inadvertently violates an EPA regulation because of a technical misunderstanding?

This is exactly what the Reed amendment, if approved, puts in motion as every anti-business group in the country will attempt to enlist the Tax Code to fulfill their agenda.

In short, the utilization of the federal government's taxing authority for regulatory enforcement may represent one of the largest expansions of the federal government's power since enactment of the Great Society programs of the 1960's. Therefore, I strongly urge you to vote against this ill-conceived proposal.

Sincerely,

GROVER G. NORQUIST,
President.

Mr. MCCAIN. Mr. President, I wish I could support the Reed amendment. If this amendment simply disallowed the tax deductibility of any advertising deemed in violation of FDA rules, I believe we might be in the ballpark.

However, this amendment goes well beyond. It says that if a company advertises in any way, even unintentionally, that violates FDA rules, then that company may not deduct any advertising expenses incurred that year which are otherwise legal and deductible under current law.

Mr. President, concerns have been expressed about the advertising deduction as generally applied. In fact, both the CATO and the Progressive Policy Institutes have identified this deduction as one that should be reformed. Perhaps that is something we should do in a manner that treats all taxpayers the same. But, this amendment is not a general reform, it is specific and I believe goes too far.

I appreciate the motives of the Senator from Rhode Island but I will not vote for this amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GORTON. 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 Chair advises the Senator, under the previous order, the Senate is to proceed to the amendment by the Senator from Rhode Island, No. 2702, with 10 minutes allowed for debate, 5 minutes each, and then a vote no later than 5 o'clock on or in relation to the amendment, unless consent is granted otherwise.

Mr. REED. Mr. President, I propose a unanimous consent that we begin the debate on my amendment at 5 o'clock, to conclude at 10 minutes past, and to begin the vote at 5:10.

Mr. GORTON. Unfortunately, I must object on behalf of the majority leader. He wishes the vote take place then. Then I will yield the floor.

The PRESIDING OFFICER. The objection is heard.

Mr. REED. Mr. President, at 5 p.m. the Senate will vote on my amendment, which would deny advertising deductions to the tobacco industry if they do not follow the FDA rules and regulations with respect to advertising to children.

We are here debating a large, comprehensive tobacco bill because our major goal, our overriding interest, is to prevent children from being enticed into smoking. We know from the industry's own records that they have relentlessly, over decades, deliberately

mounted promotional advertising campaigns aimed at children as young as 12 or 13 years old. We know from the effects of this record that in a survey of 3-year-old children, 60 percent or so recognize Joe Camel as a symbol of smoking; 6-year-old children, first grade, 91 percent recognize Joe Camel as a symbol of smoking.

Advertising and the promotion of cigarettes are inextricably linked. My amendment goes to the heart of that. The FDA has proposed narrowly based and narrowly focused regulations. The amendment would say if the tobacco industry does not want to abide by these regulations, they lose their tax deductions for advertising. Taken by itself, my amendment does not even preclude them from saying anything or doing anything. What it simply says is they will do it on their own nickel.

Now, we have a great support from the public health community. The following organizations and individuals are supporting it: C. Everett Koop, the former Surgeon General, the American Lung Association, the Center for Tobacco-Free Kids, ENACT Coalition, and many others. Cosponsors of this legislation include my colleagues Senator BOXER, Senator WYDEN, Senator KENNEDY, Senator DASCHLE, Senator DURBIN, Senator WELLSTONE, Senator FEINSTEIN, Senator BINGAMAN, Senator CONRAD, and Senator JOHNSON.

This amendment is a logical way to strengthen and make effective the major goal of this legislation. It also is constitutionally permissible under the Central Hudson test, the Supreme Court case that outlined permissible limits on commercial speech. It meets that test. First of all, we are advancing a substantial national interest. According to the FDA documents and their research and the rulemaking, if we have effective controls on advertising to children, we can save approximately 250,000 children a year from becoming addicted to nicotine.

It is also directly related to the substantial national interest. In fact, the industry itself is the best evidence of this. They spend $6 billion a year on advertising. We are subsidizing them to the tune of $1.6 billion, but they know and they have demonstrated that advertising is the way they entice young people to smoke. If we stop this linkage, we will do more than anything else to ensure that we protect the children of America.

The final aspect of the Central Hudson test is that this legislation is narrowly constructed and focused. As I mentioned before, it does not absolutely forbid any ban on speech. What it does do, however, it essentially restricts their ability to put posters near schools and to do many other things.

This legislation is both constitutionally sound and is a public policy which will support what we are here to do—to prevent children from smoking.

The PRESIDING OFFICER. All time has expired.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The distinguished Senator from Washington is recognized.

Mr. GORTON. How much time is available to the opponents?

The PRESIDING OFFICER. There is approximately 2 minutes 45 seconds allotted to the majority.

Mr. GORTON. Mr. President, in the absence of any other person here, I yield myself that time to say that during 2 years when I was not in the Senate, between 1987 and 1989, I had the privilege of being a partner in a Seattle firm, Davis, Wright and Tremaine, the senior partner of which, Cameron DeVore, is one of the most distinguished first amendment lawyers in the United States. He informed me in no uncertain terms, and I agree with him, that this proposal is clearly and blatantly unconstitutional. You cannot condition a right, a privilege, available to everyone else in the United States, on its abandonment of its first amendment rights—a highly simple proposition.

We can and we should limit advertising of cigarettes. We can only do that constitutionally, Mr. President, if we come up with a bill like the proposal made by the State attorneys general that has the agreement of those who are asked to give up their first amendment rights to advertising. Therefore, this amendment should be defeated.

On another matter, Mr. President, on Thursday, for the second time, I voted against limitations on attorney's fees in these cases, because in both cases I thought they were unfair. I will soon introduce an amendment that allows higher attorney's fees for those who began these cases early, when they were greatly at risk and ask for lower attorney's fees for those attorneys who got in late, when winning cases of the nature that have been discussed here is like shooting fish in a barrel.

I think we should be fair. I think we also have the right to propose and propound such limitations to those who have come before the Congress asking us to intervene in what previously was litigation outside of the scope of the Congress at all.

I am sorry I have no more time at this point to discuss that proposal, but it is both nuanced in favor of those attorneys who really did the yeomen's work in this connection and much less favorable to those who got in essentially after the fact and who will be engaged in such litigation in the future.

Mr. President, I move to table the Reed amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Washington to lay on the table the amendment of the Senator from Rhode Island.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Mr. President, I am now informed that the leaders of both sides are willing to postpone this vote for approximately 10 minutes. I ask unanimous consent that the vote on the motion to table take place at 5:10.

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

Mr. REED addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. REED. Mr. President, again, the vote before us is a vote on my amendment which would restrict the deduction of advertising expenses for tobacco companies which do not choose to follow FDA rules and regulations. There are many reasons why this is appropriate. The most compelling reason is simply the record of tobacco itself. It is a record that has shown over many, many decades a consistent attempt to market to children.

There have been some objectives with respect to the first amendment. Let me suggest, first, that commercial speech under the doctrine of the Supreme Court is not afforded the same level of protection as pure political speech. This is clearly a case of commercial speech.

Second, the test of the leading case, Central Hudson, clearly states that if there is a substantial governmental interest, if the proposed legislation addresses directly that interest, and if it is done by means that are narrowly focused and no more than is necessary, that it would pass the test. I submit that this legislation does that. There can be no more compelling national interest than curbing teenage smoking.

Under the record of the FDA, they have demonstrated that if we take effective advertising restrictions and put them in place, we could on an annual basis save 250,000 children from addiction to nicotine. That is a direct, material, significant correlation between the substantial national interest and this legislation.

Finally, this legislation is narrowly focused.

I also submit that this legislation does not spring up de nova. We have had a long record of trying to constrain access to tobacco products to children. In the 1970s and 1960s, we put warning labels on cigarettes. That has proven ineffective. In the early 1970s, we banned TV advertising on tobacco products. That has proved ineffective. We have reached an intellectual consensus that in order to get the job done—that is what we are here to do—in order to effectively prevent the children from the addiction of nicotine, we have to have reasonable constraints on advertising. This legislation does it.

I should also point out that many States in the United States already impose certain restrictions on advertising to children. For example, the State of Utah precludes the placement of billboards or other types of visible advertising for cigarettes within that State.

To point out that in many other jurisdictions—Texas, for example—there

are limits on how close one can place a billboard within a school. All of these have been in effect for many, many years. They have been tested. They are constitutionally permissible. We can do it. And, indeed, we must do it.

We have literally within our power the opportunity to save 250,000 children a year from the ravages of smoking. That is the conclusion of the FDA after their extensive, detailed rulemaking process. We can and we must insist on this type of regulatory authority. I think it will provide a device that will lead the companies to do what they have yet been unable to do; that is, stop marketing cigarette products to children.

We see it in every manner in every form. I have been for the last several days pointing out an advertisement, a mail solicitation that a 16-year-old junior high school student received in Providence, RI. It was slick. It was sophisticated. It was based upon a rock concert that he attended several months before, a concert attended by many people under 18 years of age. It was not coincidental. It was a deliberate, calculated, focused attempt by the industry using the talents of advertising executives, focus group directors, people who understand psychology and the dynamics of youth addiction, to figure out how they could get the message right in the hands of a 16-year-old that smoking is good; not only good, it is socially desirable.

We shouldn't stand for that. We don't have to stand for it. We know that for years and years and years the tobacco industry has been misleading the American public. That is objectionable. But when we discover, as we do from all of these documents and all of this litigation, that their target has been young children as young as 12 and 13 years old, that becomes unconscionable. And the conscious of this country and the conscious of this Senate will be tested today. Will we take effective steps to preclude access to tobacco products of children?

This amendment is constitutionally sound. This amendment will, in fact, provide decisive and effective controls on tobacco access by young people in this country. We shouldn't shrink from this responsibility. We should pass this legislation to ensure that when we finish this great debate, and as we look ahead, we will be confident that we have taken effective, practical steps to prevent children from being addicted to nicotine and tobacco. If we don't do that, many, many young people—the estimate is 5 million young people under 18—will die prematurely. We can stop that if we vote today to support this amendment.

I retain the remainder of my time.

I yield the floor.

The PRESIDING OFFICER (Mr. GRAMS). The Senator from Oklahoma is recognized.

Mr. NICKLES. Mr. President, how much time is in opposition to the amendment?

The PRESIDING OFFICER. The Senator from Oklahoma has 3 minutes remaining.

Mr. NICKLES. Mr. President, I urge my colleagues to vote against this amendment.

First, let me say to the proponents that if they want to have an amendment to ban advertising, or deduction of advertising, for tobacco products, they can do so. But to turn it over to the FDA, I think, may be some of the worst tax policy we have seen. This bill already has some of the worst tax policy we have seen. The look-back penalties, as I have stated a couple of times, are clearly not working. But if I read this amendment right, advertising is deductible, unless it doesn't comply with FDA regulations.

What are the FDA regulations? You are in violation of FDA regulations if you have a ball cap that says ''Marlboro'' on it. If I have a staff member who went to a car race, or something, that has a ball cap that says ''Marlboro,'' they would be in violation. I don't know if a ball cap under FDA regulations would be in violation of advertising restrictions. They would lose deductibility of their advertising expenses.

Again, if people want to be more direct, let's be more direct. Just say, I have an amendment to disallow all advertising expenses for tobacco products. I expect some may have that. They probably will have it on this bill. But to say you cannot have the deduction unless you comply with FDA regulations, and treating FDA regulations as sacrosanct, as if they make sense—some of them don't make sense. For example, there is an FDA regulation that says people selling tobacco must check IDs up to age 27. A lot of people aren't aware of it. But that is part of the same FDA regulation that we are talking about. I don't think that is workable. It is legal to buy cigarettes if you are over 18. But if you are 18, and they come up with a regulation that says we are going to mandate that you check identification of people up to age 27—they also have restrictions on advertising that says you can't have a T-shirt, a ball cap, or tobacco companies—you can't advertise during the races. This is auto racing time—Indianapolis 500. My friend from Indiana is here. My guess is there was a car running around the track that had ''Marlboro'' on it. Somebody probably said, ''Wait a minute. That is directed at youth.'' I don't know if it is directed at youth or not.

If they did it, if they sponsored a sporting event, they would be in violation of this provision and they would lose deductibility of advertising.

I just do not think we should have FDA making tax policy. I do not think we should have FDA deciding what is compliance or whether a company is allowed to take the deduction. If Senators do not want to have tobacco advertising, they want to ban it, let them introduce that on a tax bill, but let's not turn that kind of authority over to FDA. I think this bill has already granted FDA too much authority, including the authority to totally ban nicotine without prior congressional approval, which I think is a mistake, and I think the ID check up to age 27 is a mistake. I think that is FDA overreaching. I think their ban on ball caps and T-shirts, again, is overreaching.

Now, I do not want them targeting teenagers either, but I think to turn over tax policy to FDA would be a serious mistake. So I urge my colleagues to vote no on this amendment.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, in whatever time I have remaining, I would like to respond.

First of all, I do not want to let stand the suggestion that this has anything to do with checking IDs at a retail store. That is not part of the FDA regulation.

The PRESIDING OFFICER. The time of the Senator from Rhode Island has expired.

Mr. REED. I thank the Chair.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the Reed amendment No. 2702. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. NICKLES. I announce that the Senator from Montana (Mr. BURNS) and the Senator from Oklahoma (Mr. INHOFE) are absent on official business.

I also announce that the Senator from Pennsylvania (Mr. SPECTER) is absent because of illness.

Mr. FORD. I announce that the Senator from Illinois (Mr. DURBIN), the Senator from Nebraska (Mr. KERREY), and the Senator from Illinois (Ms. MOSELEY-BRAUN) are necessarily absent.

The result was announced—yeas 47, nays 47, as follows:

[Rollcall Vote No. 159 Leg.]

YEAS—47

Abraham	Gorton	McConnell
Allard	Gramm	Moynihan
Ashcroft	Grams	Murkowski
Bennett	Grassley	Nickles
Bond	Gregg	Roberts
Brownback	Hagel	Santorum
Campbell	Hatch	Sessions
Coats	Helms	Shelby
Cochran	Hollings	Smith (NH)
Craig	Hutchinson	Smith (OR)
Domenici	Kempthorne	Stevens
Enzi	Kyl	Thomas
Faircloth	Lott	Thompson
Feingold	Lugar	Thurmond
Ford	Mack	Warner
Frist	McCain	

NAYS—47

Akaka	D'Amato	Kerry
Baucus	Daschle	Kohl
Biden	DeWine	Landrieu
Bingaman	Dodd	Lautenberg
Boxer	Dorgan	Leahy
Breaux	Feinstein	Levin
Bryan	Glenn	Lieberman
Bumpers	Graham	Mikulski
Byrd	Harkin	Murray
Chafee	Hutchison	Reed
Cleland	Inouye	Reid
Collins	Jeffords	Robb
Conrad	Johnson	Rockefeller
Coverdell	Kennedy	

Roth	Snowe	Wellstone
Sarbanes	Torricelli	Wyden

NOT VOTING—6

Burns	Inhofe	Moseley-Braun
Durbin	Kerrey	Specter

The motion to table the amendment (No. 2702) was rejected.

The PRESIDING OFFICER. The question now occurs on the amendment of the Senator from Rhode Island.

The amendment (No. 2702) was agreed to.

Mr. REED. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I enter the motion to reconsider the vote by which the Reed amendment was adopted.

The PRESIDING OFFICER. The motion to reconsider has been entered.

Mr. SARBANES. Mr. President, I rise to voice my hopes that the Senate will this week have the opportunity, after several weeks of debate, to vote on the pending tobacco bill.

The course that this bill has taken is in marked contrast to the course taken by many other important bills that we have considered in the 105th Congress. Whereas the Republican leadership has severely truncated debate on such important matters as campaign finance reform and education policy, we have been on the tobacco bill for several weeks, have engaged in hours of debate, and have considered a wide range of amendments. I have no doubt that when the Republican leadership has wanted quick resolution of an issue during the 105th Congress, it has understood how to accomplish that goal, and worked toward it. A similar commitment has not been apparent in the area of tobacco legislation.

Let me be clear, Mr. President. I support the idea of full and considered debate on an issue as important as this one. I also believe, however, that once an issue has been fully vetted, once Senators have had a chance to listen to the debate and vote on amendments, it becomes time for the Senate to step up to the plate and vote on the legislation before us. That is what we are paid to do, and it is what the American people expect us to do.

This is the fourth week of the tobacco debate. We have debated and voted on germane amendments and non-germane amendments; we have consumed dozens of hours of floor time and hundreds of pages in the CONGRESSIONAL RECORD. I worry, Mr. President, that the delays we are now facing on this bill are not designed to allow further thoughtful consideration of tobacco legislation, but rather to delay and obfuscate that legislation, to add to tobacco legislation layer upon layer of unrelated measures, to divide supporters of action in this area, and to run the clock in a legislative session that is evaporating before our eyes. The American people deserve better than that.

Now I do not support everything in this bill. I have voted for some of the amendments the Senate has considered and against others. I have found the wide-ranging discussion on the Senate floor to be valuable and enlightening in some instances and irrelevant and repetitive in others. I do believe, however, that by the end of this week, after the Senate has had the chance to consider the handful of remaining outstanding issues, we will be ready to take a stand on how to deal with the problems of smoking—especially the problem of teen smoking—in our nation.

Mr. MCCAIN. Mr. President, it is my understanding the Senator from Texas is waiting to speak, and the Senator from Minnesota. I ask both of them if they would like to begin and would ask their indulgence of Senator GORTON, who is going to come over for a brief time to lay down an amendment—very briefly, if they would allow him to interrupt for a few minutes upon his arrival.

Several Senators addressed the Chair.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCAIN. 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. MCCAIN. Mr. President, I ask unanimous consent that the Senator from Texas be allowed to go into morning business, followed by the Senator from Minnesota, and at some time the Senator from Washington be recognized to interrupt for morning business to lay down an amendment.

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

The Senator from Texas.

Mrs. HUTCHISON. Mr. President, before you finish, let me make sure that I will be able to ask for a resolution to be unanimously passed and if I can do that in morning business. I want to be sure that I can do that. It has been cleared.

The PRESIDING OFFICER. Repeat the request.

Mrs. HUTCHISON. I have a resolution that has been entered by both sides. I wanted to be able to bring it up, read the resolution, and speak for about 5 minutes, and ask unanimous consent that it be passed. So I didn't want to be prohibited from doing that in morning business.

The PRESIDING OFFICER. Will the Senator from Arizona make that part of his request?

Mr. MCCAIN. I do.

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

Mrs. HUTCHISON. I thank the Chair. I thank the Senator from Arizona.

CONDEMNATION THE BRUTAL KILLING OF JAMES BYRD, JR.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 248, which was submitted earlier today by myself and Senator GRAMM and Senator MOSELEY-BRAUN.

The PRESIDING OFFICER (Mr. FRIST). The clerk will report the resolution.

The assistant legislative clerk read as follows:

A resolution (S. Res. 248) condemning the brutal killing of Mr. James Byrd, Jr., and commend the community of Jasper, TX, for the manner in which it has come together in response.

There being no objection, the Senate proceeded to consider the resolution.

Mrs. HUTCHISON. Mr. President, I want to read the resolution because I think the Senate is taking a step that is very important, and I want to speak for a few minutes on the great honor I had this weekend to attend the services for one of my constituents, Mr. James Byrd, Jr.

The resolution condemns the brutal killing of Mr. James Byrd Jr., and it commends the community of Jasper, TX, and Jasper County, TX, for the manner in which it has come together in response to this brutal killing.

The findings are as follows:

Mr. James Byrd, Jr., of Jasper, TX, was brutally murdered on June 6, 1998.

Since this heinous tragedy, the citizens of Jasper, from all segments of the community, have come together to condemn the killing and honor the memory of Mr. Byrd.

The sheriff of Jasper County, Billy Rowles, spoke for the community when he appealed that the Nation not ''label us because of this random, brutal act.''

Mr. and Mrs. James Byrd, Sr., called for ''justice and peace,'' asking that ''we * * * get this over and put it behind us.''

The community's response reflects the spirit that other communities across the Nation have shown in the face of recent incidents of random and senseless violence.

The Senate condemns the actions which occurred in Jasper, TX, as horrific and intolerable, to be rejected by all Americans.

The Senate expresses its deepest condolences to the Byrd family for their loss and the pain it caused.

The Senate notes the strong religious faith of the Byrd family, under the inspired leadership of James, Sr., and Stella Byrd, and the Reverend Kenneth Lyons, Pastor of the Greater New Bethel Baptist Church, that has helped the family through this most trying time.

The Senate sees in the Byrd family reaction to this tragedy the inspiration for hope, peace and justice in Jasper and throughout the United States.

The Senate commends the leadership shown by Jasper County sheriff, Billy Rowles, City of Jasper Mayor R.C. Horn, and other community leaders in responding to this tragedy.

The Senate urges that law enforcement officials at all appropriate levels continue with the full and fair investigation into all of the facts of this case.

The Senate urges prosecutors to proceed with a fair and speedy trial to bring the perpetrators of this outrageous crime to justice.

Mr. President, I had an experience that I will never forget this weekend when I attended the funeral service for Mr. Byrd. I saw a community coming together in confronting a tragedy that was unspeakable and yet they handled it in a way in which I think all of us could learn. They said unanimously in that little community, ''There is no hate here; there is only love.''

I want to say that the Byrd family reminds me of something that Senator GRAMM has said before, and that is the greatness of our country is that ordinary people do extraordinary things. I have seen the spirit of America in Mr. and Mrs. James Byrd, Sr., in James Byrd, Jr.'s sisters, and in his children. They endure the pain of knowing how their loved one died and yet can say to all the world, ''There is no hate here, there is no hate in our home, there is no hate in our church; there is love.''

I walked through that church and I saw a woman who goes to that church every Sunday. She had on four yellow ribbons. The yellow ribbons were displayed all over the community of Jasper, showing that the community was coming together in memory of James Byrd, Jr. This woman had on four ribbons, and she knew James Byrd, Jr. She said, ''I have four ribbons. I have one ribbon for James Byrd, Jr., and I have three ribbons for the three who are accused of killing him.'' That said everything about the way this community is handling this terrible tragedy.

I think the leadership that is given to us by the Byrd family, by Mayor Horn, by Sheriff Rowles, and by Rev. Kenneth Lyons is something that all of us will be able to say has enriched us. I was enriched this weekend by seeing that community. I was enriched when Sheriff Rowles told me that he was trying to make sure that everyone stayed together, that everyone had their say, and he was even giving the same courtesy and respect even to the Black Panthers who came and did not talk about unity at all. Nevertheless, Sheriff Rowles recognized their freedom of speech. I saw a community that said we are proud that we have been able to grow up in loving homes with Christian backgrounds.

So I think that Abraham Lincoln's call to the ''better angels of our nature'' was personified by the Byrd family during this past week. All of us are better because we have seen the Byrd family endure a tragedy that we pray none of us will ever have to endure, and we saw them rise above it and counsel justice and prayer, not hate and despair.

It is their leadership that will make me a follower, and I hope all Americans will follow their message—that love is what is important for our country, not hate.

So I commend them, and that is why I introduced this resolution with Senator GRAMM tonight and why the Senate is, I hope, going to unanimously pass this resolution in just a few minutes, because I want to follow the Byrd family's example and talk about love, not hate; prayer, not despair. That is how we can come together as a country and learn from the worst of tragedies, and, by the very nature of its horror, resolve that we are going to fight harder for equality and justice in this country for our children and grandchildren.

That will be the memory of James Byrd, Jr., that we will all come out of this stronger because of the horror that he endured.

I also want to say that the Reverend Jesse Jackson was a healer this week, that Kweisi Mfume was a healer this week, that Rodney Slater, representing the President of the United States, was a healer this week, that Congresswoman MAXINE WATERS was a healer this week. All of them came together with the same message that the Byrd family gave to us. And I was touched by what I saw in Jasper, TX, this week. I think we will all be better because of the leadership of the Byrd family of Jasper, TX.

Mr. President, I ask unanimous consent that S. Res. 248 be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 248) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 248

Whereas, Mr. James Byrd, Jr., of Jasper, Texas, was brutally murdered on June 6, 1998;

Whereas, since this heinous tragedy, the citizens of Jasper, from all segments of the community, have come together to condemn the killing and honor the memory of Mr. Byrd.

Whereas, the Sheriff of Jasper County, Billy Rowles, spoke for the community when he appealed that the nation not ''label us because of this random, brutal act.''

Whereas, Mr. and Mrs. James Byrd, Sr., called for ''justice and peace,'' asking that ''we . . . get this over and put this behind us.''; and

Whereas, the community's response reflects the spirit that other communities across the nation have shown in the face of recent incidents of random and senseless violence. Now, therefore, be it

Resolved, That The Senate—

(1) condemns the actions which occurred in Jasper, Texas as horrific and intolerable, to be rejected by all Americans;

(2) expresses its deepest condolences to the Byrd family for their loss and the pain it caused;

(3) notes the strong religious faith of the Byrd family, under the inspired leadership of James Sr., and Stella Byrd, and the Reverend Kenneth Lyons, Pastor of the Greater New Bethel Baptist Church, that has helped the family through this most trying time;

(4) sees in the Byrd family reaction to this tragedy the inspiration for hope, peace, and justice in Jasper and throughout the United States;

(5) commends the leadership shown by Jasper County Sheriff Billy Rowles, City of Jasper Mayor R.C. Horn, and other community leaders in responding to this tragedy;

(6) urges that law enforcement officials at all appropriate levels continue with the full and fair investigation into all of the facts of the case; and

(7) urges prosecutors to proceed with a fair and speedy trial to bring the perpetrators of this outrageous crime to justice.

Mrs. HUTCHISON. Mr. President, I yield the floor.

Mr. GORTON addressed the Chair.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The PRESIDING OFFICER. Under the previous order of the Senate, we will now continue with the consideration of S. 1415.

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, parliamentary inquiry: May I send an amendment to the desk without asking unanimous consent some pending amendment be set aside?

The PRESIDING OFFICER. The Senator may send up the amendment without consent.

AMENDMENT NO. 2705 TO AMENDMENT NO. 2437

(Purpose: To limit attorneys' fees)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Mr. GORTON] proposes an amendment numbered 2705 to amendment No. 2437.

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

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

The amendment is as follows:

At the end of the pending amendment, add the following:

SEC. LIMIT ON ATTORNEYS' FEES.

(a) FEES COVERED BY THIS SECTION.—Notwithstanding any other provision of law, or any arrangement, agreement, or contract regarding attorneys' fees, attorneys' fees for—

(1) representation of a State, political subdivision of a state, or any other entity listed in subsection (a) of Section 1407 of this Act;

(2) representation of a plaintiff or plaintiff class in the Castano Civil Actions described in subsection (9) of Section 701 of this Act;

(3) representation of a plaintiff or plaintiff class in any ''tobacco claim,'' as that term is defined in subsection (7) of Section 701 of this Act, that is settled or otherwise finally resolved after June 15, 1998;

(4) efforts expended that in whole or in part resulted in or created a model for programs in this Act,

shall be determined by this Section.

(b) ATTORNEYS' FEES.

(1) JURISDICTION.—Upon petition by the attorney whose fees are covered by subsection (a), the attorneys' fees shall be determined

by the last court in which the action was pending.

(2) CRITERIA.—In determining an attorney fee awarded for fees subject to this section, the court shall consider—

(A) The likelihood at the commencement of the representation that the claimant attorney would secure a favorable judgment or substantial settlement;

(B) The amount of time and labor that the claimant attorney reasonably believed at the commencement of the representation that he was likely to expend on the claim;

(C) The amount of productive time and labor that the claimant attorney actually invested in the representation as determined through an examination of contemporaneous or reconstructed time records;

(D) The obligations undertaken by the claimant attorney at the commencement of the representation including—

(i) whether the claimant attorney was obligated to proceed with the presentation through its conclusion or was permitted to withdraw from the representation; and

(ii) whether the claimant attorney assumed an unconditional commitment for expenses incurred pursuant to the representation;

(E) The expenses actually incurred by the claimant attorney pursuant to the representation, including—

(i) whether those expenses were reimbursable; and

(ii) the likelihood on each occasion that expenses were advanced that the claimant attorney would secure a favorable judgment or settlement;

(F) The novelty of the legal issues before the claimant attorney and whether the legal work was innovative or modeled after the work of others or prior work of the claimant attorney;

(G) The skill required for the proper performance of the legal services rendered;

(H) The results obtained and whether those results were or are appreciably better than the results obtained by other lawyers representing comparable clients or similar claims;

(I) The reduced degree of risk borne by the claimant attorney in the representation and the increased likelihood that the claimant attorney would secure a favorable judgment or a substantial settlement based on the progression of relevant developments from the 1994 Williams document disclosures through the settlement negotiations and the eventual federal legislative process;

(J) Whether this Act or related changes in State laws increase the likelihood of the attorney's success;

(K) The fees paid to claimant attorneys that would be subject to this section but for the provisions of subsection (3);

(L) Such other factors as justice may require.

(3) EFFECTIVE DATE.—Notwithstanding any other provision of law, this section shall not apply to attorneys' fees actually remitted and received by an attorney before June 15, 1998.

(4) LIMITATION.—Notwithstanding any other provision of law, separate from the reimbursement of actual out-of-pocket expenses as approved by the court in such action, any attorneys' fees shall not exceed a per hour rate of—

(A) $4000 for actions filed before December 31, 1994;

(B) $2000 for actions filed on or after December 31, 1994, but before April 1, 1997, or for efforts expended as described in subsection (a)(4) of this section which efforts are not covered by any other category in subsection (a);

(C) $1000 for actions filed on or after April 1, 1997, but before June 15, 1998;

(D) $500 for actions filed after June 15, 1998.

(c) SEVERABILITY.—If any provision of this section or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this section and the application of the provisions of such to any person or circumstance shall not be affected thereby.

Mr. GORTON. Mr. President, there is at least an informal understanding that there will be a debate on this amendment tomorrow for approximately 1 hour. With the kind indulgence of my friend and colleague from Minnesota, I am going to simply give a brief explanation of this amendment now so Members who are watching, or staffs who are watching, will understand its general subject matter.

Twice during the course of this debate we have debated the subject of limitations on attorneys' fees. On both occasions I have voted to table those amendments, not because I felt that limitations on attorneys' fees in connection with tobacco litigation and legislation were not appropriate, but because I felt that the amendments themselves were unfair. This amendment is a third attempt to provide some limitations in a manner that I, at least, believe to be considerably more sensitive and more fair to the attorneys who have been involved in that litigation. I hope under those circumstances it will be given reasonably careful consideration by my colleagues.

We are dealing with litigation that is literally unprecedented, I think, in the history of the United States, with the potential of immense recoveries on the part of various States interfered with and amended by the legislation that we are considering here on the floor. Under those circumstances, the possibility that attorneys' fees would be awarded in the billions of dollars—perhaps even in the billions of dollars to some individual firms, but certainly in the order of nine digits to many individuals and individual firms—is a matter that I think greatly disturbs the majority of the American people and many, if not most, members of the bar. Those attorneys' fees have been subject to much criticism from the outside, and there should be a way to see to it that they are dealt with fairly.

The difficulty with the two earlier amendments, in my view at least, was that they treated all lawyers, all attorneys who were involved in tobacco litigation—past, present, and future—in exactly the same fashion. Yet it is obvious that, if we look at the history of this controversy, the initial litigation and the ideas for that initial litigation that were brought forth some time ago, in the early 1990s, were developed by a group of tremendously gifted and imaginative attorneys at a time at which the odds on their success, looking at it from the beginning, would have been judged to have been very small.

They have shown great skill, great persistence; they have spent, in many cases, a great deal of their own and their law firms' money; and I think the reward they have earned is considerably larger than awards that will be earned by those who got into this litigation very late in the game when it was obvious that the litigation was going to be settled for large amounts of money or litigated successfully; not to mention those who will bring tobacco-related litigation in the future when, under the terms of this bill, and many State legislative acts, it will be almost impossible for an attorney to lose a tobacco case.

As a consequence, the fundamental approach of this amendment is to say that for those who were in this litigation early—that is, before the end of the year 1994—attorneys' fees can be up to $4,000 an hour—a huge amount of money beyond any question, a mind-boggling amount of money, but nevertheless considerably less than many of these attorneys will get in the absence of such legislation, on the basis of percentage contingent fees.

Moreover, like other amendments in this connection, that is a ceiling, not a floor. The courts, in this case, will make a determination considering all of the same items that have been outlined in previous decisions of the U.S. Supreme Court and in previous amendments on this subject. So when a judge determines that amount is too much, the judge may reduce the amount below that hourly fee but under no circumstances may go above it.

The second category of attorneys will be those who were involved in this litigation after 1994 but before early last year. Their ceiling will be half the amount of the pioneers, or $2,000 an hour. And certain other attorneys who worked on developing the ideas that went into this case will fall into that category as well.

The next clear date is when the Liggett Tobacco Company agreed, in effect, to turn state's evidence to settle the matter and to admit its liabilities and admit, generally speaking, the liabilities of the other tobacco companies. Those who got into the litigation after that were almost certain winners—almost certain winners. They did not run the risks that earlier attorneys did, and their maximum fee under this amendment will be $1,000 an hour. That will, in fact, be somewhat less than the maximum recovery under the last Faircloth amendment, because while it stated the sum of $1,000 an hour, it allowed for recovery of costs over—considerably over and above the actual costs incurred in the litigation.

Finally, after the beginning of this debate here, assuming that this debate, of course, ends up in actual legislation, tobacco litigation will be almost like Workmen's Compensation litigation in all of our State courts, and the limit there is $500 an hour under this amendment, half that in the last Faircloth proposal. Again, these are limits, these are maximums, but they are maximums set in a different way than they were in the other two amendments, reflecting the actual risks, the actual

imagination, the actual work that went into the litigation and, for that matter, into the legislation itself.

I am not certain this is a totally perfect proposal of this nature, but I think it is highly reasonable. I think it is highly generous. I think it meets the views of people in the United States as a whole who do not think the lawyers in this case should become billionaires out of it. And it will husband the actual recoveries, whatever those recoveries may be and however they are derived, far more for the purposes of the litigation and the legislation itself than relatively unlimited contingent fees would do.

That is a brief explanation and a justification of something that I hope meets with the support of those who have felt that there ought to be limits on those attorneys' fees, but that they should be somewhat lower and those on the other side, who, like I, have voted against these previous limitations on the grounds that they weren't sensitive enough and for at least some people were not high enough. I would like to bring people together on this so that at least this particular element of this debate can be brought to a successful conclusion.

TRIBUTE TO LIEUTENANT COMMANDER GARY MAYES

Mr. LOTT. Mr. President, I wish to take this opportunity to recognize and say farewell to an outstanding Naval Officer, Lieutenant Commander Gary Mayes, who has served with distinction for the past two years in the Navy's Senate Liaison Office. It is a privilege for me to recognize his many outstanding achievements and to commend him for the superb service he has provided this legislative body, the Navy and our great Nation.

Lieutenant Commander Mayes is a graduate of Purdue University and was commissioned an Ensign upon graduation from Aviation Officer Candidate School in Pensacola, Florida, in May 1988. He proceeded to flight training where he received his ''Wings of Gold'' and was designated a Naval Aviator in October 1989.

Lieutenant Commander Mayes' first assignment in the Navy was as a pilot flying the UH–1N and C–12B at Naval Air Station Guantanamo Bay, Cuba, from July 1990 to May 1991. Following training in the SH–60B Seahawk helicopter, he reported to Helicopter Anti-Submarine Squadron, Light Four Eight (HSL–48) as the Detachment Five Assistant Maintenance Officer. He qualified as an Aircraft Commander and deployed aboard USS Boone (FFG–28) to the Mediterranean. He was next assigned to Detachment One as the Maintenance Officer during Operation Support Democracy to Haiti while embarked on USS Spruance (DD–963). He also was deployed on USS Comte de Grasse in 1995, flying missions in support of exercise UNITAS around South America.

Lieutenant Commander Mayes joined the Navy's Senate Liaison team in January 1996. During his service as a Navy Liaison Officer, he provided members of the Senate Armed Services Committee, personal staffs, as well as Senators from both sides of the aisle, with timely support regarding Navy plans, programs and constituent casework. His valuable contributions have enabled Congress and the Department of the Navy to work close together to preserve the well-trained and well-equipped naval forces upon which our country has come to depend.

Mr. President, Gary Mayes, his wife Stephanie and their daughter Gabrielle have made many sacrifices during his 10-year Navy career. He has served proudly with a dedication and enthusiasm that only comes from our Nation's best and brightest. Lieutenant Commander Mayes is a great credit to both our Navy and our country. As he now departs to attend the Marine Corps Command and Staff War College, I call upon my colleagues from both sides of the aisle to wish him fair winds and following seas.

NATIONAL SMALL BUSINESS WEEK

Mr. DASCHLE. Mr. President, I would like to express my support and admiration of small business owners and entrepreneurs as we reflect on another successful National Small Business Week. It is appropriate that we recognize the contributions and achievements entrepreneurs have made to strengthen our communities and our national economy.

Small businesses account for 99.7% all the employers in the country and employ 53.7 percent of the private work force. Senate Democrats have demonstrated their support of small business by advocating increased funding for the reauthorization of the Small Business Administration, supporting targeted tax relief, ensuring responsible regulatory relief, and increasing procurement opportunities for small businesses.

Small businesses are changing the face of the economy by creating jobs and bringing prosperity to small towns and cities across the country. One such small business is the Roundup Building Center, owned by Doug and Julie Kapsch in Belle Fourche, South Dakota. As part of National Small Business week, Doug and Julie have been awarded special recognition from the Small Business Administration as the South Dakota Small Business Owners of the Year.

Doug and Julie became business owners under a rather unique set of circumstances. In 1990, a fire destroyed much of the Belle Fourche Building Center, which Doug managed at the time. Faced with adversity, Doug and Julie saw an opportunity. After the fire, Doug contacted the former owner of the Belle Fourche Building Center, and the Kapschs began building their business. Today, Doug and Julie's business, the Roundup Building Center, serves the tri-state area of South Dakota, Wyoming and Montana by providing local contractors and do-it-yourself builders with a variety of building supplies. The business has grown by approximately 10 percent a year under Doug and Julie's management.

As successful small business owners, Doug and Julie have shown that hard work, initiative, and a bit of risk-taking can produce big dividends. I congratulate them on their success and wish them many more profitable years of business.

I would also like to commend another woman who has made significant contributions to South Dakota's small business community. Sandra Christenson, President of Heartland Paper Council, has been appointed by the Small Business Administrator to serve on the National Women's Business Council. The Council advises the President and the Administrator on small business issues especially important to women.

After serving as President of Triangle School Service in Sioux Falls, Sandra was named President of Heartland Paper Company in 1989. In this capacity, she oversees 170 employees and the company's seven thousand customers. Heartland Paper has been a vibrant member of the Sioux Falls business community under Sandra's leadership, and I am confident that with her leadership and experience, Sandra is uniquely qualified to represent the views of women business leaders and rural America before the Council.

Small businesses are vitally important to South Dakota's economy, and I truly appreciate the contributions that Sandra, Doug and Julie have made to our state's small business community. They join countless other small business owners across the country who have helped make America's vibrant economy the envy of the world.

RETIREMENT OF CARL STOKES

Mr. THURMOND. Mr. President, I rise today to pay tribute to a man who has rendered a great service to the State of South Carolina through his efforts as a professional law enforcement officer, Carl B. Stokes.

Just like his father, who was the Sheriff of Darlington County, Carl Stokes has literally dedicated his life to crime fighting. As a matter of fact, I am told that he is supposed to be the longest serving lawman in the Palmetto State, and his distinguished career began in the 1950's while he was still attending the University of South Carolina and joined the South Carolina State Law Enforcement Division (SLED). In just a few weeks, he will bring that career to a close when he retires from his position as System Vice President for Law Enforcement and Safety for the University of South Carolina.

For more than 25-years, Carl Stokes held a number of positions within

SLED, including undercover operations, crowd control, investigations, and forensics. As a trusted, competent, and reliable member of SLED, Carl Stokes caught the attention of that agency's chief, J.P. Strom, who tapped Stokes to undertake an innovative and important project-creating a computer system for law enforcement in South Carolina. He is also credited with implementing the first incident-based Uniform Crime Reporting System, which is used by all law enforcement agencies in the Palmetto State.

In addition to his work at SLED, Stokes made a number of important contributions to professionalizing law enforcement in South Carolina. He was involved in many organizations, associations, and committees that worked to make law enforcement at all levels more professional and efficient. Through his involvement with these groups, he became very well known throughout the state and region, and his expertise was respected by many. This varied and progressive experience made him an ideal candidate to head up law enforcement and security operations at the University of South Carolina, and in 1981, Carl Stokes returned to college, this time not as a student, but as a cop.

Law enforcement on college campuses has changed tremendously in the past twenty years. Colleges and universities have diverse populations that are essentially the size of small cities, and it is critical that such institutions have professional police forces that are trained in everything from community relations to resolving a hostage crisis. Such a responsibility is a tremendous task, but Carl Stokes was able to carry out his duties with seeming ease. Over the past seventeen years, he has helped to make certain that students, faculty, and staff are safe and secure in housing, classrooms, and university property. He and his department have worked closely with the Federal Bureau of Investigation, the United States Secret Service, the Department of State, the United Nations, and a host of other national and international law enforcement agencies in order to provide security to visiting dignitaries as well as to provide police services on the nine USC campuses. Impressively, Carl Stokes also worked to ensure that the University of South Carolina Division of Law Enforcement and Safety gained national accreditation from the Commission on Accreditation for Law Enforcement Agencies. This is an especially noteworthy achievement as this is one of only fifteen college and university police departments in the United States to earn such a professional recognition.

I am certain that after such a long and distinguished career, it must be difficult for Carl Stokes to take off his badge and hang-up his gun, but he can do so knowing that in his more than four decades as a law enforcement official, he made countless contributions to the safety and security of society. I am pleased to note that all three of his children have followed in his footsteps in one way or another, his two sons are involved in law enforcement and his daughter works for the University of South Carolina. I wish Carl and his wife health and happiness in the years to come, I know that they will both enjoy being able to spend time with their children and grandchildren and reflecting on a full life.

U.S. FOREIGN OIL CONSUMPTION FOR WEEK ENDING JUNE 5TH

Mr. HELMS. Mr. President, the American Petroleum Institute reported for the week ending June 5 that the U.S. imported 9,532,000 barrels of oil each day, an increase of 1,103,000 barrels a day over the 8,429,000 imported during the same week a year ago.

Americans relied on foreign oil for 59.9 percent of their needs last week. There are no signs that the upward spiral will abate. Before the Persian Gulf War, the United States imported about 45 percent of its oil supply from foreign countries. During the Arab oil embargo in the 1970s, foreign oil accounted for only 35 percent of America's oil supply.

Politicians should give consideration to the economic calamity certain to occur in America if and when foreign producers shut off our supply—or double the already enormous cost of imported oil flowing into the U.S.—now 9,532,000 barrels a day.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business Friday, June 12, 1998, the federal debt stood at $5,499,026,995,472.09 (Five trillion, four hundred ninety-nine billion, twenty-six million, nine hundred ninety-five thousand, four hundred seventy-two dollars and nine cents).

One year ago, June 12, 1997, the federal debt stood at $5,352,849,000,000 (Five trillion, three hundred fifty-two billion, eight hundred forty-nine million).

Twenty-five years ago, June 12, 1973, the federal debt stood at $454,612,000,000 (Four hundred fifty-four billion, six hundred twelve million) which reflects a debt increase of more than $5 trillion—$5,044,414,995,472.09 (Five trillion, forty-four billion, four hundred fourteen million, nine hundred ninety-five thousand, four hundred seventy-two dollars and nine cents) during the past 25 years.

LEADERSHIP TRAINING INSTITUTE

Mr. ASHCROFT. Mr. President, it is with great pleasure that I rise today to recognize the Leadership Training Institute (LTI), a summer camp being held in Bolivar, Missouri this week. LTI is challenging America's youth to reach for personal excellence and to lead their generation to an ever higher standard of morality and achievement than the generation before them. The United States has seen success because individuals have the opportunity to set standards that define their highest and best.

Leaders have the opportunity to be both ''intensive'' and ''extensive.'' Intensive leadership is influencing towards excellence those that are closest to you—your family and friends. Extensive leadership is reaching beyond to your community, culture, and even the world. My hope for today's youth—and those participating in this week's leadership training—is that they will take the opportunity to be leaders close to home and beyond.

Programs that guide youth in setting the highest standards for their lives are essential to the continuity of morality in our culture and the setting of our sights on the noble. God has given principles which turn our eyes from the temporal, the physical, and the menial to the eternal, the spiritual, and the noble.

The Leadership Training Institute is headquartered in Arkansas and its staff and participants come from many communities across America, including from my home state of Missouri. LTI is committed to training youth in the virtues which leaders such as Thomas Jefferson considered to constitute the moral fabric of our society: ''With a firm reliance on the protection of the Divine Providence; we mutually pledge to each other, our lives, our fortunes, and our sacred honor.''

LTI educates youth in the lessons of our Nation's founders —their experiences, wisdom, and legacies. Youth learn that good leaders are people of faith as well as people of science. This training in American heritage and ingenuity prepares today's youth to set an excellent example in their homes, schools, communities, and government.

I am proud to see the staff and supporters of the Leadership Training Institute challenging America's youth to lead by personal standards of excellence. Hopefully, the participants of the program this week in Bolivar, Missouri, will set goals to become the leaders that remind us of all that is good in our country by advancing those values in their own lives.

CHILDREN'S SCHOLARSHIP FUND

Mr. ASHCROFT. Mr. President, on many occasions, I have come to the Senate floor to talk about the importance of parental control and involvement in a child's education. Study after study has confirmed that parental involvement is the single most important element in educational achievement.

One way to allow parents more control over and involvement in their children's education is to give them more choices of where to send their children to school. Choice empowers parents. It puts them in the driver's seat instead of the nickel seats. I believe we want parents in those front seats.

Education is an important tool that our children need in order to survive and be successful in our society. It is sad to realize that for too many children in too many families, a safe, structured and challenging education is out of reach. The public schools in many of our major cities simply cannot or do not provide adequate education, while a private or parochial education is too costly for most families of modest means.

On the other hand, it is encouraging when individuals in our society step forward to provide the means for better educational opportunities for our nation's underprivileged children. When those in the private sector, through their charitable giving, open the door for kids to receive a high quality education, those individuals are to be commended.

I am pleased to say that last week, two very generous and compassionate Americans gave new hope to thousands of families across the country who want the same thing all of us want—the best possible education for their children.

Ted Forstmann and John Walton are businessmen, entrepreneurs and philanthropists. On June 9, they launched the Children's Scholarship Fund, which will provide scholarships to bright and deserving children from low-income families across the nation to help their parents send them to any private or parochial school they're academically qualified to attend—from kindergarten right through high school. Thanks to these individuals, new educational opportunities will now be available to thousands of youngsters that were not available before.

These two civic-minded Americans have given the fund quite a start, with an initial contribution of $100 million dollars. Over the summer, they will select cities to become partners with the fund, lining up donors in each city to match their initial generosity. That will allow this new and exciting program to distribute more than $200 million in scholarships in more than a dozen cities, with each scholarship being an opportunity for a child to prepare for a better and brighter future.

This national program is modeled after—and really inspired by—an effort Mr. Forstmann and Mr. Walton launched here in the city of Washington, D.C. earlier this year. Together they donated $6 million to the Washington Scholarship Fund, which recently awarded scholarships to more than 1,000 students from the troubled District of Columbia public schools. Washington is one of about thirty privately-funded scholarship programs in the country. The fact that there are so many of these programs speaks volumes, I think, about the state of the public schools in many of our cities.

I mention the Washington program because I think it's a good example of what the national effort is all about. First, the Washington Scholarship Fund is locally-based and locally-run. Mr. Forstmann is right when he insists that each program must have strong involvement from local officials, community leaders, local businesses and anyone else who wants to help kids obtain the best education. I have always believed that local neighborhoods and communities are in the best position to create solutions to meet the specific needs of individuals in their communities.

The Children's Scholarship Fund is already in contact with more than 300 mayors from all around the country. This is the first step in selecting partners who know what's needed in their community and who will support this program financially and with their hard work.

But perhaps more important than the scholarships themselves is what they represent. it's important—and maybe even a bit sad—to note that more than seventy-five hundred families here in the Nation's Capitol applied for those 1,000 scholarships. It took a lottery to give them out. Mr. Forstmann has said he never dreamed the demand would be so overwhelming.

Who are these families? They're families whose children are trapped in public school systems that offer them no choices. If students only have one choice of where to attend school, they are locked into that school and don't have the capacity to say I am going to do better, I will go elsewhere.

On the other hand, when students have more choices of where to attend school, they will have the ability to receive a higher quality, more rigorous education. The Children's Scholarship Fund provides children and their families with more educational choice.

I believe that providing more educational choices for families can even help our nation's public schools, because they will understand they are no longer the exclusive provider of education in their community. They will have to start becoming the creative supplier of what it is that students need. When you have diversity and pluralism in a school system by providing more choices for students, this creates energy, creativity, and quality when institutions know that they have to do their best for to compete for students.

I commend Mr. Forstmann and Mr. Walton for providing the opportunity for our nation's children to have greater choices of where to receive their education, giving them the chance to learn as much as their minds and hard work will allow.

Education is an investment in future citizens, future leaders, the future work force of America. Ted Forstmann and John Walton have made a profound investment in the nation's future, one that is worthy of our admiration and gratitude.

CORRECTION OF THE RECORD—JEFFORDS AMENDMENT NO. 2704

The Jeffords amendment No. 2704 which appeared in the RECORD of Friday, June 12, 1998, was missing some text. The correct version appears as follows:

AMENDMENT NO. 2704

Strike out all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Carl D. Perkins Vocational and Applied Technology Education Act of 1998''.

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

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) in order to be successful workers, citizens, and learners in the 21st century, individuals will need—

(A) a combination of strong basic and advanced academic skills;

(B) computer and other technical skills;

(C) theoretical knowledge;

(D) communications, problem-solving, teamwork, and employability skills; and

(E) the ability to acquire additional knowledge and skills throughout a lifetime;

(2) students participating in vocational education can achieve challenging academic and technical skills, and may learn better

and retain more, when the students learn in context, learn by doing, and have an opportunity to learn and understand how academic, vocational, and technological skills are used outside the classroom;

(3)(A) many high school graduates in the United States do not complete a rigorous course of study that prepares the graduates for completing a 2-year or 4-year college degree or for entering highskill, high-wage careers;

(B) adult students are an increasingly diverse group and often enter postsecondary education unprepared for academic and technical work; and

(C) certain individuals often face great challenges in acquiring the knowledge and skills needed for successful employment;

(4) community colleges, technical colleges, and area vocational education schools are offering adults a gateway to higher education, and access to quality certificates and degrees that increase their skills and earnings, by—

(A) ensuring that the academic, vocational, and technological skills gained by students adequately prepare the students for the workforce; and

(B) enhancing connections with employers and 4-year institutions of higher education;

(5) local, State, and national programs supported under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.) (as such Act was in effect on the day before the date of enactment of this Act) have assisted many students in obtaining technical, academic, and employability skills, and tech-prep education;

(6) the Federal Government can assist States and localities by carrying out nationally significant research, program development, demonstration, dissemination, evaluation, data collection, professional development, and technical assistance activities that support State and local efforts regarding vocational education; and

(7) through a performance partnership with States and localities based on clear programmatic goals, increased State and local flexibility, improved accountability, and performance measures, the Federal Government will provide to States and localities financial assistance for the improvement and expansion of vocational education for students participating in vocational education.

(b) PURPOSE.—The purpose of this Act is to make the United States more competitive in the world economy by developing more fully the academic, technological, vocational, and employability skills of secondary students and postsecondary students who elect to enroll in vocational education programs, by—

(1) building on the efforts of States and localities to develop challenging academic standards;

(2) promoting the development of services and activities that integrate academic, vocational, and technological instruction, and that link secondary and postsecondary education for participating vocational education students;

(3) increasing State and local flexibility in providing services and activities designed to develop, implement, and improve vocational education, including tech-prep education; and

(4) disseminating national research, and providing professional development and technical assistance, that will improve vocational education programs, services, and activities.

SEC. 3. VOLUNTARY SELECTION AND PARTICIPATION.

No funds made available under this Act shall be used—

(1) to require any secondary school student to choose or pursue a specific career path or major; and

(2) to mandate that any individual participate in a vocational education program, including a vocational education program that requires the attainment of a federally funded skill level or standard.

SEC. 4. CONSTRUCTION.

Nothing in this Act shall be construed to permit, allow, encourage, or authorize any Federal control over any aspect of a private, religious, or home school, regardless of whether a home school is treated as a private school or home school under State law. This section shall not be construed to bar students attending private, religious, or home schools from participation in programs or services under this Act.

TITLE I—VOCATIONAL EDUCATION

Subtitle A—Federal Provisions

SEC. 101. RESERVATIONS AND STATE ALLOTMENT.

(a) RESERVATIONS AND STATE ALLOTMENT.—

(1) RESERVATIONS.—From the sum appropriated under section 401 for each fiscal year, the Secretary shall reserve—

(A) 0.2 percent to carry out section 103;

(B) 1.80 percent to carry out sections 104 and 105, of which—

(i) 1.25 percent of the sum shall be available to carry out section 104(b);

(ii) 0.25 percent of the sum shall be available to carry out section 104(c);

(iii) 0.30 percent of the sum shall be available to carry out section 105; and

(C) 1.3 percent to carry out sections 106, 303, 304, 305, and 306, of which not less than 0.65 percent of the sum shall be available to carry out section 106 for each of the fiscal years 2001 through 2005.

(2) STATE ALLOTMENT FORMULA.—Subject to paragraphs (3) and (4), from the remainder of the sums appropriated under section 401 and not reserved under paragraph (1) for a fiscal year, the Secretary shall allot to a State for the fiscal year—

(A) an amount that bears the same ratio to 50 percent of the sums being allotted as the product of the population aged 15 to 19 inclusive, in the State in the fiscal year preceding the fiscal year for which the determination is made and the State's allotment ratio bears to the sum of the corresponding products for all the States;

(B) an amount that bears the same ratio to 20 percent of the sums being allotted as the product of the population aged 20 to 24, inclusive, in the State in the fiscal year preceding the fiscal year for which the determination is made and the State's allotment ratio bears to the sum of the corresponding products for all the States;

(C) an amount that bears the same ratio to 15 percent of the sums being allotted as the product of the population aged 25 to 65, inclusive, in the State in the fiscal year preceding the fiscal year for which the determination is made and the State's allotment ratio bears to the sum of the corresponding products for all the States; and

(D) an amount that bears the same ratio to 15 percent of the sums being allotted as the State under subparagraphs (A), (B), and (C) for such years bears to the sum of the amounts allotted to all the States under subparagraphs (A), (B), and (C) for such year.

(3) MINIMUM ALLOTMENT.—

(A) IN GENERAL.—Notwithstanding any other provision of law and subject to subparagraphs (B) and (C), and paragraph (4), no State shall receive for a fiscal year under this subsection less than ½ of 1 percent of the amount appropriated under section 401 and not reserved under paragraph (1) for such fiscal year. Amounts necessary for increasing such payments to States to comply with the preceding sentence shall be obtained by ratably reducing the amounts to be paid to other States.

(B) REQUIREMENT.—Due to the application of subparagraph (A), for any fiscal year, no State shall receive more than 150 percent of the amount the State received under this subsection for the preceding fiscal year (or in the case of fiscal year 1999 only, under section 101 of the Carl D. Perkins Vocational and Applied Technology Education Act, as such section was in effect on the day before the date of enactment of this Act).

(C) SPECIAL RULE.—

(i) IN GENERAL.—Subject to paragraph (4), no State, by reason of subparagraph (A), shall be allotted for a fiscal year more than the lesser of—

(I) 150 percent of the amount that the State received in the preceding fiscal year (or in the case of fiscal year 1999 only under section 101 of the Carl D. Perkins Vocational and Applied Technology Education Act, as such section was in effect on the day before the date of enactment of this Act); and

(II) the amount calculated under clause (ii).

(ii) AMOUNT.—The amount calculated under this clause shall be determined by multiplying—

(I) the number of individuals in the State counted under paragraph (2) in the preceding fiscal year; by

(II) 150 percent of the national average per pupil payment made with funds available under this section for that year (or in the case of fiscal year 1999, only, under section 101 of the Carl D. Perkins Vocational and Applied Technology Education Act, as such section was in effect on the day before the date of enactment of this Act).

(4) HOLD HARMLESS.—

(A) IN GENERAL.—No State shall receive an allotment under this section for a fiscal year that is less than the allotment the State received under part A of title I of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2311 et seq.) (as such part was in effect on the day before the date of enactment of this Act) for fiscal year 1997.

(B) RATABLE REDUCTION.—If for any fiscal year the amount appropriated for allotments under this section is insufficient to satisfy the provisions of subparagraph (A), the payments to all States under such subparagraph shall be ratably reduced.

(b) REALLOTMENT.—If the Secretary determines that any amount of any State's allotment under subsection (a) for any fiscal year will not be required for such fiscal year carrying out the activities for which such amount has been allotted, the Secretary shall make such amount available for reallotment. Any such reallotment among other States shall occur on such dates during the same year as the Secretary shall fix, and shall be made on the basis of criteria established by regulation. No funds may be reallotted for any use other than the use for which the funds were appropriated. Any amount reallotted to a State under this subsection for any fiscal year shall remain available for obligation during the succeeding fiscal year and shall be deemed to be part of the State's allotment for the year in which the amount is obligated.

(c) ALLOTMENT RATIO.—

(1) IN GENERAL.—The allotment ratio for any State shall be 1.00 less the product of—

(A) 0.50; and

(B) the quotient obtained by dividing the per capita income for the State by the per capita income for all the States (exclusive of the Commonwealth of Puerto Rico and the United States Virgin Islands), except that—

(i) the allotment ratio in no case shall be more than 0.60 or less than 0.40; and

(ii) the allotment ratio for the Commonwealth of Puerto Rico and the United States Virgin Islands shall be 0.60.

(2) PROMULGATION.—The allotment ratios shall be promulgated by the Secretary for

each fiscal year between October 1 and December 31 of the fiscal year preceding the fiscal year for which the determination is made. Allotment ratios shall be computed on the basis of the average of the appropriate per capita incomes for the 3 most recent consecutive fiscal years for which satisfactory data are available.

(3) DEFINITION OF PER CAPITA INCOME.—For the purpose of this section, the term ''per capita income'' means, with respect to a fiscal year, the total personal income in the calendar year ending in such year, divided by the population of the area concerned in such year.

(4) POPULATION DETERMINATION.—For the purposes of this section, population shall be determined by the Secretary on the basis of the latest estimates available to the Department of Education.

(d) DEFINITION OF STATE.—For the purpose of this section, the term ''State'' means each of the several States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, and the United States Virgin Islands.

SEC. 102. PERFORMANCE MEASURES AND EXPECTED LEVELS OF PERFORMANCE.

(a) PUBLICATION OF PERFORMANCE MEASURES.—

(1) IN GENERAL.—The Secretary shall publish the following performance measures to assess the progress of each eligible agency:

(A) Student attainment of academic skills.

(B) Student attainment of job readiness skills.

(C) Student attainment of vocational skill proficiencies for students in vocational education programs, that are necessary for the receipt of a secondary school diploma or its recognized equivalent, or a secondary school skill certificate.

(D) Receipt of a postsecondary degree or certificate.

(E) Retention in, and completion of, secondary school education (as determined under State law), placement in, retention in, and completion of postsecondary education, employment, or military service.

(F) Participation in and completion of vocational education programs that lead to nontraditional employment.

(2) SPECIAL RULE.—The Secretary shall establish 1 set of performance measures for students served under this Act, including populations described in section 114(c)(16).

(b) EXPECTED LEVELS OF PERFORMANCE.—In developing a State plan, each eligible agency shall negotiate with the Secretary the expected levels of performance for the performance measures described in subsection (a).

SEC. 103. ASSISTANCE FOR THE OUTLYING AREAS.

(a) IN GENERAL.—From the funds reserved under section 101(a)(1)(A), the Secretary—

(1) shall award a grant in the amount of $500,000 to Guam for vocational education and training for the purpose of providing direct educational services related to vocational education, including—

(A) teacher and counselor training and retraining;

(B) curriculum development; and

(C) improving vocational education programs in secondary schools and institutions of higher education, or improving cooperative education programs involving both secondary schools and institutions of higher education; and

(2) shall award a grant in the amount of $190,000 to each of American Samoa and the Commonwealth of the Northern Mariana Islands for vocational education for the purpose described in paragraph (1).

(b) SPECIAL RULE.—

(1) IN GENERAL.—From funds reserved under section 101(a)(1)(A) and not awarded under subsection (a), the Secretary shall make available the amount awarded to the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau under section 101A of the Carl D. Perkins Vocational and Applied Technology Education Act (as such section was in effect on the day before the date of enactment of this Act) to award grants under the succeeding sentence. From the amount made available under the preceding sentence, the Secretary shall award grants, to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau for the purpose described in subsection (a)(1).

(2) AWARD BASIS.—The Secretary shall award grants pursuant to paragraph (1) on a competitive basis and pursuant to recommendations from the Pacific Region Educational Laboratory in Honolulu, Hawaii.

(3) TERMINATION OF ELIGIBILITY.—Notwithstanding any other provision of law, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau shall not receive any funds under this Act for any fiscal year that begins after September 30, 2004.

(4) ADMINISTRATIVE COSTS.—The Secretary may provide not more than 5 percent of the funds made available for grants under this subsection to pay the administrative costs of the Pacific Region Educational Laboratory regarding activities assisted under this subsection.

SEC. 104. INDIAN AND HAWAIIAN NATIVE PROGRAMS.

(a) DEFINITIONS; AUTHORITY OF SECRETARY.—

(1) DEFINITIONS.—For the purpose of this section—

(A) the term ''Act of April 16, 1934'' means the Act entitled ''An Act authorizing the Secretary of the Interior to arrange with States or territories for the education, medical attention, relief of distress, and social welfare of Indians, and for other purposes'', enacted April 16, 1934 (48 Stat. 596; 25 U.S.C. 452 et seq.);

(B) the term ''Bureau funded school'' has the meaning given the term in section 1146 of the Education Amendments of 1978 (25 U.S.C. 2026);

(C) the term ''Hawaiian native'' means any individual any of whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii; and

(D) the terms ''Indian'' and ''Indian tribe'' have the meanings given the terms in section 2 of the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801).

(2) AUTHORITY.—From the funds reserved pursuant to section 101(a)(1)(B), the Secretary shall award grants and enter into contracts for Indian and Hawaiian native programs in accordance with this section, except that such programs shall not include secondary school programs in Bureau funded schools.

(b) INDIAN PROGRAMS.—

(1) AUTHORITY.—

(A) IN GENERAL.—Except as provided in subparagraph (B), from the funds reserved pursuant to section 101(a)(1)(B)(i), the Secretary is directed—

(i) upon the request of any Indian tribe, or a tribal organization serving an Indian tribe, which is eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination Act (25 U.S.C. 450 et seq.) or under the Act of April 16, 1934; or

(ii) upon an application received from a Bureau funded school offering post-secondary or adult education programs filed at such time and under such conditions as the Secretary may prescribe,

to make grants to or enter into contracts with any Indian tribe or tribal organization, or to make a grant to such Bureau funded school, as appropriate, to plan, conduct, and administer programs or portions of programs authorized by, and consistent with the purpose of, this Act.

(B) REQUIREMENTS.—The grants or contracts described in subparagraph (A), shall be subject to the following:

(i) TRIBES AND TRIBAL ORGANIZATIONS.—Such grants or contracts with any tribes or tribal organization shall be subject to the terms and conditions of section 102 of the Indian Self-Determination Act (25 U.S.C. 450f) and shall be conducted in accordance with the provisions of sections 4, 5, and 6 of the Act of April 16, 1934, which are relevant to the programs administered under this subsection.

(ii) BUREAU FUNDED SCHOOLS.—Such grants to Bureau funded schools shall not be subject to the requirements of the Indian Self-Determination Act (25 U.S.C. 450f et seq.) or the Act of April 16, 1934.

(C) REGULATIONS.—If the Secretary promulgates any regulations applicable to subparagraph (B), the Secretary shall—

(i) confer with, and allow for active participation by, representatives of Indian tribes, tribal organizations, and individual tribal members; and

(ii) promulgate the regulations under subchapter III of chapter 5 of title 5, United States Code, commonly known as the ''Negotiated Rulemaking Act of 1990''.

(D) APPLICATION.—Any Indian tribe, tribal organization, or Bureau funded school eligible to receive assistance under this paragraph may apply individually or as part of a consortium with another such Indian tribe, tribal organization, or Bureau funded school.

(E) PERFORMANCE MEASURES AND EVALUATION.—Any Indian tribe, tribal organization, or Bureau funded school that receives assistance under this section shall—

(i) establish performance measures and expected levels of performance to be achieved by students served under this section; and

(ii) evaluate the quality and effectiveness of activities and services provided under this subsection.

(F) MINIMUM.—In the case of a Bureau funded school, the minimum amount of a grant awarded or contract entered into under this section shall be $35,000.

(G) RESTRICTIONS.—The Secretary may not place upon grants awarded or contracts entered into under this paragraph any restrictions relating to programs other than restrictions that apply to grants made to or contracts entered into with States pursuant to allotments under section 101(a). The Secretary, in awarding grants and entering into contracts under this paragraph, shall ensure that the grants and contracts will improve vocational education programs, and shall give special consideration to—

(i) grants or contracts with involve, coordinate with, or encourage tribal economic development plans; and

(ii) applications from tribally controlled community colleges that—

(I) are accredited or are candidates for accreditation by a nationally recognized accreditation organization as an institution of postsecondary vocational education; or

(II) operate vocational education programs that are accredited or are candidates for accreditation by a nationally recognized accreditation organization, and issue certificates for completion of vocational education programs.

(H) STIPENDS.—

(i) IN GENERAL.—Funds received pursuant to grants or contracts described in subparagraph (A) may be used to provide stipends to

students who are enrolled in vocational education programs and who have acute economic needs which cannot be met through work-study programs.

(ii) AMOUNT.—Stipends described in clause (i) shall not exceed reasonable amounts as prescribed by the Secretary.

(2) MATCHING.—If sufficient funding is available, the Bureau of Indian Affairs shall expend an amount equal to the amount made available under this subsection, relating to programs for Indians, to pay a part of the costs of programs funded under this subsection. During each fiscal year the Bureau of Indian Affairs shall expend no less than the amount expended during the prior fiscal year on vocational education programs, services, and activities administered either directly by, or under contract with, the Bureau of Indian Affairs, except that in no year shall funding for such programs, services, and activities be provided from accounts and programs that support other Indian education programs. The Secretary and the Assistant Secretary of the Interior for Indian Affairs shall prepare jointly a plan for the expenditure of funds made available and for the evaluation of programs assisted under this subsection. Upon the completion of a joint plan for the expenditure of the funds and the evaluation of the programs, the Secretary shall assume responsibility for the administration of the program, with the assistance and consultation of the Bureau of Indian Affairs.

(3) SPECIAL RULE.—Programs funded under this subsection shall be in addition to such other programs, services, and activities as are made available to eligible Indians under other provisions of this Act.

(c) HAWAIIAN NATIVE PROGRAMS.—From the funds reserved pursuant to section 101(a)(1)(b)(ii), the Secretary shall award grants or enter into contracts, with organizations primarily serving and representing Hawaiian natives which are recognized by the Governor of the State of Hawaii, for the planning, conduct, or administration of programs, or portions thereof, that are described in this Act and consistent with the purpose of this Act, for the benefit of Hawaiian natives.

SEC. 105. TRIBALLY CONTROLLED POSTSECONDARY VOCATIONAL INSTITUTIONS.

(a) IN GENERAL.—It is the purpose of this section to provide grants for the operation and improvement of tribally controlled postsecondary vocational institutions to ensure continued and expanded educational opportunities for Indian students, and to allow for the improvement and expansion of the physical resources of such institutions.

(b) GRANTS AUTHORIZED.—

(1) IN GENERAL.—From the funds reserved pursuant to section 101(a)(1)(B)(iii), the Secretary shall make grants to tribally controlled postsecondary vocational institutions to provide basic support for the vocational education and training of Indian students.

(2) AMOUNT OF GRANTS.—

(A) IN GENERAL.—If the sum appropriated for any fiscal year for grants under this section is not sufficient to pay in full the total amount that approved applicants are eligible to receive under this section for such fiscal year, the Secretary shall first allocate to each such applicant that received funds under this part for the preceding fiscal year an amount equal to 100 percent of the product of the per capita payment for the preceding fiscal year and such applicant's Indian student count for the current program year, plus an amount equal to the actual cost of any increase to the per capita figure resulting from inflationary increases to necessary costs beyond the institution's control.

(B) PER CAPITA DETERMINATION.—For the purposes of paragraph (1), the per capita payment for any fiscal year shall be determined by dividing the amount available for grants to tribally controlled postsecondary vocational institutions under this part for such program year by the sum of the Indian student counts of such institutions for such program year. The Secretary shall, on the basis of the most accurate data available from the institutions, compute the Indian student count for any fiscal year for which such count was not used for the purpose of making allocations under this section.

(c) ELIGIBLE GRANT RECIPIENTS.—To be eligible for assistance under this section a tribally controlled postsecondary vocational institution shall—

(1) be governed by a board of directors or trustees, a majority of whom are Indians;

(2) demonstrate adherence to stated goals, a philosophy, or a plan of operation which fosters individual Indian economic and self-sufficiency opportunity, including programs that are appropriate to stated tribal goals of developing individual entrepreneurships and self-sustaining economic infrastructures on reservations;

(3) have been in operation for at least 3 years;

(4) hold accreditation with or be a candidate for accreditation by a nationally recognized accrediting authority for postsecondary vocational education; and

(5) enroll the full-time equivalency of not less than 100 students, of whom a majority are Indians.

(d) GRANT REQUIREMENTS.—

(1) APPLICATIONS.—Any tribally controlled postsecondary vocational institution that desires to receive a grant under this section shall submit an application to the Secretary. Such application shall include a description of recordkeeping procedures for the expenditure of funds received under this section that will allow the Secretary to audit and monitor programs.

(2) NUMBER.—The Secretary shall award not less than 2 grants under this section for each fiscal year.

(3) CONSULTATION.—In awarding grants under this section, the Secretary shall, to the extent practicable, consult with the boards of trustees of, and the tribal governments chartering, the institutions desiring the grants.

(4) LIMITATION.—Amounts made available through grants under this section shall not be used in connection with religious worship or sectarian instruction.

(e) USES OF GRANTS.—

(1) IN GENERAL.—The Secretary shall, subject to the availability of appropriations, provide for each program year to each tribally controlled postsecondary vocational institution having an application approved by the Secretary, an amount necessary to pay expenses associated with—

(A) the maintenance and operation of the program, including development costs, costs of basic and special instruction (including special programs for individuals with disabilities and academic instruction), materials, student costs, administrative expenses, boarding costs, transportation, student services, daycare and family support programs for students and their families (including contributions to the costs of education for dependents), and student stipends;

(B) capital expenditures, including operations and maintenance, and minor improvements and repair, and physical plant maintenance costs, for the conduct of programs funded under this section; and

(C) costs associated with repair, upkeep, replacement, and upgrading of the instructional equipment.

(2) ACCOUNTING.—Each institution receiving a grant under this section shall provide annually to the Secretary an accurate and detailed accounting of the institution's operating and maintenance expenses and such other information concerning costs as the Secretary may reasonably require.

(f) EFFECT ON OTHER PROGRAMS.—

(1) IN GENERAL.—Except as specifically provided in this Act, eligibility for assistance under this section shall not preclude any tribally controlled postsecondary vocational institution from receiving Federal financial assistance under any program authorized under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) or any other applicable program for the benefit of institutions of higher education or vocational education.

(2) PROHIBITION ON ALTERNATION OF GRANT AMOUNT.—The amount of any grant for which tribally controlled postsecondary vocational institutions are eligible under this section shall not be altered because of funds allocated to any such institution from funds appropriated under the Act of November 2, 1921 (commonly known as the ''Snyder Act'') (42 Stat. 208, chapter 115; 25 U.S.C. 13).

(3) PROHIBITION ON CONTRACT DENIAL.—No tribally controlled postsecondary vocational institution for which an Indian tribe has designated a portion of the funds appropriated for the tribe from funds appropriated under such Act of November 2, 1921, may be denied a contract for such portion under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.) (except as provided in that Act), or denied appropriate contract support to administer such portion of the appropriated funds.

(g) NEEDS ESTIMATE AND REPORT ON FACILITIES AND FACILITIES IMPROVEMENT.—

(1) NEEDS ESTIMATE.—The Secretary shall, based on the most accurate data available from the institutions and Indian tribes whose Indian students are served under this section, and in consideration of employment needs, economic development needs, population training needs, and facilities needs, prepare an actual budget needs estimate for each institution eligible under this section for each subsequent program year, and submit such budget needs estimate to Congress in such a timely manner as will enable the appropriate committees of Congress to consider such needs data for purposes of the uninterrupted flow of adequate appropriations to such institutions. Such data shall take into account the goals and requirements of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2105).

(2) STUDY OF TRAINING AND HOUSING NEEDS.—

(A) IN GENERAL.—The Secretary shall conduct a detailed study of the training, housing, and immediate facilities needs of each institution eligible under this section. The study shall include an examination of—

(i) training equipment needs;

(ii) housing needs of families whose heads of households are students and whose dependents have no alternate source of support while such heads of households are students; and

(iii) immediate facilities needs.

(B) REPORT.—The Secretary shall report to Congress not later than July 1, 1999, on the results of the study required by subparagraph (A).

(C) CONTENTS.—The report required by subparagraph (B) shall include the number, type, and cost of meeting the needs described in subparagraph (A), and rank each institution by relative need.

(D) PRIORITY.—In conducting the study required by subparagraph (A), the Secretary shall priority to institutions that are receiving assistance under this section.

(3) LONG-TERM STUDY OF FACILITIES.—

(A) IN GENERAL.—The Secretary shall provide for the conduct of a long-term study of

the facilities of each institution eligible for assistance under this section.

(B) CONTENTS.—The study required by subparagraph (A) shall include a 5-year projection of training facilities, equipment, and housing needs and shall consider such factors as projected service population, employment, and economic development forecasting, based on the most current and accurate data available from the institutions and Indian tribes affected.

(C) SUBMISSION.—The Secretary shall submit to Congress a detailed report on the results of such study not later than the end of the 18-month period beginning on the date of enactment of this Act.

(h) DEFINITIONS.—For the purposes of this section:

(1) INDIAN; INDIAN TRIBE.—The terms ''Indian'' and ''Indian tribe'' have the meaning given such terms in section 2 of the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801).

(2) TRIBALLY CONTROLLED POSTSECONDARY VOCATIONAL INSTITUTION.—The term ''tribally controlled postsecondary vocational institution'' means an institution of higher education that—

(A) is formally controlled, or has been formally sanctioned or chartered by the governing body of an Indian tribe or tribes; and

(B) offers technical degrees or certificate granting programs.

(3) INDIAN STUDENT COUNT.—The term ''Indian student count'' means a number equal to the total number of Indian students enrolled in each tribally controlled postsecondary vocational institution, determined as follows:

(A) REGISTRATIONS.—The registrations of Indian students as in effect on October 1 of each year.

(B) SUMMER TERM.—Credits or clock hours toward a certificate earned in classes offered during a summer term shall be counted toward the computation of the Indian student count in the succeeding fall term.

(C) ADMISSION CRITERIA.—Credits or clock hours toward a certificate earned in classes during a summer term shall be counted toward the computation of the Indian student count if the institution at which the student is in attendance has established criteria for the admission of such student on the basis of the student's ability to benefit from the education or training offered. The institution shall be presumed to have established such criteria if the admission procedures for such studies include counseling or testing that measures the student's aptitude to successfully complete the course in which the student has enrolled. No credit earned by such student for purposes of obtaining a secondary school diploma or its recognized equivalent shall be counted toward the computation of the Indian student count.

(D) DETERMINATION OF HOURS.—Indian students earning credits in any continuing education program of a tribally controlled postsecondary vocational institution shall be included in determining the sum of all credit or clock hours.

(E) CONTINUING EDUCATION.—Credits or clock hours earned in a continuing education program shall be converted to the basis that is in accordance with the institution's system for providing credit for participation in such programs.

SEC. 106. INCENTIVE GRANTS.

(a) IN GENERAL.—The Secretary may make grants to States that exceed the expected levels of performance for performance measures established under this Act.

(b) USE OF FUNDS.—A State that receives a incentive grant under this section shall use the funds made available through the grant to carry out innovative vocational education, adult education and literacy, or work-force investment programs as determined by the State.

Subtitle B—State Provisions

SEC. 111. STATE ADMINISTRATION.

Each eligible agency shall be responsible for the State administration of activities under this title, including—

(1) the development, submission, and implementation of the State plan;

(2) the efficient and effective performance of the eligible agency's duties under this title; and

(3) consultation with other appropriate agencies, groups, and individuals that are involved in the development and implementation of activities assisted under this title, such as employers, parents, students, teachers, labor organizations, State and local elected officials, and local program administrators.

SEC. 112. STATE USE OF FUNDS.

(a) RESERVATIONS.—From funds allotted to each State under section 101(a) for each fiscal year, the eligible agency shall reserve—

(1) not more than 14 percent of the funds to carry out section 113;

(2) not more than 10 percent of the funds, or $300,000, whichever is greater, of which—

(A) $60,000 shall be available to provide technical assistance and advice to local educational agencies, postsecondary educational institutions, and other interested parties in the State for gender equity activities; and

(B) the remainder may be used to—

(i) develop the State plan;

(ii) review local applications;

(iii) monitor and evaluate program effectiveness;

(iv) provide technical assistance; and

(v) assure compliance with all applicable Federal laws, including required services and activities for individuals who are members of populations described in section 114(c)(16); and

(3) 1 percent of the funds, or the amount the State expanded under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.) for vocational education programs for criminal offenders for the fiscal year 1997, whichever is greater, to carry out programs for criminal offenders.

(b) REMAINDER.—From funds allotted to each State under section 101(a) for each fiscal year and not reserved under subsection (a), the eligible agency shall determine the portion of the funds that will be available to carry out sections 121 and 122.

(c) MATCHING REQUIREMENT.—Each eligible agency receiving funds under this title shall match, from non-Federal sources and on a dollar-for-dollar basis, the funds received under subsection (a)(2).

SEC. 113. STATE LEADERSHIP ACTIVITIES.

(a) MANDATORY.—Each eligible agency shall use the funds reserved under section 112(a)(1) to conduct programs, services, and activities that further the development, implementation, and improvement of vocational education within the State and that are integrated, to the maximum extent possible, with challenging State academic standards, including—

(1) providing comprehensive professional development (including initial teacher preparation) for vocational, academic, guidance, and administrative personnel, that—

(A) will help the teachers and personnel to assist students in meeting the expected levels of performance established under section 102;

(B) reflects the eligible agency's assessment of the eligible agency's needs for professional development; and

(C) is integrated with the professional development activities that the State carries out under title II of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6001 et seq.);

(2) developing and disseminating curricula that are aligned, as appropriate, with challenging State academic standards, and vocational and technological skills;

(3) monitoring and evaluating the quality of, and improvement in, activities conducted with assistance under this title;

(4) providing gender equity programs in secondary and postsecondary vocational education;

(5) supporting tech-prep education activities;

(6) improving and expanding the use of technology in instruction;

(7) supporting partnerships among local educational agencies, institutions of higher education, adult education providers, and, as appropriate, other entities, such as employers, labor organizations, parents, and local partnerships, to enable students to achieve State academic standards, and vocational and technological skills; and

(8) serving individuals in State institutions, such as State correctional institutions and institutions that serve individuals with disabilities.

(b) PERMISSIVE.—Each eligible agency may use the funds reserved under section 112(a)(1) for—

(1) improving guidance and counseling programs that assist students in making informed education and vocational decisions;

(2) supporting vocational student organizations, especially with respect to efforts to increase the participation of students who are members of populations described in section 114(c)(16);

(3) providing vocational education programs for adults and school dropouts to complete their secondary school education; and

(4) providing assistance to students who have participated in services and activities under this title in finding an appropriate job and continuing their education.

SEC. 114. STATE PLAN.

(a) STATE PLAN.—

(1) IN GENERAL.—Each eligible entity desiring assistance under this title for any fiscal year shall prepare and submit to the Secretary a State plan for a 3-year period, together with such annual revisions as the eligible agency determines to be necessary.

(2) HEARING PROCESS.—The eligible agency shall conduct public hearings in the State, after appropriate and sufficient notice, for the purpose of affording all segments of the public and interested organizations and groups (including employers, labor organizations, and parents), an opportunity to present their views and make recommendations regarding the State plan. A summary of such recommendations and the eligible agency's response to such recommendations shall be included with the State plan.

(b) PLAN DEVELOPMENT.—The eligible agency shall develop the State plan with representatives of secondary and postsecondary vocational education, parents, representatives of populations described in section 114(c)(16), and businesses, in the State and shall also consult the Governor of the State.

(c) PLAN CONTENTS.—The State plan shall include information that—

(1) describes the vocational education activities to be assisted that are designed to meet and reach the State performance measures;

(2) describes the integration of academic and technological education with vocational education;

(3) describes how the eligible agency will disaggregate data relating to students participating in vocational education in order to adequately measure the progress of the students;

(4) describes how the eligible agency will adequately address the needs of students in alternative education programs;

(5) describes how the eligible agency will provide local educational agencies, area vocational education schools, and eligible institutions in the State with technical assistance;

(6) describes how the eligible agency will encourage the participation of the parents of secondary school students who are involved in vocational education activities;

(7) identifies how the eligible agency will obtain the active participation of business, labor organizations, and parents in the development and improvement of vocational education activities carried out by the eligible agency;

(8) describes how vocational education relates to State and regional employment opportunities;

(9) describes the methods proposed for the joint planning and coordination of programs carried out under this title with other Federal education programs;

(10) describes how funds will be used to promote gender equity in secondary and postsecondary vocational education;

(11) describes how funds will be used to improve and expand the use of technology in instruction;

(12) describes how funds will be used to serve individuals in State correctional institutions;

(13) describes how funds will be used effectively to link secondary and postsecondary education;

(14) describes how funds will be allocated and used at the secondary and postsecondary level, any consortia that will be formed among secondary schools and eligible institutions, and how funds will be allocated among the members of the consortia;

(15) describes how the eligible agency will ensure that the data reported to the eligible agency from local educational agencies and eligible institutions under this title and the data the eligible agency reports to the Secretary are complete, accurate, and reliable;

(16) describes the eligible agency's program strategies for populations that include, at a minimum—

(A) low-income individuals, including foster children;

(B) individuals with disabilities;

(C) single parents and displaced homemakers; and

(D) individuals with other barriers to educational achievement, including individuals with limited English proficiency;

(17) describes how individuals who are members of the special populations described in subsection (c)(16)—

(A) will be provided with equal access to activities assisted under this Act; and

(B) will not be discriminated against on the basis of their status as members of the special populations; and

(d) PLAN APPROVAL.—

(1) IN GENERAL.—The Secretary shall approve a State plan, or a revision to an approved State plan, only if the Secretary determines that—

(A) the State plan, or revision, respectively, meets the requirements of this section; and

(B) the State's performance measures and expected levels of performance under section 102 are sufficiently rigorous to meet the purpose of this Act.

(2) DISAPPROVAL.—The Secretary shall not finally disapprove a State plan, except after giving the eligible agency notice and an opportunity for a hearing.

(3) PEER REVIEW.—The Secretary shall establish a peer review process to make recommendations regarding approval of State plans.

(4) TIMEFRAME.—A State plan shall be deemed approved if the Secretary has not responded to the eligible agency regarding the plan within 90 days of the date the Secretary receives the plan.

(e) ASSURANCES.—A State plan shall contain assurances that the State will comply with the requirements of this Act and the provisions of the State plan, and provide for such fiscal control and fund accounting procedures that may be necessary to ensure the proper disbursement of, and accounting for, funds paid to the State under this Act.

(f) ELIGIBLE AGENCY REPORT.—

(1) IN GENERAL.—The eligible agency shall annually report tot he Secretary regarding—

(A) the quality and effectiveness of the programs, services, and activities, assisted under this title, based on the performance measures and expected levels of performance described in section 102; and

(B) the progress each population of individuals described in section 114(c)(16) is making toward achieving the expected levels of performance.

(2) CONTENTS.—The eligible agency report also—

(A) shall include such information, in such form, as the Secretary may reasonably require, in order to ensure the collection of uniform data; and

(B) shall be made available to the public.

Subtitle C—Local Provisions

SEC. 121. DISTRIBUTION FOR SECONDARY SCHOOL VOCATIONAL EDUCATION.

(a) ALLOCATION.—Except as otherwise provided in this section, each eligible agency shall distribute the portion of the funds made available for secondary school vocational education activities under section 112(b) for any fiscal year to local educational agencies within the State as follows:

(1) SEVENTY PERCENT.—From 70 percent of such portion, each local educational agency shall be allocated an amount that bears the same relationship to such 70 percent as the amount such local educational agency was allocated under section 1124 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333) for the preceding fiscal year bears to the total amount received under such section by all local educational agencies in the State for such year.

(2) TWENTY PERCENT.—From 20 percent of such portion, each local educational agency shall be allocated an amount that bears the same relationship to such 20 percent as the number of students with disabilities who have individualized education programs under section 614(d) of the Individuals With Disabilities Education Act (20 U.S.C. 1414(d)) served by such local educational agency for the preceding fiscal year bears to the total number of such students served by all local educational agencies in the State for such year.

(3) TEN PERCENT.—From 10 percent of such portion, each local educational agency shall be allocated an amount that bears the same relationship to such 10 percent as the number of students enrolled in schools and adults enrolled in training programs under the jurisdiction of such local educational agency for the preceding fiscal year bears to the number of students enrolled in schools and adults enrolled in training programs under the jurisdiction of all local educational agencies in the State for such year.

(b) MINIMUM ALLOCATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), no local educational agency shall receive an allocation under subsection (a) unless the amount allocated to such agency under subsection (a) is not less than $25,000. A local educational agency may enter into a consortium with other local educational agencies for purposes of meeting the minimum allocation requirement of this paragraph.

(2) WAIVER.—The eligible agency may waive the application of paragraph (1) for a local educational agency that is located in a rural, sparsely populated area.

(3) REALLOCATION.—Any amounts that are not allocated by reason of paragraph (1) or (2) shall be reallocated to local educational agencies that meet the requirements of paragraph (1) or (2) in accordance with the provisions of this section.

(c) LIMITED JURISDICTION AGENCIES.—

(1) IN GENERAL.—In applying the provisions of subsection (a), no eligible agency receiving assistance under this title shall allocate funds to a local educational agency that serves only elementary schools, but shall distribute such funds to the local educational agency or regional educational agency that provides secondary school services to secondary school students in the same attendance area.

(2) SPECIAL RULE.—The amount to be allocated under paragraph (1) to a local educational agency that has jurisdiction only over secondary schools shall be determined based on the number of students that entered such secondary schools in the previous year from the elementary schools involved.

(d) ALLOCATIONS TO AREA VOCATIONAL EDUCATION SCHOOLS AND EDUCATIONAL SERVICE AGENCIES.—

(1) IN GENERAL.—Each eligible agency shall distribute the portion of funds made available for any fiscal year by such entity for secondary school vocational education activities under section 112(b) to the appropriate area vocational educations school or educational service agency in any case in which—

(A) the area vocational education school or educational service agency, and the local educational agency concerned—

(i) have formed or will form a consortium for the purpose of receiving funds under this section; or

(ii) have entered into or will enter into a cooperative arrangement for such purpose; and

(B)(i) the area vocational education school or educational service agency serves an approximately equal or greater proportion of students who are individuals with disabilities or are low-income than the proportion of such students attending the secondary schools under the jurisdiction of all of the local educational agencies sending students to the area vocational education school or the educational service agency; or

(ii) the area vocational education school, educational service agency, or local educational agency demonstrates that the vocational education school or educational service agency is unable to meet the criterion described in clause (i) due to the lack of interest by students described in clause (i) in attending vocational education programs in that area vocational education school or educational service agency.

(2) ALLOCATION BASIS.—If an area vocational education school or educational service agency meets the requirements of paragraph (1), then—

(A) the amount that will otherwise be distributed to the local educational agency under this section shall be allocated to the area vocational education school, the educational service agency, and the local educational agency, based on each school's or agency's relative share of students described in paragraph (1)(B)(i) who are attending vocational education programs (based, if practicable, on the average enrollment for the prior 3 years); or

(B) such amount may be allocated on the basis of an agreement between the local educational agency and the area vocational education school or educational service agency.

(3) STATE DETERMINATION.—

(A) IN GENERAL.—For the purposes of this subsection, the eligible agency may determine the number of students who are low-income on the basis of—

(i) eligibility for—

(I) free or reduced-price meals under the National School Lunch Act (7 U.S.C. 1751 et seq.);

(II) assistance under a State program funded under part A of title IV of the Social Security Act;

(III) benefits under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.); or

(IV) services under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.); or

(ii) another index of economic status, including an estimate of such index, if the eligible agency demonstrates to the satisfaction of the Secretary that such index is a more representative means of determining such number.

(B) DATA.—If an eligible agency elects to use more than 1 factor described in subparagraph (A) for purposes of making the determination described in such subparagraph, the eligible agency shall ensure that the data used is not duplicative.

(4) APPEALS PROCEDURE.—The eligible agency shall establish an appeals procedure for resolution of any dispute arising between a local educational agency and an area vocational education school or an educational service agency with respect to the allocation procedures described in this section, including the decision of a local educational agency to leave a consortium.

(5) SPECIAL RULE.—Notwithstanding the provisions of paragraphs (1), (2), (3), and (4), any local educational agency receiving an allocation that is not sufficient to conduct a secondary school vocational education program of sufficient size, scope, and quality to be effective may—

(A) form a consortium or enter into a cooperative agreement with an area vocational education school or educational service agency offering secondary school vocational education programs of sufficient size, scope, and quality to be effective and that are accessible to students who are individuals with disabilities or are low-income, and are served by such local educational agency; and

(B) transfer such allocation to the area vocational education school or educational service agency.

(e) SPECIAL RULE.—Each eligible agency distributing funds under this section shall treat a secondary school funded by the Bureau of Indian Affairs within the State as if such school were a local educational agency within the State for the purpose of receiving a distribution under this section.

SEC. 122. DISTRIBUTION FOR POSTSECONDARY VOCATIONAL EDUCATION.

(a) DISTRIBUTION.—

(1) IN GENERAL.—Except as otherwise provided in this section, each eligible agency shall distribute the portion of funds made available for post-secondary vocational education under section 112(b) for any fiscal year to eligible institutions within the State in accordance with paragraph (2).

(2) ALLOCATION.—Each eligible institution in the State having an application approved under section 124 for a fiscal year shall be allocated an amount that bears the same relationship to the amount of funds made available for postsecondary vocational education under section 112(b) for the fiscal year as the number of Pell Grant recipients and recipients of assistance from the Bureau of Indian Affairs enrolled for the preceding fiscal year by such eligible institution in vocational education programs that do not exceed 2 years in duration bears to the number of such recipients enrolled in such programs within the State for such fiscal year.

(3) SPECIAL RULE FOR CONSORTIA.—In order for a consortium to receive assistance under this section, such consortium shall operate joint projects that—

(A) provide services to all postsecondary institutions in the consortium; and

(B) are of sufficient size, scope, and quality to be effective.

(4) MINIMUM ALLOCATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), no eligible institution shall receive an allocation under paragraph (2) unless the amount allocated to the eligible institution under paragraph (2) is not less than $65,000.

(B) WAIVER.—The eligible agency may waive the application of subparagraph (A) in any case in which the eligible institution is located in a rural, sparsely populated area.

(C) REALLOCATION.—Any amounts that are not allocated by reason of subparagraph (A) or (B) shall be reallocated to eligible institutions that meet the requirements of subparagraph (A) or (B) in accordance with the provisions of this section.

(5) DEFINITION OF PELL GRANT RECIPIENT.—The term ''Pell Grant recipient'' means a recipient of financial aid under subpart 1 of part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070a).

(b) ALTERNATIVE ALLOCATION.—An eligible agency may allocate funds made available for postsecondary education under section 112(b) for a fiscal year using an alternative formula if the eligible agency demonstrates to the Secretary's satisfaction that—

(1) the alternative formula better meets the purpose of this Act; and

(2)(A) the formula described in subsection (a) does not result in an allocation of funds to the eligible institutions that serve the highest numbers or percentages of low-income students; and

(B) the alternative formula will result in such a distribution.

SEC. 123. LOCAL ACTIVITIES.

(a) MANDATORY.—Funds made available to a local educational agency or an eligible institution under this title shall be used—

(1) to initiate, improve, expand, and modernize quality vocational education programs;

(2) to improve or expand the use of technology in vocational instruction, including professional development in the use of technology, which instruction may include distance learning;

(3) to provide services an activities that are of sufficient size, scope, and quality to be effective;

(4) to integrate academic education with vocational education for students participating in vocational education;

(5) to link secondary education (as determined under State law) and postsecondary education, including implementing tech-prep programs;

(6) to provide professional development activities to teachers, counselors, and administrators, including—

(A) inservice and preservice training in state-of-the-art vocational education programs;

(B) internship programs that provide business experience to teachers; and

(C) programs designed to train teachers specifically in the use and application of technology;

(7) to develop and implement programs that provide access to, and the supportive services needed to participate in, quality vocational education programs for students, including students who are members of the populations described in section 114(c)(16);

(8) to develop and implement performance management systems and evaluations; and

(9) to promote gender equity in secondary and postsecondary vocational education.

(b) PERMISSIVE.—Funds made available to a local educational agency or an eligible institution under this title may be used)—

(1) to carry out student internships;

(2) to provide guidance and counseling for students participating in vocational education programs;

(3) to provide vocational education programs for adults and school dropouts to complete their secondary school education;

(4) to acquire and adapt equipment, including instructional aids;

(5) to support vocational student organizations;

(6) to provide assistance to students who have participated in services and activities under this title in finding an appropriate job and continuing their education; and

(7) to support other vocational education activities that are consistent with the purpose of this Act.

SEC. 124. LOCAL APPLICATION.

(a) IN GENERAL.—Each local educational agency or eligible institution desiring assistance under this title shall submit an application to the eligible agency at such time, in such manner, and accompanied by such information as the eligible agency (in consultation with such other educational entities as the eligible agency determines to be appropriate) may require.

(b) CONTENTS.—Each application shall, at a minimum—

(1) describe how the vocational education activities will be carried out pertaining to meeting the expected levels of performance;

(2) describe the process that will be used to independently evaluate and continuously improve the performance of the local educational agency or eligible institution, as appropriate;

(3) describe how the local educational agency or eligible institution, as appropriate, will plan and consult with students, parents, representatives of populations described in section 114(c)(16), businesses, labor organizations, and other interested individuals, in carrying out activities under this title;

(4) describe how the local educational agency or eligible institution, as appropriate, will review vocational education programs, and identify and adopt strategies to overcome barriers that result in lowering rates of access to the programs, for populations described in section 114(c)(16); and

(5) describe how individuals who are members of the special populations described in section 114(c)(16) will not be discriminated against on the basis of their status as members of the special populations.

SEC. 125. CONSORTIA.

A local educational agency and an eligible institution may form a consortium to carry out the provisions of this subtitle if the sum of the amount the consortium receives for a fiscal year under sections 121 and 122 equals or exceeds $65,000.

TITLE II—TECH–PREP EDUCATION

SEC. 201. SHORT TITLE.

This title may be cited as the ''Tech-Prep Education Act''.

SEC. 202. PURPOSES.

The purposes of this title are—

(1) to provide implementation grants to consortia of local educational agencies, postsecondary educational institutions, and employers or labor organizations, for the development and operation of programs designed to provide a tech-prep education program leading to a 2-year associate degree or a 2-year certificate;

(2) to provide, in a systematic manner, strong, comprehensive links among secondary schools, post-secondary educational institutions, and local or regional employers, or labor organizations; and

(3) to support the use of contextual, authentic, and applied teaching and curriculum based on each State's academic, occupational, and employability standards.

SEC. 203. DEFINITIONS.

(a) In this title:

(1) ARTICULATION AGREEMENT.—The term ''articulation agreement'' means a written commitment to a program designed to provide students with a non duplicative sequence of progressive achievement leading to degrees or certificates in a tech-prep education program.

(2) COMMUNITY COLLEGE.—The term ''community college''—

(A) has the meaning provided in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141) for an institution which provides not less than a 2-year program which is acceptable for full credit toward a bachelor's degree; and

(B) includes tribally controlled community colleges.

(3) TECH-PREP PROGRAM.—The term ''tech-prep program'' means a program of study that—

(A) combines at a minimum 2 years of secondary education (as determined under State law) with a minimum of 2 years of postsecondary education in a nonduplicative, sequential course of study;

(B) integrates academic and vocational instruction, and utilizes work-based and worksite learning where appropriate and available;

(C) provides technical preparation in a career field such as engineering technology, applied science, a mechanical, industrial, or practical art or trade, agriculture, health occupations, business, or applied economics;

(D) builds student competence in mathematics, science, reading, writing, communications, economics, and workplace skills through applied, contextual academics, and integrated instruction, in a coherent sequence of courses;

(E) leads to an associate or a baccalaureate degree or a certificate in a specific career field; and

(F) leads to placement in appropriate employment or further education.

SEC. 204. PROGRAM AUTHORIZED.

(a) DISCRETIONARY AMOUNTS.—

(1) IN GENERAL.—For any fiscal year for which the amount appropriated under section 207 to carry out this title is equal to or less than $50,000,000, the Secretary shall award grants for tech-prep education programs to consortia between or among—

(A) a local educational agency, an intermediate educational agency or area vocational education school serving secondary school students, or a secondary school funded by the Bureau of Indian Affairs; and

(B)(i) a nonprofit institution of higher education that offers—

(I) a 2-year associate degree program, or a 2-year certificate program, and is qualified as institutions of higher education pursuant to section 481(a) of the Higher Education Act of 1965 (20 U.S.C. 1088(a)), including an institution receiving assistance under the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801 et seq.) and a tribally controlled postsecondary vocational institution; or

(II) a 2-year apprenticeship program that follows secondary instruction,

if such nonprofit institution of higher education is not prohibited from receiving assistance under part B of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.) pursuant to the provisions of section 435(a)(3) of such Act (20 U.S.C. 1083(a)); or

(ii) a proprietary institution of higher education that offers a 2-year associate degree program and is qualified as an institution of higher education pursuant to section 481(a) of the Higher Education Act of 1965 (20 U.S.C. 1088(a)), if such proprietary institution of higher education is not subject to a default management plan required by the Secretary.

(2) SPECIAL RULE.—In addition, a consortium described in paragraph (1) may include 1 or more—

(A) institutions of higher education that award a baccalaureate degree; and

(B) employer or labor organizations.

(b) STATE GRANTS.—

(1) IN GENERAL.—For any fiscal year for which the amount made available under section 207 to carry out this title exceeds $50,000,000, the Secretary shall allot such amount among the States in the same manner as funds are allotted to States under paragraphs (2), (3), and (4) of section 101(a).

(2) PAYMENTS TO ELIGIBLE AGENICES.—The Secretary shall make a payment in the amount of a State's allotment under this paragraph to the eligible agency that serves the State and has an application approved under paragraph (4).

(3) AWARD BASIS.—From amounts made available to each eligible agency under this subsection, the eligible agency shall award grants, on a competitive basis or on the basis of a formula determined by the eligible agency, for tech-prep education programs to consortia described in subsection (a).

(4) STATE APPLICATION.—Each eligible agency desiring assistance under this title shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require.

SEC. 205. TECH-PREP EDUCATION PROGRAMS.

(a) GENERAL AUTHORITY.—Each consortium shall use amounts provided through the grant to develop and operate a tech-prep education program.

(b) CONTENTS OF PROGRAM.—Any such tech-prep program shall—

(1) be carried out under an articulation agreement between the participants in the consortium;

(2) consist of at least 2 years of secondary school preceding graduation and 2 years or more of higher education, or an apprenticeship program of at least 2 years following secondary instruction, with a common core of required proficiency in mathematics, science, reading, writing, communications, and technologies designed to lead to an associate's degree or a certificate in a specific career field;

(3) include the development of tech-prep education program curricula for both secondary and postsecondary levels that—

(A) meets academic standards developed by the State;

(B) links secondary schools and 2-year postsecondary institutions, and where possible and practicable, 4-year institutions of higher education through nonduplicative sequences of courses in career fields;

(C) uses, where appropriate and available, work-based or worksite learning in conjunction with business and industry; and

(D) uses educational technology and distance learning, as appropriate, to involve all the consortium partners more fully in the development and operation of programs.

(4) include a professional development program for academic, vocational, and technical teachers that—

(A) is designed to train teachers to effectively implement tech-prep education curricula;

(B) provides for joint training for teachers from all participants in the consortium;

(C) is designed to ensure that teachers stay current with the needs, expectations, and methods of business and industry;

(D) focuses on training postsecondary education faculty in the use of contextual and applied curricula and instruction; and

(E) provides training in the use and application of technology;

(5) include training programs for counselors designed to enable counselors to more effectively—

(A) make tech-prep education opportunities known to students interested in such activities;

(B) ensure that such students successfully complete such programs;

(C) ensure that such students are placed in appropriate employment; and

(D) stay current with the needs, expectations, and methods of business and industry;

(6) provide equal access to the full range of technical preparation programs to individuals who are members of populations described in section 114(c)(16), including the development of tech-prep education program services appropriate to the needs of such individuals; and

(7) provide for preparatory services that assist all participants in such programs.

(c) ADDITIONAL AUTHORIZED ACTIVITIES.—Each such tech-prep program may—

(1) provide for the acquisition of tech-prep education program equipment;

(2) as part of the program's planning activities, acquire technical assistance from State or local entities that have successfully designed, established and operated tech-prep programs;

(3) acquire technical assistance from State or local entities that have designed, established, and operated tech-prep programs that have effectively used educational technology and distance learning in the delivery of curricula and services and in the articulation process; and

(4) establish articulation agreements with institutions of higher education, labor organizations, or businesses located outside of the State served by the consortium, especially with regard to using distance learning and educational technology to provide for the delivery of services and programs.

SEC. 206. APPLICATIONS

(a) IN GENERAL.—Each consortium that desires to receive a grant under this title shall submit an application to the Secretary or the eligible agency, as appropriate, at such time and in such manager as the Secretary or the eligible agency, as appropriate, shall prescribe.

(b) THREE-YEAR PLAN.—Each application submitted under this section shall contain a 3-year plan for the development and implementation of activities under this title.

(c) APPROVAL.—The Secretary or the eligible agency, as appropriate, shall approve applications based on the potential of the activities described in the application to create an effective tech-prep education program described in section 205.

(d) SPECIAL CONSIDERATION.—The Secretary or the eligible agency, as appropriate, shall give special consideration to applications that—

(1) provide for effective employment placement activities or the transfer of students to 4-year institutions of higher education;

(2) are developed in consultation with 4-year institutions of higher education;

(3) address effectively the needs of populations described in section 114(c)(16);

(4) provide education and training in areas or skills where there are significant workforce shortages, including the information technology industry; and

(5) demonstrate how tech-prep programs will help students meet high academic and employability competencies.

(e) EQUITABLE DISTRIBUTION OF ASSISTANCE.—In awarding grants under this title, the Secretary shall ensure an equitable distribution of assistance among States, and the Secretary or the eligible agency, as appropriate, shall ensure an equitable distribution of assistance between urban and rural consortium participants.

(f) NOTICE.—

(1) IN GENERAL.—In the case of grants to be awarded by the Secretary, each consortium that submits an application under this section shall provide notice of such submission and a copy of such application to the State educational agency and the State agency for higher education of the State in which the consortium is located.

(2) NOTIFICATION.—The Secretary shall notify the State educational agency and the State agency for higher education of a State each time a consortium located in the State is selected to receive a grant under this title.

SEC. 207. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this title such sums as may be necessary for fiscal year 1999 and each of the 5 succeeding fiscal years.

SEC. 208. DEMONSTRATION PROGRAM.

(a) DEMOSNTRATION PROGRAM AUTHORIZED.—From funds appropriated under subsection (e) for a fiscal year, the Secretary shall award grants to consortia described in section 204(a) to enable the consortia to carry out tech-prep education programs.

(b) PROGRAM CONTENTS.—Each tech-prep program referred to in subsection (a)—

(1) shall—

(A) involve the location of a secondary school on the site of a community college;

(B) involve a business as a member of the consortium; and

(C) require the voluntary participation of secondary school students in the tech-prep education program; and

(2) may provide summer internships at a business for students or teachers.

(c) APPLICATION.—Each consortium desiring a grant under this section shall submit an application to the Secretary at such time, in such manner and accompanied by such information as the Secretary may require.

(d) APPLICABILITY.—The provisions of sections 204, 205, 206, and 207 shall not apply to this section, except that—

(1) the provisions of section 204(a) shall apply for purposes of describing consortia eligible to receive assistance under this section;

(2) each tech-prep education program assisted under this section shall meet the requirements of paragraphs (1), (2), (3)(A), (3)(B), (3)(C), (3)(D), (4), (5), (6), and (7) of section 205(b), except that such paragraph (3)(B) shall be applied by striking '', and where possible and practicable, 4-year institutions of higher education through nonduplicative sequences of courses in career fields''; and

(3) in awarding grants under this section, the Secretary shall give special consideration to consortia submitting applications under subsection (c) that meet the requirements of paragraphs (1), (3), (4), and (5) of section 206(d), except that such paragraph (1) shall be applied by striking ''or the transfer of students to 4-year institutions of higher education''.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $25,000,000 for fiscal year 1999 and each of the 5 succeeding fiscal years.

TITLE III—GENERAL PROVISIONS

SEC. 301. ADMINISTRATIVE PROVISIONS.

(a) SUPPLEMENT NOT SUPPLANT.—Funds made available under this Act for vocational education activities shall supplement, and shall not supplant, non-Federal funds expended to carry out vocational education and tech-prep activities.

(b) MAINTENANCE OF EFFORT.—

(1) DETERMINATION.—No payments shall be made under this Act for any fiscal year to an eligible agency for vocational education or tech-prep activities unless the Secretary determines that the fiscal effort per student or the aggregate expenditures of the State for vocational education for the fiscal year preceding the fiscal year for which the determination is made, equaled or exceeded such effort or expenditures for vocational education for the second fiscal year preceding the fiscal year for which the determination is made.

(2) WAIVER.—The Secretary may waive the requirements of this section, with respect to not more than 5 percent of expenditures by any eligible agency for 1 fiscal year only, on making a determination that such waiver would be equitable due to exceptional or uncontrollable circumstances affecting the ability of the applicant to meet such requirements, such as a natural disaster or an unforeseen and precipitous decline in financial resources. No level of funding permitted under such a waiver may be used as the basis for computing the fiscal effort or aggregate expenditures required under this section for years subsequent to the year covered by such waiver. The fiscal effort or aggregate expenditures for the subsequent years shall be computed on the basis of the level of funding that would, but for such waiver, have been required.

(c) REPRESENTATION.—The eligible agency shall provide representation to the statewide partnership.

SEC. 302. EVALUATION, IMPROVEMENT, AND ACCOUNTABILITY.

(a) LOCAL EVALUATION.—Each eligible agency shall evaluate annually the vocational education and tech-prep activities of each local educational agency or eligible institution receiving assistance under this Act, using the performance measures established under section 102.

(b) IMPROVEMENT ACTIVITIES.—If, after reviewing the evaluation, an eligible agency determines that a local educational agency or eligible institution is not making substantial progress in achieving the purpose of this Act, the local educational agency or eligible institution, in consultation with teachers, parents, and other school staff, shall—

(1) conduct an assessment of the educational and other problems that the local educational agency or eligible institution shall address to overcome local performance problems;

(2) enter into an improvement plan based on the results of the assessment, which plan shall include instructional and other programmatic innovations of demonstrated effectiveness, and where necessary, strategies for appropriate staffing and staff development; and

(3) conduct regular evaluations of the progress being made toward program improvement goals.

(c) TECHNICAL ASSISTANCE.—If the Secretary determines that an eligible agency is not properly implementing the eligible agency's responsibilities under section 114, or is not making substantial progress in meeting the purpose of this Act, based on the performance measures and expected levels of performance under section 102 included in the eligible agency's State plan, the Secretary shall work with the eligible agency to implement improvement activities.

(d) WITHHOLDING OF FEDERAL FUNDS.—If, after a reasonable time, but not earlier than 1 year after implementing activities described in subsection (c), the Secretary determines that the eligible agency is not making sufficient progress, based on the eligible agency's performance measures and expected levels of performance, the Secretary, after notice and opportunity for a hearing, shall withhold from the eligible agency all, or a portion, of the eligible agency's grant funds under this title. The Secretary may use funds withheld under the preceding sentence to provide, through alternative arrangements, services, and activities within the State to meet the purpose of this Act.

SEC. 303. NATIONAL ACTIVITIES.

The Secretary may, directly or through grants, contracts, or cooperative agreements, carry out research, development, dissemination, evaluation, capacity-building, and technical assistance activities that carry out the purpose of this Act.

SEC. 304. NATIONAL ASSESSMENT OF VOCATIONAL EDUCATION PROGRAMS.

(a) IN GENERAL.—The Secretary shall conduct a national assessment of vocational education programs assisted under this Act, through studies and analyses conducted independently through competitive awards.

(b) INDEPENDENT ADVISORY PANEL.—The Secretary shall appoint an independent advisory panel, consisting of vocational education administrators, educators, researchers, and representatives of labor organizations, business, parents, guidance and counseling professionals, and other relevant groups, to advise the Secretary on the implementation of such assessment, including the issues to be addressed and the methodology of the studies involved, and the findings and recommendations resulting from the assessment. The panel shall submit to the Committee on Education and the Workforce of the House of Representatives, the Committee on Labor and Human Resources of the Senate, and the Secretary an independent analysis of the findings and recommendations resulting from the assessment. The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the panel established under this subsection.

(c) CONTENTS.—The assessment required under subsection (a) shall include descriptions and evaluations of—

(1) the effect of the vocational education programs assisted under this Act on State and tribal administration of vocational education programs and on local vocational education practices, including the capacity of State, tribal, and local vocational education systems to address the purpose of this Act;

(2) expenditures at the Federal, State, tribal, and local levels to address program improvement in vocational education, including the impact of Federal allocation requirements (such as within-State distribution formulas) on the delivery of services;

(3) preparation and qualifications of teachers of vocational and academic curricula in vocational education programs, as well as shortages of such teachers;

(4) participation in vocational education programs;

(5) academic and employment outcomes of vocational education, including analyses of—

(A) the number of vocational education students and tech-prep students who meet State academic standards;

(B) the extent and success of integration of academic and vocational education for students participating in vocational education programs; and

(C) the degree to which vocational education is relevant to subsequent employment or participation in postsecondary education;

(6) employer involvement in, and satisfaction with, vocational education programs;

(7) the use and impact of educational technology and distance learning with respect to vocational education and tech-prep programs; and

(8) the effect of performance measures, and other measures of accountability, on the delivery of vocational education services.

(d) CONSULTATION.—

(1) IN GENERAL.—The Secretary shall consult with the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate in the design

and implementation of the assessment required under subsection (a).

(2) REPORTS.—The Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives, the Committee on Labor and Human Resources of the Senate, and the Secretary—

(A) an interim report regarding the assessment on or before July 1, 2001; and

(B) a final report, summarizing all studies and analyses that relate to the assessment and that are completed after the assessment, on or before July 1, 2002.

(3) PROHIBITION.—Notwithstanding any other provision of law or regulation, the reports required by this subsection shall not be subject to any review outside of the Department of Education before their transmittal to the Committee on Education and the Workforce of the House of Representatives, the Committee on Labor and Human Resources of the Senate, and the Secretary, but the President, the Secretary, and the independent advisory panel established under subsection (b) may make such additional recommendations to Congress with respect to the assessment as the President, the Secretary, or the panel determine to be appropriate.

SEC. 305. NATIONAL RESEARCH CENTER.

(a) GENERAL AUTHORITY.—

(1) IN GENERAL.—The Secretary, through grants, contracts, or cooperative agreements, may establish 1 or more national centers in the areas of—

(A) applied research and development; and

(B) dissemination and training.

(2) CONSULTATION.—The Secretary shall consult with the States prior to establishing 1 or more such centers.

(3) ELIGIBLE ENTITIES.—Entities eligible to receive funds under this section are institutions of higher education, other public or private nonprofit organizations or agencies, and consortia of such institutions, organizations, or agencies.

(b) ACTIVITIES.—

(1) IN GENERAL.—The national center or centers shall carry out such activities as the Secretary determines to be appropriate to assist State and local recipients of funds under this Act to achieve the purpose of this Act, which may include the research and evaluation activities in such areas as—

(A) the integration of vocational and academic instruction, secondary and postsecondary instruction;

(B) effective inservice and preservice teacher education that assists vocational education systems;

(C) education technology and distance learning approaches and strategies that are effective with respect to vocational education;

(D) performance measures and expected levels of performance that serve to improve vocational education programs and student achievement;

(E) effects of economic changes on the kinds of knowledge and skills required for employment or participation in postsecondary education;

(F) longitudinal studies of student achievement; and

(G) dissemination and training activities related to the applied research and demonstration activities described in this subsection, which may also include—

(i) serving as a repository for information on vocational and technological skills, State academic standards, and related materials; and

(ii) developing and maintaining national networks of educators who facilitate the development of vocational education systems.

(2) REPORT.—The center or centers conducting the activities described in paragraph (1) annually shall prepare a report of key research findings of such center or centers and shall submit copies of the report to the Secretary, the Secretary of Labor, and the Secretary of Health and Human Services. The Secretary shall submit that report to the Committee on Education and the Workforce of the House of Representatives, the Committee on Labor and Human Resources of the Senate, the Library of Congress, and each eligible agency.

(c) REVIEW.—The Secretary shall—

(1) consult at least annually with the national center or centers and with experts in education to ensure that the activities of the national center or center meet the needs of vocational education programs; and

(2) undertake an independent review of each award recipient under this section prior to extending an award to such recipient beyond a 5-year period.

SEC. 306. DATA SYSTEMS.

(a) IN GENERAL.—The Secretary shall maintain a data system to collect information about, and report on, the condition of vocational education and on the effectiveness of State and local programs, services, and activities carried out under this Act in order to provide the Secretary and Congress, as well as Federal, State, local, and tribal agencies, with information relevant to improvement in the quality and effectiveness of vocational education. The Secretary annually shall report to Congress on the Secretary's analysis of performance data collected each year pursuant to this Act, including an analysis of performance data regarding the populations described in section 114(c)(16).

(b) DATA SYSTEM.—In maintaining the data system, the Secretary shall ensure that the data system is compatible with other Federal information systems.

(c) ASSESSMENTS.—As a regular part of its assessments, the National Center for Education Statistics shall collect and report information on vocational education for a nationally representative sample of students. Such assessment may include international comparisons.

SEC. 307. PROMOTING SCHOLAR-ATHLETE COMPETITIONS.

Section 10104 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8004) is amended—

(1) in subsection (a), by striking ''to be held in 1995''; and

(2) in subsection (b)—

(A) in paragraph (4), by striking ''in the summer of 1995;'' and inserting ''; and'';

(B) in paragraph (5), by striking ''in 1996 and thereafter, as well as replicate such program internationally; and'' and inserting ''and internationally.''; and

(C) by striking paragraph (6).

SEC. 308. DEFINITION.

In this Act, the term ''gender equity'', used with respect to a program, service, or activity, means a program, service, or activity that is designed to ensure that men and women (including single parents and displaced homemakers) have access to opportunities to participate in vocational education that prepares the men and women to enter high-skill, high-wage careers.

TITLE IV—AUTHORIZATION OF APPROPRIATIONS

SEC. 401. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out title I, and sections 303, 304, 305, and 306, such sums as may be necessary for fiscal year 1999 and each of the 5 succeeding fiscal years.

TITLE V—REPEAL

SEC. 501. REPEAL.

(a) REPEAL.—The Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.) is repealed.

(b) REFERENCES TO CARL D. PERKINS VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION ACT.—

(1) IMMIGRATION AND NATIONALITY ACT.—Section 245A(h)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1255a(h)(4)(C)) is amended by striking ''Vocational Education Act of 1963'' and inserting ''Carl D. Perkins Vocational and Applied Technology Education Act of 1998''.

(2) NATIONAL DEFENSE AUTHORIZATION ACT.—Section 4461 of the National Defense Authorization Act for Fiscal Year 1993 (10 U.S.C. 1143 note) is amended—

(A) by striking paragraph (4); and

(B) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(3) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—The Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) is amended—

(A) in section 1114(b)(2)(C)(v) (20 U.S.C. 6314(b)(2)(C)(v)), by striking ''Carl D. Perkins Vocational and Applied Technology Education Act,'' and inserting ''Carl D. Perkins Vocational and Applied Technology Education Act of 1998'';

(B) in section 9115(b)(5) (20 U.S.C. 7815(b)(5)), by striking ''Carl D. Perkins Vocational and Applied Technology Education Act'' and inserting ''Carl D. Perkins Vocational and Applied Technology Education Act of 1998'';

(C) in section 14302(a)(2) (20 U.S.C. 8852(a)(2))—

(1) by striking and inserting subparagraph (C); and

(ii) by redesignating subparagraphs (D), (E), and (F) as subparagraphs (C), (D), and (E), respectively; and

(D) in the matter preceding subparagraph (A) of section 14307(a)(1) (20 U.S.C. 8857(a)(1)), by striking ''Carl D. Perkins Vocational and Applied Technology Education Act'' and inserting ''Carl D. Perkins Vocational and Applied Technology Education Act of 1998''.

(4) EQUITY IN EDUCATIONAL LAND-GRANT STATUS ACT OF 1994.—Section 533(c)(4)(A) of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note) is amended by striking ''(20 U.S.C. 2397h(3)'' and inserting '', as such section was in effect on the day preceding the date of enactment of the Carl D. Perkins Vocational and Applied Technology Education Act of 1998''.

(5) IMPROVING AMERICA'S SCHOOLS ACT OF 1994.—Section 563 of the Improving America's Schools Act of 1994 (20 U.S.C. 6301 note) is amended by striking ''the date of enactment of an Act reauthorizing the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.)'' and inserting ''July 1, 1999''.

(6) INTERNAL REVENUE CODE OF 1986.—Section 135(c)(3)(B) of the Internal Revenue Code of 1986 (26 U.S.C. 135(c)(3)(B)) is amended—

(A) by striking ''subparagraph (C) or (D) of section 521(3) of the Carl D. Perkins Vocational Education Act'' and inserting ''subparagraph (C) or (D) of section 2(3) of the Workforce Investment Partnership Act of 1998''; and

(B) by striking ''any State (as defined in section 521(27) of such Act)'' and inserting ''any State or outlying area (as the terms 'State' and 'outlying area' are defined in section 2 of such Act)''.

(7) APPALACHIAN REGIONAL DEVELOPMENT ACT OF 1965.—Section 214(c) of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 214(c)) (as amended by subsection (c)(5)) is further amended by striking ''Carl D. Perkins Vocational Education Act'' and inserting ''Carl D. Perkins Vocational and Applied Technology Education Act of 1998''.

(8) VOCATIONAL EDUCATION AMENDMENTS OF 1968.—Section 104 of the Vocational Education Amendments of 1968 (82 Stat. 1091) is

amended by striking ''section 3 of the Carl D. Perkins Vocational Education Act'' and inserting ''the Carl D. Perkins Vocational and Applied Technology Education Act of 1998''.

(9) OLDER AMERICANS ACT OF 1965.—The Older Americans Act of 1965 (42 U.S.C. 3001 et seq.) is amended—

(A) in section 502(b)(1)(N)(i) (42 U.S.C. 3056(b)(1)N)(i)), by striking ''or the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.)''; and

(B) in section 505(d)(2) (42 U.S.C. 3056c(d)(2))—

(i) by striking ''employment and training programs'' and inserting ''workforce investment activities''; and

(ii) by striking ''the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.)'' and inserting ''the Carl D. Perkins Vocational and Applied Technology Education Act of 1998''.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT CONCERNING COST SHARING ARRANGEMENTS OF THE CONVENTION ON THE PROHIBITION OF THE DEVELOPMENT, PRODUCTION, STOCKPILING, AND USE OF CHEMICAL WEAPONS AND ON THEIR DESTRUCTION—MESSAGE FROM THE PRESIDENT—PM 140

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Foreign Relations.

To the Congress of the United States:

Attached is a report to the Congress on cost-sharing arrangements, as required by Condition (4)(A) of the resolution of advice and consent to ratification of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, adopted by the Senate of the United States on April 24, 1997.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *June 15, 1998*.

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–5473. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment to Aurora Municipal Airport Class E Airspace Area: NE'' (Docket 98–ACE–13) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5474. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment to Le Mars Municipal Airport Class E Airspace Area: IA'' (Docket 98–ACE–7) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5475. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Revision of Class E Airspace; Grand Isle, LA'' (Docket 98–ASW–29) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5476. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Grand Chenier, LA'' (Docket 98–ASW–26) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5477. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Revision of Class E Airspace; Venice, LA'' (Docket 98–ASW–25) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5478. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Revision of Class E Airspace; Intracoastal City, LA'' (Docket 98–ASW–24) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5479. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Revision of Class E Airspace; Sabine Pass, TX'' (Docket 98–ASW–28) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5480. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Revision of Class E Airspace; Leeville, LA'' (Docket 98–ASW–27) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5481. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding Olathe, New Century Aircenter airspace (Docket 98–ACE–5) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5482. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establish Class E Airspace; Atkinson, NE'' (Docket 98–ACE–8) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5483. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of the Atlantic High Offshore Airspace Area; Correction'' (Docket 97–ASO–16) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5484. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain Industrie Aeronautiche e Meccaniche airplanes (Docket 97–CE–141–AD) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5485. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain Avions Mudry et Cie airplanes (Docket 97–CE–126–AD) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5486. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on Lucas Air Equipment Electric Hoists (Docket 98–SW–04–AD) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5487. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain Eurocopter France helicopters (Docket 98–SW–7–AD) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5488. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain British Aerospace airplanes (Docket 97–NM–321–AD) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5489. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain British Aerospace airplanes (Docket 97–NM–312–AD) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5490. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain British Aerospace airplanes (Docket 98–NM–53–AD) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5491. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain Fokker airplanes (Docket 98–NM–45–AD) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5492. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain Airbus airplanes (Docket 98–NM–182–AD) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5493. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain CASA airplanes (Docket 98–NM–97–AD) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5494. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain AERMACCHI S.p.A airplanes (Docket 97–CE–146–AD) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5495. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain Bell Helicopter Textron Canada helicopters (Docket 98–SW–10–AD) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5496. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain Eurocopter France helicopters (Docket 98–SW–02–AD) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5497. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain Airbus airplanes (Docket 96–NM–184–AD) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5498. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain Eurocopter France helicopters (Docket 98–SW–07–AD) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5499. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain Eurocopter France helicopters (Docket 98–SW–03–AD) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5500. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain Allison Engine Company engines (Docket 98–ANE–14–AD) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5501. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain AlliedSignal Inc. engines (Docket 97–ANE–47–AD) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5502. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding a safety zone for the Peekskill Summerfest 98 Fireworks (Docket 01–98–050) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5503. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding fireworks displays within the First Coast Guard District (Docket 01–98–065) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5504. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding a fireworks display on the Patapsco River, Baltimore, MD (Docket 05–98–040) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5505. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding the Newport-Bermuda Regatta, Newport, RI (Docket 01–98–045) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5506. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Anchorage Regulation; San Francisco Bay, CA'' (Docket 11–97–002) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5507. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding a fireworks display at Annapolis, MD (Docket 05–98–039) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5508. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding the Americas' Sail event, Savannah, GA (COTP Savannah 98–010) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5509. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''National Standards for Traffic Control Devices; Pedestrian, Bicycle, and School Warning Signs'' (RIN2125–AD89) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5510. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Review of the Federal Motor Carrier Safety Regulations; Regulatory Removals and Substantive Amendments'' (Docket 97–2328) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5511. A communication from the ADMPERM, Federal Communications Commission, transmitting, pursuant to law, the report of a rule regarding the use of the 220–222 MHz Band by the Private Land Mobile Radio Service received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5512. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Revisions to Digital Flight Data Recorder Rules'' (RIN2120–AF76) received on June 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5513. A communication from the Regulations Coordinator of the Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Block Grant Programs: Implementation of OMB Circular A–133'' (RIN0991–AA92) received on June 11, 1998; to the Committee on Labor and Human Resources.

EC–5514. A communication from the Regulations Coordinator of the Department of Health and Human Services, transmitting, pursuant to law, the report of a rule regarding protection and advocacy of individuals with mental illness (RIN0905–AD99) received on June 11, 1998; to the Committee on Labor and Human Resources.

EC–5515. A communication from the Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the report of a rule entitled ''Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits'' received on June 11, 1998; to the Committee on Labor and Human Resources.

EC–5516. A communication from the Regulations Coordinator of the Department of Health and Human Services, transmitting, pursuant to law, the report of three rules regarding Medicare collection of fees, long term care and provider agreements (RIN0938–AC88, RIN0938–AI35, RIN0938–AE61) received on June 11, 1998; to the Committee on Finance.

EC–5517. A communication from the Chair of the Medicare Payment Advisory Commission, transmitting, pursuant to law, a report entitled ''Context for a Changing Medicare Program''; to the Committee on Finance.

EC–5518. A communication from the Chief Financial Officer of the Export-Import Bank of the United States, transmitting, pursuant to law, the Bank's annual report for fiscal year 1997; to the Committee on Governmental Affairs.

EC–5519. A communication from the Secretary of Education, transmitting, pursuant to law, the report of the Office of Inspector General for the period October 1, 1997 through March 31, 1998; to the Committee on Governmental Affairs.

EC–5520. A communication from the CFO and Plan Administrator, Production Credit Association Retirement Committee, transmitting, the annual pension plan report for the calendar year 1997; to the Committee on Governmental Affairs.

EC–5521. A communication from the Executive Director of the Committee For Purchase From People Who Are Blind Or Severely Disabled, transmitting, pursuant to law, additions and deletions to the procurement list; to the Committee on Governmental Affairs.

EC–5522. A communication from the Chief Operating Officer and President of the Resolution Funding Corporation, transmitting, pursuant to law, a report entitled ''Financial Statements and Other Reports; December 31, 1997 and 1996''; to the Committee on Governmental Affairs.

EC–5523. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of two rules regarding the South Coast Air Quality Management District in California and Hazardous Waste Combustors (FRL6110–2, RIN2050–AE01)received on June 11, 1998; to the Committee on Environment and Public Works.

EC–5524. A communication from the General counsel of the Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Community Development Work Study Program; Repayment Requirements'' (RIN2528–AA08) received on June 11, 1998; to the Committee on Banking, Housing, and Urban Affairs.

EC–5525. A communication from the Chairman of the Board of Governors of the Federal Reserve System, transmitting, pursuant to law, the annual report on the cost and availability of retail banking services; to the Committee on Banking, Housing, and Urban Affairs.

EC–5526. A communication from the Acting Assistant Attorney General, Department of Justice, transmitting, a draft of proposed legislation entitled ''The Thrift Litigation Funding Act''; to the Committee on Banking, Housing, and Urban Affairs.

EC–5527. A communication from the Secretary of Health and Human Services, transmitting, a draft of proposed legislation entitled ''The Medicaid and Children's Health Improvement Amendments''; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mrs. HUTCHISON (for herself, Mr. GRAMM, and Ms. MOSELEY- BRAUN):

S. Res. 248. A resolution condemning the brutal killing of Mr. James Byrd, Jr. and Commend the Community of Jasper, Texas, for the manner in which it has come together in response; considered and agreed to.

ADDITIONAL COSPONSORS

S. 263

At the request of Mr. MCCONNELL, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 263, a bill to prohibit the import, export, sale, purchase, possession, transportation, acquisition, and receipt of bear viscera or products that contain or claim to contain bear viscera, and for other purposes.

S. 348

At the request of Mr. MCCONNELL, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 348, a bill to amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to encourage States to enact a Law Enforcement Officers' Bill of Rights, to provide standards and protection for the conduct of internal police investigations, and for other purposes.

S. 617

At the request of Mr. JOHNSON, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 617, a bill to amend the Federal Meat Inspection Act to require that imported meat, and meat food products containing imported meat, bear a label identifying the country of origin.

S. 852

At the request of Mr. LOTT, the name of the Senator from Utah (Mr. BENNETT) was added as a cosponsor of S. 852, a bill to establish nationally uniform requirements regarding the titling and registration of salvage, nonrepairable, and rebuilt vehicles.

S. 995

At the request of Mr. LAUTENBERG, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 995, a bill to amend title 18, United States Code, to prohibit certain interstate conduct relating to exotic animals.

S. 1021

At the request of Mr. HAGEL, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 1021, a bill to amend title 5, United States Code, to provide that consideration may not be denied to preference eligibles applying for certain positions in the competitive service, and for other purposes.

S. 1252

At the request of Mr. D'AMATO, the name of the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 1252, a bill to amend the Internal Revenue Code of 1986 to increase the amount of low-income housing credits which may be allocated in each State, and to index such amount for inflation.

S. 1391

At the request of Mr. DODD, the name of the Senator from Ohio (Mr. GLENN) was added as a cosponsor of S. 1391, a bill to authorize the President to permit the sale and export of food, medicines, and medical equipment to Cuba.

S. 1406

At the request of Mr. SMITH, the name of the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 1406, a bill to amend section 2301 of title 38, United States Code, to provide for the furnishing of burial flags on behalf of certain deceased members and former members of the Selected Reserve.

S. 1413

At the request of Mr. LUGAR, the names of the Senator from Missouri (Mr. BOND), the Senator from Idaho (Mr. CRAIG), the Senator from New Mexico (Mr. BINGAMAN), the Senator from New Mexico (Mr. DOMENICI), and the Senator from Colorado (Mr. CAMPBELL) were added as cosponsors of S. 1413, a bill to provide a framework for consideration by the legislative and executive branches of unilateral economic sanctions.

S. 1423

At the request of Mr. HAGEL, the names of the Senator from Oklahoma (Mr. INHOFE) and the Senator from Ohio (Mr. DEWINE) were added as cosponsors of S. 1423, a bill to modernize and improve the Federal Home Loan Bank System.

S. 1459

At the request of Mr. GRASSLEY, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 1459, 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 closed-loop biomass.

S. 1529

At the request of Mr. KENNEDY, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 1529, a bill to enhance Federal enforcement of hate crimes, and for other purposes.

S. 1534

At the request of Mr. TORRICELLI, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 1534, a bill to amend the Higher Education Act of 1965 to delay the commencement of the student loan repayment period for certain students called to active duty in the Armed Forces.

S. 1792

At the request of Mr. MOYNIHAN, the name of the Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of S. 1792, a bill to reduce social security payroll taxes, and for other purposes.

S. 1885

At the request of Mr. D'AMATO, the name of the Senator from Illinois (Ms. MOSELEY-BRAUN) was added as a cosponsor of S. 1885, a bill to amend the Internal Revenue Code of 1986 to provide for a medical innovation tax credit for clinical testing research expenses attributable to academic medical centers and other qualified hospital research organizations.

S. 2078

At the request of Mr. GRASSLEY, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 2078, a bill to amend the Internal Revenue Code of 1986 to provide for Farm and Ranch Risk Management Accounts, and for other purposes.

S. 2110

At the request of Mr. BIDEN, the names of the Senator from South Dakota (Mr. JOHNSON), and the Senator from Maryland (Mr. SARBANES) were added as cosponsors of S. 2110, a bill to authorize the Federal programs to prevent violence against women, and for other purposes.

S. 2128

At the request of Mr. STEVENS, the names of the Senator from Florida (Mr. GRAHAM), and the Senator from New Hampshire (Mr. SMITH) were added as cosponsors of S. 2128, a bill to clarify the authority of the Director of the Federal Bureau of Investigation regarding the collection of fees to process certain identification records and name checks, and for other purposes.

SENATE JOINT RESOLUTION 50

At the request of Mr. BOND, the names of the Senator from Kansas (Mr. BROWNBACK), the Senator from New Mexico (Mr. DOMENICI), the Senator from Wisconsin (Mr. FEINGOLD), the Senator from Wisconsin (Mr. KOHL), and the Senator from Nevada (Mr. REID) were added as cosponsors of Senate Joint Resolution 50, a joint resolution to disapprove the rule submitted by the Health Care Financing Administration, Department of Health and Human Services on June 1, 1998, relating to surety bond requirements for home health agencies under the medicare and medicaid programs.

SENATE CONCURRENT RESOLUTION 95

At the request of Mr. DODD, the name of the Senator from Louisiana (Mr. BREAUX) was added as a cosponsor of Senate Concurrent Resolution 95, a concurrent resolution expressing the sense of Congress with respect to promoting coverage of individuals under long-term care insurance.

AMENDMENT NO. 2702

At the request of Mr. HARKIN his name was added as a cosponsor of amendment No. 2702 proposed to S. 1415, a bill to reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes.

SENATE RESOLUTION 248—CONDEMNING THE KILLING OF MR. JAMES BYRD, JR., AND COMMENDING THE COMMUNITY OF JASPER, TX

(Mrs. HUTCHISON (for herself, Mr. GRAMM, and Ms. MOSELEY-BRAUN) submitted the following resolution; which was considered and agreed to:

S. RES. 248

SECTION 1. FINDINGS.

The Senate finds as follows:

(1) Mr. James Byrd, Jr., of Jasper, Texas, was brutally murdered on June 6, 1998.

(2) Since this heinous tragedy, the citizens of Jasper, from all segments of the community, have come together to condemn the killing and honor the memory of Mr. Byrd.

(3) The Sheriff of Jasper County, Billy Rowles, spoke for the community when he appealed that the nation not ''label us because of this random, brutal act.''

(4) Mr. and Mrs. James Byrd, Sr., called for ''justice and peace,'' asking that ''we . . . get this over and put this behind us.''

(5) The community's response reflects the spirit that other communities across the nation have shown in the face of recent incidents of random and senseless violence.

SEC. 2. CONDEMNING THE KILLING OF JAMES BYRD, JR., AND COMMENDING THE COMMUNITY OF JASPER.

The Senate—

(1) condemns the actions which occurred in Jasper, Texas as horrific and intolerable, to be rejected by all Americans;

(2) expresses its deepest condolences to the Byrd family for their loss and the pain it caused;

(3) notes the strong religious faith of the Byrd family, under the inspired leadership of James Sr., and Stella Byrd, and the Reverend Kenneth Lyons, Pastor of the Greater New Bethel Baptist Church, that has helped the family through this most trying time;

(4) sees in the Byrd family reaction to this tragedy the inspiration for hope, peace, and justice in Jasper and throughout the United States;

(5) commends the leadership shown by Jasper County Sheriff Billy Rowles, City of Jasper Mayor R.C. Horn, and other community leaders in responding to this tragedy;

(6) urges that law enforcement officials at all appropriate levels continue with the full and fair investigation into all of the facts of the case;

(7) urges prosecutors to proceed with a fair and speedy trial to bring the perpetrators of this outrageous crime to justice.

AMENDMENTS SUBMITTED

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

GORTON AMENDMENT NO. 2705

Mr. GORTON proposed an amendment to amendment No. 2437 proposed by Mr. DURBIN to the bill (S. 1415) to reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes; as follows:

At the end of the pending amendment, add the following:

SEC. . LIMIT ON ATTORNEYS' FEES.

(a) FEES COVERED BY THIS SECTION.—Notwithstanding any other provision of law, or any arrangement, agreement, or contract regarding attorneys' fees, attorneys' fees for—

(1) representation of a State, political subdivision of a state, or any other entity listed in subsection (a) of Section 1407 of this Act;

(2) representation of a plaintiff or plaintiff class in the Castano Civil Actions described in subsection (9) of Section 701 of this Act;

(3) representation of a plaintiff or plaintiff class in any ''tobacco claim,'' as that term is defined in subsection (7) of Section 701 of this Act, that is settled or otherwise finally resolved after June 15, 1998;

(4) efforts expended that in whole or in part resulted in or created a model for programs in this Act,

shall be determined by this Section.

(b) ATTORNEYS' FEES.—

(1) JURISDICTION.—Upon petition by the attorney whose fees are covered by subsection (a), the attorneys' fees shall be determined by the last court in which the action was pending.

(2) CRITERIA.—In determining an attorney fee awarded for fees subject to this section, the court shall consider—

(A) The likelihood at the commencement of the representation that the claimant attorney would secure a favorable judgment or substantial settlement;

(B) The amount of time and labor that the claimant attorney reasonably believed at the commencement of the representation that he was likely to expend on the claim;

(C) The amount of productive time and labor that the claimant attorney actually invested in the representation as determined through an examination of contemporaneous or reconstructed time records;

(D) The obligations undertaken by the claimant attorney at the commencement of the representation including—

(i) whether the claimant attorney was obligated to proceed with the representation through its conclusion or was permitted to withdraw from the representation; and

(ii) whether the claimant attorney assumed an unconditional commitment for expenses incurred pursuant to the representation;

(E) The expenses actually incurred by the claimant attorney pursuant to the representation, including—

(i) whether those expenses were reimbursable; and

(ii) the likelihood on each occasion that expenses were advanced that the claimant attorney would secure a favorable judgment or settlement;

(F) The novelty of the legal issues before the claimant attorney and whether the legal work was innovative or modeled after the work of others or prior work of the claimant attorney;

(G) The skill required for the proper performance of the legal services rendered;

(H) The results obtained and whether those results were or are appreciably better than the results obtained by other lawyers representing comparable clients or similar claims;

(I) The reduced degree of risk borne by the claimant attorney in the representation and the increased likelihood that the claimant attorney would secure a favorable judgment or substantial settlement based on the progression of relevant developments from the 1995 Williams document disclosures through the settlement negotiations and the eventual federal legislative process;

(J) Whether this Act or related changes in State laws increase the likelihood of the attorney's success;

(K) The fees paid to claimant attorneys that would be subject to this section for the provisions of subsection (3);

(L) Such other factors as justice may require.

(3) EFFECTIVE DATE.—Notwithstanding any other provision of law, this section shall not apply to attorneys' fees actually remitted and received by an attorney before June 15, 1998.

(4) LIMITATION.—Notwithstanding any other provision of law, separate from the reimbursement of actual out-of-pocket expenses as approved by the court in such action, any attorneys' fees shall not exceed a per hour rate of—

(A) $4000 for actions filed before December 31, 1994;

(B) $2000 for actions filed on or after December 31, 1994, but before April 1, 1997, or for efforts expended as described in subsection (a)(4) of this section which efforts are not covered by any other category in subsection (a);

(C) $1000 for actions filed on or after April 1, 1997, but before June 15, 1998;

(D) $500 for actions filed after June 15, 1998.

(c) SEVERABILITY.—If any provision of this section or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this section and the application of the provisions of such to any person or circumstance shall not be affected thereby.

AUTHORITY FOR COMMITTEE TO MEET

SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT AND THE COURTS

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the Subcommittee on Administrative Oversight and the Courts, of the Senate Judiciary Committee, be authorized to meet during the session of the Senate on Monday, June 15, 1998, at 2 p.m. to hold a hearing in Room 226, Senate Dirksen Building, on: ''S. 1166, the Federal Agency Compliance Act,'' and ''A Review of the Judgeship Needs of the 10th Circuit.''

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

ADDITIONAL STATEMENTS

TRIBUTE TO DR. ERNEST TOMASI

• Mr. LEAHY. Mr. President, the real treasure of our state of Vermont is the people who make up our special state. One whom I have known all my life is Dr. Ernest Tomasi of Montpelier. It seems from the time I was a youngster, we knew the Tomasis, and partly because like Dr. Tomasi, my mother was an Italian American who knew almost every Italian American family in the area.

Dr. Tomasi was a true hero of WWII, but like so many, rarely ever spoke about what he did. In one rare instance, he was interviewed for The Times Argus, and I ask that the article be printed in the RECORD.

I also want to applaud his dedication to the people of Montpelier. Many, many of those from my hometown received medical help and, when many could not pay for it, they received it as a gift from Dr. Tomasi. He was a hero abroad, but he has also always been a hero at home.

The article follows:

[From the Times Argus, May 30, 1998]

MONTPELIER VET RECALLS HIS SERVICE

(By David W. Smith)

MONTPELIER.— Dr. Ernest Tomasi likes to tell the story of the bravest act he witnessed on the European fields of battle during World War II.

It was shortly after the invasion of the French coastline at Normandy by American troops in June of 1944, and Tomasi had been temporarily assigned to a medical unit with the 3rd Battalion, 116th Regiment of the 29th Infantry Division.

Hunkered down amongst inland hedgerows—enormous earthen barriers topped

with brush and trees—Tomasi watched a young sergeant named Black gather together several soldiers who spoke German and French, and climb up on a hedgerow waving Red Cross flags.

The men were shouting in three languages that they were a medical team and were trying to bring aid to both American and German soldiers.

Apparently they were successful, and managed to bring wounded from both sides back for medical attention.

''Sgt. Black, after the war, married Shirley Temple,'' Tomasi laughed.

Tomasi has a lot of stories from the years he served as a surgeon with the 2nd Battalion of the 116th, his regular unit. From the time they sat foot on the deadly beaches of Normandy, all the way to Berlin, Tomasi traveled with the soldiers, offering what medical attention he could.

Tomasi recalled helping a cow give birth, and the time he delivered a human baby girl along the shores of the Elbe river while nearby the crippled city of Berlin finally caved in from the relentless attack of the Russian army.

Six years later, while working in his clinic on Barre Street in Montpelier, Tomasi received a letter from the German woman he helped, and a picture of that young girl.

''Our unit liberated the first town in Germany,'' Tomasi said with pride, although he couldn't recall the name of the town. ''We were all sort of optimistic then.''

Tomasi, who was born and raised in Montpelier, attended medical school at the University of Vermont, graduating in 1942.

After a year of internship in Waterbury, Conn., he flew through a quick four weeks of field officer's training, and was soon shipped off to England to prepare for the massive American D-Day invasion.

While in England, Lt. Tomasi trained for the assault along a beach called Slapton Sands, where many Americans got their first taste of war.

''They warned us that German torpedo boats . . . were there. We practiced there anyway,'' said Tomasi. ''Two weeks later, the 4th Battalion practiced there and lost 200 men.''

Not long afterward, Tomasi and his company crossed the English channel aboard the ocean liner Thomas Jefferson, and were soon deposited from a landing craft into the cold sea water to half-walk, half-swim into shore. The 29th was one of the first divisions of soldiers to attack the coast.

The captain of Tomasi's company was immediately wounded, and had to be sent back to the ship.

''I was the only officer there,'' Tomasi recalled. ''We landed where we shouldn't have landed. There was a burning building so the Germans couldn't see us, so we all got in fine.''

Only when he tried to describe what happened on the beach, did Tomasi run out of words, saying it was impossible to describe it to anyone who had not seen it for themselves.

''There were so many people there that were killed,'' he said, ''It was terrible. We had to stay on the beach and take care of the people.''

Tomasi remembers unique events from the war, preferring not to dwell on the horror: He slipped easily into a story of the time he was out at night riding in a jeep driven by a corporal, searching for a missing sergeant.

An American tank lurched up behind them, and a gruff voice boomed out.

''What the hell are you doing out here, don't you know this is no-man's land?''

It was the corporal who told Tomasi the man shouting was General George S. Patton, who told them to return to their unit and promised to find the sergeant himself.

Tomasi remained near Berlin until the end of the war, then returned home to Montpelier, where he set up a practice, raised a family and remained until the present. Tomasi's son, Tim, currently serves on the Montpelier City Council.

He will probably walk, Tomasi said, with members of the American Legion in the annual downtown Barre Memorial Day Parade at 11 a.m., although Memorial Day activities don't stir up any particular emotions for him.

''I just think that it's nice that people take a few minutes to remember,'' he said.●

SCHOOL SAFETY AND DELINQUENCY PREVENTION

● Mr. SMITH of Oregon. Mr. President, immediately following the tragedy that occurred at Thurston High School in Springfield, Oregon, Senator WYDEN and I went to the floor of the Senate to express our great sadness and outrage that a community in our state would be subject to such an act of violence. Perhaps what is equally disturbing, is the fact that Oregon is not alone. From Jonesboro to Springfield, the virus of school violence has been indiscriminate.

While we will never forget these tragic events, it is time for us to turn our grief and our anger into action. I believe it is our responsibility as legislators, governors, school officials, law enforcement, parents and students to work together to determine the sources and solutions to this complex problem.

To address this issue, Senator WYDEN and I have introduced legislation, S. 2169, to encourage states to require a holding period for any student who brings a gun to school. If states pass a law requiring the 72-hour detainment of a student who is in possession, or has been in possession, of a firearm at school, they will receive a 25 percent increase in funding for juvenile violence prevention and intervention programs.

As we have learned from recent events, students who bring guns to school are suspended temporarily because communities often lack the personnel and resources to detain them in juvenile justice settings. By providing states that pass laws requiring detainment an increase in funding for prevention programs, schools will have additional resources to address the growing severity of violence and juvenile delinquency. States may use such additional funds for prevention and intervention programs that include professional counseling and detention in local juvenile justice centers.

Mr. President, it has been said that ''the foundation of every state is the education of its youth.'' If we do not fulfill our promise of providing a strong and safe foundation for our students, education will not be possible. I believe this legislation is an important step in building a strong foundation, and I encourage my colleagues to join Senator WYDEN and me in cosponsoring S. 2169.●

MEDICARE HOME HEALTH EQUITY ACT

● Mr. KOHL. Mr. President, I rise today to join 16 of my colleagues in cosponsoring S. 1993, the Medicare Home Health Equity Act. I want to commend my colleague from Maine, Senator COLLINS, for taking the lead on this extremely important issue. This legislation will go a long way toward ensuring that seniors in Wisconsin continue to have access to the quality home health services they need, and that home health providers in low-cost States like Wisconsin receive fair and equitable reimbursement for the valuable services they provide.

Mr. President, I have long supported efforts to expand access to home health care. This important long-term care option allows people to stay in their homes longer, where they are often most comfortable, while they receive the skilled medical care they need. Home care empowers people to continue to live independently among their families and friends. It is of added value that in many cases, home care is also more cost-effective than institutional-based care. For those seniors whose medical needs can be met with home-based care in a cost-effective way, we should do everything we can to make sure that they have the choice to continue to stay in their homes and received care through the Medicare home health benefit.

I realize that the Medicare changes Congress made last year in the Balanced Budget Act were necessary in order to help prevent Medicare from going bankrupt. Home health is the fastest growing component of Medicare and it was imperative that we bring costs under control. However, I am deeply concerned that the Interim Payment System created in the BBA will inadvertently penalize those States, like Wisconsin, that have historically done a good job in keeping costs low.

The IPS established in the BBA is based on a technical formula which pays home health agencies the lowest of three measures: (1) actual costs; (2) a per visit limit of 105% of the national median; or (3) a per beneficiary annual limit, derived from a blend of 75% of an agency's costs and 25% regional costs. Without going into the details of this complicated formula, this in effect means that agencies that have done a good job keeping costs and utilization low will be penalized under the IPS. At the same time, those agencies that provided the most visits and spent the most per patient will be rewarded by continuing to receive higher reimbursement levels that the agencies that were more efficient. Although the IPS would reduce reimbursement for everyone, Wisconsin agencies have already been successful in keeping costs low, and there is no fat to trim from their reimbursement.

The proposed IPS would be devastating for home care in Wisconsin and would likely drive many good providers from the Medicare program. Already, I

have heard from Wisconsin agencies who have had to let staff go, limit new patients, and who honestly don't know how they will be able to afford to operate under the IPS. This will severely hurt Wisconsin's seniors, many of whom will now have to enter nursing facilities because far fewer home health services will be available for them.

Mr. President, this was not my intention when I voted for the Balanced Budget Act last year, and I believe that we must now work to make the IPS more equitable for seniors and providers. The Medicare Home Health Equity Act will accomplish this by changing the formula on which IPS is based. The new formula would be based 75 percent on the national average cost per patient in calendar year 1994 ($3,987) and 25 percent on the regional average cost per patient in calendar year 1995. This change would bring more equity between States and would ensure that low cost States like Wisconsin are not penalized for being efficient. Most importantly, this change will ensure that seniors in Wisconsin continue to have access to the quality home health care services they need and deserve.

Mr. President, I understand that several more of my colleagues are also working on legislation that would bring greater equity to the Interim Payment System. I am cosponsoring this legislation not only because it is good for Wisconsin and other low cost States, but also because it is my hope that by bringing attention to this issue, we can all work together to find a fair solution for all States. I look forward to working with my colleagues on this important issue during the remaining months of the 105th Congress.●

RECOGNITION OF CHERYL POEPPING

● Mr. GRAMS. Mr. President, on behalf of all Minnesotans, I would like to congratulate Cheryl Poepping from Cold Spring, Minnesota. Cheryl was recently named the Minnesota state winner in the Citizens Flag Alliance Essay Contest. The topic of her award winning essay is ''The American Flag Protection Amendment: A Right of the People . . . the Right Thing to Do.''

I am submitting Cheryl's winning essay and ask that it be printed in the RECORD. I agree whole-heartedly with her endorsement of the flag protecting amendment and appreciate the words she chose to convey her message. Cheryl is an outstanding young American, and I am proud to count her among my constituents. Again, I offer my sincere congratulations.

The essay follows:

THE AMERICAN FLAG PROTECTION AMENDMENT: A RIGHT OF THE PEOPLE . . . THE RIGHT THING TO DO

(By Cheryl Poepping)

Maj. Gen. Patrick Brady was quoted as saying, ''Neither the ACLU nor the media gave us free speech—our veterans did.'' For over 200 hundred years Americans had the right to protect the flag but in the cases of Texas v. Johnson in 1989 and U.S. v. Eichman in 1990 the court ended this power and stated that it was a ''First Amendment right of citizens to burn flags in protest.'' (Goldstein 85). This allowance undermines the very thing that veterans strove for, freedom. Which is why H.J. Res. 54 was introduced by Gerald Solomona. This resolution is a constitutional amendment proposed to prohibit the desecration of the flag (Packard http.). To many the flag is not just a symbol but rather representation for all the men who died defending and supporting this country. By allowing this to continue we not only undermine 200 years of history but we also destroy patriotism and respect for the country and our veterans.

The flag is a symbol of patriotism. Sown not only for those living but those who have sacrificed to make this country what it is. The flag is ''a beacon of democracy and hope in a world plagued by turmoil and depression (Packard http).'' The flag allows people to believe in the country and promotes a level of respect for everything the country stands for. Without patriotism the values of the country will decline. Many feel the greatest tragedy in flag burning is the mutilation of the values it embodies and the disrespect to those who have sacrificed for those values (Brady http). This amendment understands that when someone desecrates the flag, such acts are perceived as attacks on patriotic self sacrifice (Presser http).

If you went to Arlington Cemetery how many men do you think died defending a cause as noble as democracy? The answer is obvious, all of them. They did not die to protect themselves or even the ones they loved, but to protect all future generations and to ensure what this country is based on freedom. These veterans deserve the honor that defending the flag has given them. To these veterans we will be saying with the passage of the flag protection amendment that we will honor them through not allowing the desecration of the symbol they united in defense to protect. Protection of the flag comes directly from the citizens where 80% support the amendment (Presser http) stating that we as citizens feel that ''You—the United States—have done a whole lot for us, and therefore we are going to do this for you, we are going to protect you against public indignity. (National Review 75).'' Maj. General Patrick Brady stated that, ''I hope they (the voters) will have the compassion to defer to those great blood donors to our freedom, those men and women we honor on Veterans Day, many whose final earthy embrace was in the folds of Old Glory.'' This quote emphasizes the importance of this symbol to our veterans and our country, displaying the need for its protection.

Many oppose the constitutional amendment saying for the first time in history they are limiting the freedoms of Americans. This is not true. It is not a dagger struck out at the first amendment, but rather a indication that popular sovereignty is vital and active in this country. This question demonstrates the struggle over what kind of country we want to be (Presser http). The First Amendment has come to protect many ideals that when it was written it has no intention of protecting. The proposed amendment would merely clarify that the First Amendment never presupposed citizens the right to desecrate the flag (National Review 76). Flag burning is not speech. It is an act that has no association with the first amendment or what it preserves (Brady http). In fact in the 1880's the initial flag protection acts were institutionalized and later in 1984 extended laws were enacted to safeguard our flag from intentional public desecration (Packard http). Let it be understood that such champions of liberty such as Earl Warren and Hugo Black expressed their opinions that flag desecration was not protected under the First Amendment (Presser http).

Flag desecration is an act that does not represent anything wholesome or respectable about our country. We as citizens of this country now have the opportunity to amend this injustice done to us by the passage of The American Flag Protection Amendment. All responsible citizens should voice the opinion that flag desecration goes against the ideas the United States was conceived to uphold. The First Amendment was never designed to allow these grossly offensive acts to occur. This amendment would uphold the honor bestowed on those that fought for this country. It would allow the loved ones of those who died to know that this country is noble and worth sacrificing their life for. As Stephen B. Presser stated ''Disrespect, division, an disunity are not characteristic of a lovable people.'' With the passage of this amendment we will prove not only to ourselves but also to the world that the United States does not exemplify any of these negative characteristics.

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IN RECOGNITION OF THE 40TH ANNIVERSARY OF THE CITY OF ROSEVILLE

● Mr. LEVIN. Mr. President, I rise today to recognize the City of Roseville, Michigan, which is celebrating its 40th birthday on June 20, 1998. Residents of Roseville are justifiably proud of their community's growth throughout the last 40 years.

People have lived in the area known today as Roseville since before Michigan became a state in 1837. In its early years, Roseville was an agricultural area and its people were predominately farmers. In 1836, William Rose was appointed postmaster in the area and he established a permanent office in 1840, which he named the Roseville Post Office in honor of his father, who was a hero of the War of 1812. Thus the area received its name, though Roseville was not officially incorporated as a village until 1926.

From its humble beginnings, Roseville has grown into an increasingly attractive place to live for people moving to the Detroit area. While it had previously been considered a small suburb of Detroit, in the 1950s Roseville's population increased dramatically. In 1950, the population of the village of Roseville was 15,816. By 1960, more than 50,000 people called Roseville home. In

1958, Roseville was incorporated as a city and Arthur Waterman was elected as its first mayor.

In conjunction with a fireworks display, entertainment, and other birthday festivities on June 20, Roseville officials will dedicate a new addition to the city's library, demonstrating that even as they commemorate the past, the people of the City of Roseville are committing themselves to the needs of the future.

Mr. President, I invite my colleagues to join me in offering congratulations and best wishes to the residents of Roseville, Michigan, on this important occasion.●

ST. GEORGE ANTIOCHIAN ORTHODOX CHURCH GRAND BANQUET

● Mr. ABRAHAM. Mr. President, I rise today to recognize an important event in the State of Michigan. St. George Antiochan Orthodox Church will be holding its Grand Banquet on Saturday, June 20, 1998, at the Troy Marriott Hotel.

This event promises to be the high point of the 1998 Midwest Regional Parish Life Conference, hosted by St. George Church, June 17–21. It will be presided over by Metropolitan Philip Saliba, the Hierarch of the Antiochian Orthodox Christian Archdiocese of North America. I want to extend my warmest wishes to everyone at St. George Antiochian Church. The banquet, as well as the 1998 Midwest Regional Parish Life Conference will undoubtedly be very successful.●

HARRISON LIM, EXECUTIVE DIRECTOR, CHARITY CULTURAL SERVICES CENTER

● Mrs. BOXER. Mr. President, today, I would like to call to the attention of the Senate and the nation the exceptional work of Mr. Harrison Lim, founder and executive director of Charity Cultural Services Center in the San Francisco Bay Area.

Harrison Lim immigrated to the United States in 1970. He established the original Charity Cultural Services Center (CCSC) in San Francisco in 1983 and opened a second, San Jose based CCSC in 1991. Drawing from his own experiences and challenges as a newly arrived immigrant, Mr. Lim created CCSC to help speed and ease the transition of newcomers to life in America.

CCSC is the embodiment of Harrison Lim's belief in the importance of community and self-sufficiency. Among the many services CCSC provides are English language instruction, job skills training, counseling and placement, and juvenile outreach. These programs are working. The Center's Employment Training and Placement Program, which trains chefs, bartenders and waiters, boasts a placement rate of over 90 percent. The Center's Families in Transition Program is out in the community every day addressing the needs of at-risk young people through such things as academic tutoring, counseling, volunteer opportunities, self esteem and confidence building, recreational activities and parental involvement.

Mr. Lim's personal story is one of determination, dedication and triumph. He and his wife and three children left Hong Kong to care for Harrison's ailing mother and begin a new life in California. Although he was a respected teacher and journalist in his native land, he ran into many obstacles upon his arrival to America. He had difficulty with the language and was forced to accept jobs well below his skill and education levels. Tragically, he also encountered people and businesses unwilling to give him a chance to succeed simply because he was new to this country.

But Harrison Lim persevered and has not only succeeded, he has prospered. Appropriately, this prosperity cannot be measured in dollars and cents. To be truly understood, it must be seen in the light of the many thousands of lives he and his Charity Cultural Services Center have made richer over the years.

Twenty-eight years ago Harrison Lim travelled to a country renowned for freedom and opportunity. By pursuing a life and career true to his own values and those of his adopted country, Harrison Lim has made the American Dream a reality for his family and for countless others. He has my utmost respect and admiration.●

TRIBUTE TO MAJOR GENERAL (RETIRED) JAMES C. PENNINGTON

● Mr. CLELAND. Mr. President, I would like to acknowledge a great American, a wonderful patriot and fellow Georgian, Major General James C. Pennington, United States Army, Retired, and President of the National Association for Uniformed Services. General Pennington died June 5th at Barksdale Air Force Base, Louisiana, where he had a speaking engagement addressing the veterans and military health care systems.

General Pennington was born in Rocky Ford, Georgia, and spent most of his life soldiering—first in the military and then in a military association. Entering the armed forces during World War II, he worked his way up through the ranks from private to major general. During his distinguished 37-year military career, he always made taking care of the troops his top priority. He was very proud to defend this great Nation.

General Pennington's fight for soldiers did not cease with his retirement from the military. In fact, it just allowed him to expand the effort on behalf of the National Association for Uniformed Services. He passionately and tirelessly pursued benefits for veterans and the health care promises made to military retirees.

Shortly after I was elected to the United States Senate, General Pennington came to my office to enlist my support on this critical health care issue. This past year, I made military health care my number one legislative priority. In the National Defense Authorization Bill for Fiscal Year 1999, I cosponsored a military health care initiative which seeks to improve the quality and accessibility of health care for our veterans and military retirees. It is because of men like General Pennington that this issue has been brought to the forefront of our attention as legislators. All veterans owe a debt of gratitude to him.

General Pennington's life is testimony to the fact that we still have American heroes. Let us remember him and continue his crusade in fulfilling our commitment to our soldiers.●

HONORING THE OAK LAWN ELEMENTARY SCHOOL

● Mr. REED. Mr. President, I rise today to honor the extraordinary work of nine fifth graders and their teacher from the Oak Lawn Elementary School in Cranston, Rhode Island. On Friday, June 5, these students became the first civilians in the 223-year history of the U.S. Navy to name a naval ship.

In February, the Navy challenged America's school children to name its newest oceanographic survey vessel. Out of 1,600 submissions, the Navy ultimately chose the name proposed by these young Oak Lawn students: the USNS *Bruce C. Heezen*.

Bruce C. Heezen was a pioneer in oceanographic research. During his career, Heezen identified the rift at the center of the Mid-Atlantic Ridge, discovered ocean turbidity currents and formulated theories about ocean crust formation. He dedicated his life to exploring the world's oceans, providing future oceanographers with an invaluable knowledge base upon which to build. Heezen died in 1977 while aboard the Navy's nuclear research submersible enroute to further study the Mid-Atlantic Ridge.

These fifth graders dedicated tremendous time and energy to this project. Not only did they learn about oceanography, but they also shared their new knowledge with their fellow students at Oak Lawn Elementary. Now, with the naming of this new vessel, the USNS *Bruce C. Heezen*, the work of these outstanding young scholars will enlighten all those who look upon this great ship. I commend Amanda Baillargeon, James Coogan, Meagan Durigan, Stephen Fish, Patricia Gumbley, John Lucier, Sara Piccirilli, Dana Scott, Rebecca Webber. I also want to recognize their teacher, Ms. Marilyn Remick, who has been expanding the minds of students for 28 years.

The USNS *Bruce C. Heezen* is a fine and fitting name for the Navy's newest oceanographic survey vessel. Rhode Islanders and all Americans should be proud that students like those at Oak Lawn Elementary are keeping Heezen's memory alive to inspire future oceanographers. I hope the fifth graders of

Oak Lawn Elementary will inspire others in search for knowledge.●

TRIBUTE TO GERALD H. LIPKIN

● Mr. LAUTENBERG. Mr. President, today I want to pay tribute to a good friend and exceptional leader in the business community, Gerald H. Lipkin, as he is honored with B'nai B'rith International's Corporate Achievement Award.

B'nai B'rith, one of the oldest Jewish organizations in our nation, has long recognized model citizens for their contributions in the areas of business, politics, philanthropy and the arts. By conferring this prestigious award for Corporate Achievement on Gerry Lipkin, B'nai B'rith is recognizing his contributions to his community, his business savvy and generosity.

Gerry, like me, came from humble beginnings, he from Passaic and I from Paterson. But we both made our way in the world of business. From a young age, Gerry knew what his passion was as he worked his way through school, earning an undergraduate degree in economics at Rutgers University as well as a master's in business administration at New York University.

His business acumen is exemplified by his success at Valley National Bank, a leading financial institution with 97 branches in Northern New Jersey. Gerry began his career there in 1975 as Senior Vice President, and steadily rose to hold the joint positions of Chairman, President and CEO. Valley National has been nominated by U.S. Banker's magazine as the second most efficient bank and eighth overall best performing banking company out of America's 100 largest.

Beyond his business accomplishments, Gerry's philanthropic contributions to New Jersey and to causes across the globe are widely acknowledged, as is his keen sense of humor!

Gerry has been a staunch supporter of an organization close to my heart. For 15 years he has been involved with the Lautenberg Center in Jerusalem, Israel, serving as a board member and supporting its work on cancer and immunology research. I founded the Lautenberg Center at Hebrew University-Hadassah Medical Center in 1968. And twenty years later, Gerry was honored with the ''Torch of Learning Award'' in 1988 for all that he has contributed.

Gerry's volunteerism does not end there. He is also a trustee of the Beth Israel Hospital in Passaic, where he has served for 21 years, and sits on the board of trustees of Daughters of Israel Geriatric Center. Gerry is on the nominating committee of the Federal Reserve Bank of New York and the Foundation Board of William Paterson College, which honored him with its Legacy Award in 1994.

Mr. President, Gerry and I also both share a love of trains. Gerry's are miniatures, while I have an affinity for larger ones. At this point, I think Gerry has more trains than Amtrak, so maybe I should take transportation pointers from him in the future.

I couldn't be happier to extend my congratulations to Gerry, and his wife Linda, for receiving this great honor. And I want to thank B'nai B'rith for recognizing Gerry's professional success and his exemplary service to New Jersey.●

THE CASE OF BONG KOO CHO

● Mr. SARBANES. Mr. President, I would like to bring to the attention of my colleagues the case of Mr. Bong Koo Cho, whose property was confiscated by the Government of Korea in 1984. His daughter, my constituent, Sally Cho, is a U.S. citizen and resident of Maryland who has been actively involved in the effort to recover property. Recently, the Los Angeles Times published an article about the case which details the plight of Mr. Cho and his family, and I would ask that the full text of the article be printed in the RECORD.

The article follows:

[From The Los Angeles Times, Sunday, Mar. 1, 1998]

FROM AFAR, A ONETIME MAGNATE SEEKS REDRESS

(By Henry Chu)

Lawsuit: In a case filed in L.A. County, a S. Korean industrialist claims the Seoul government and a rival firm conspired to take his business.

From the window of his small Westside apartment, Bong Koo Cho can gaze out at the ocean, but only in his mind's eye can he look across to the life and land he left more than a decade ago.

Then, Cho was one of South Korea's wealthiest businessmen, the owner of Samho, one of the nation's biggest conglomerates, and the head of a sprawling estate in the heart of Seoul. Chauffeurs drove him around. Maids waited on his wife.

But in 1984, his world was overturned. The government abruptly declared Samho insolvent and confiscated the entire construction empire, seized the family burial plot for good measure, and handed his business to a rival firm. Already in the U.S. for medical reasons, Cho had no choice but to stay, reduced in health and lifestyle.

Now, the former entrepreneur and his family have sued to recover their money and property, alleging that a conspiracy between the South Korean government and their rival company drove them out of business. In exchange for huge kickbacks, the Chos say, South Korea's leaders concocted the bankruptcy charge against Samho, then divided the spoils—nearly $2 billion worth in current value—among their friends.

The case is unusual in that the Chos are seeking redress in Los Angeles County Superior Court even though the actions in question took place 6,000 miles away.

But more than that, the lawsuit provides a unique rearview-mirror look at the kinds of economic practices that first turned South Korea into an economic power, and have now led to its humiliating downfall.

Cho's was one of the numerous companies confiscated during the South Korean government's ''rationalization'' of industry in the early 1980s. As told by the Cho family, the episode exemplified the history of collusion between South Korea's government and business leaders, whose cozy relationship means that political influence, nepotism and plain old graft enrich the well-connected at the expense of a totally free and open market. The International Monetary Fund, which is now bailing out the nation's economy, has demanded an end to such practices.

Critics call the system ''crony capitalism.'' Cho calls it something else.

''This was highway robbery,'' said Cho, now 78. ''And it was a very simple thing: The government just wanted a kickbacks''—which Cho said he refused to pay.

What will not be so simple, legal experts say, is proving his case, given that 14 years have elapsed since Samho was swallowed up by a company called Daelim Industrial. Added to that is the difficulty the Cho family may have in arguing that a California court, rather than a South Korean or even U.S. federal court, is the proper forum for them to air their grievances.

''It's certainly an odd and difficult case for a California state court to hear,'' says Greyson Bryan, an international business lawyer in Los Angeles. ''It's a very sensitive matter for an American court to become involved in an area that's essentially diplomatic and political in nature.''

But Phil Trimble, a UCLA professor of international law, said there is precedent for plaintiffs to seek justice in the U.S. for illegal actions taken in foreign countries, particularly if the actions violate international law. For example, South American nationals have successfully sued their government in U.S. courts for human rights abuses, such as torture.

But those lawsuits filed in federal court and directed against the foreign governments themselves rather than private parties, as is the case in the Chos' lawsuit, which names as defendants the two companies involved in Samho's transfer.

The Chos' attorney, John Taylor of Santa Monica, counters that the Chos are now U.S. citizens who are entitled to relief within the state judicial system. According to Taylor, the defendant companies used their ill-gotten gains to expand overseas, including in California, which gives the state a stake in ensuring that the companies doing business here were established legally and that residents like the Chos are compensated for any past wrongs.

''We feel jurisdictionally the money's here, [and] the Chos are in the United States,'' Taylor said. The lawsuit has yet to be assigned to a judge or served on defendants, pending its translation into Korean.

At the time of its 1984 takeover, Samho ranked No. 9 on the list of South Korea's biggest chaebols, or conglomorates. Specializing in construction and infrastructure, the company built thousands of housing units in Seoul; helped install the city's subway; owned golf courses and a resort hotel; and had major contracts in the Middle East.

Its success represented the rags-to-riches rise of its founder, Cho, the son of minor landlords who fell on hard times when he was a child. After running his first business at age 19, Cho scraped through World War II—he hid in a Buddist monastery to escape the Japanese imperial army draft—then expanded his textile business, set up South Korea's first sheet-glass factory and bet on a land boom by slowly acquiring more than 1,000 undeveloped acres in downtown Seoul by 1960.

''I could've bought more, but something like that would have raised eyebrows,'' he said. ''I was raising eyebrows as it was. That's a pretty massive holding.''

In 1970, Cho launched into construction on his many properties in South Korea, amassing a fortune in real estate. In 1975, he founded Samho, which concentrated on lucrative government-ordered housing projects in Kuwait and Saudi Arabia worth more than $1.5 billion.

But squabbles with the Kuwaiti and Saudi governments and the headaches of working in an alien environment turned the first two projects into losing ventures, said Yong See (Peter) Cho, who took over Samho in the early '80s while his father sought treatment abroad after a series of strokes. Debts mounted to about $350 million on the Middle Eastern contracts, although Samho was confident that its latest project in Saudi Arabia would soon be turning in a tidy profit.

That set the stage, however, for the South Korean government's bankruptcy charge against Samho.

On the morning of Aug. 24, 1984, according to the Chos' lawsuit, the South Korean finance minister summoned Peter Cho to his office. The minister, Kim Mahn Je, curtly informed Cho that Samho was on the list of insolvent companies being targeted for ''rationalization'' by the government, part of an effort to shed financially troubled concerns and shore up the economy, Samho was to be taken over by Daelim Industrial, a smaller conglomerate.

When Cho protested, Kim advised him to stay silent. An officer with Cho Hung Bank, which worked out the details of the takeover, also warned Cho not to contest the decision or his physical safety would be threatened, the lawsuit alleges.

By day's end, Peter Cho has signed over his family's controlling share of Samho.

''I'd been brought up in this country's system, so I knew not to argue,'' the younger Cho recalled in an interview, smiling bitterly at the memory. The next day, ''the 15 executives of Daelim came into my headquarters office to take over, like little Napoleons, in their suits and black neckties.''

Samho's assets included ''country clubs, farms, orchards, driving ranges, shopping, centers, apartment [and] residences,'' valued by the bank at a total of $250 million but worth at least three times that, the lawsuit claims.

Even the family burial plot was seized, forcing them to exhume the body of a son who had died years earlier and bury him elsewhere. ''We were left with just about nothing,'' said Kyung Ja Cho, 73, Bong Koo Cho's wife.

Her husband insists that his personal holdings could have more than paid off the debts from the Middle Eastern projects.

Instead, he said, the bankruptcy charge was merely a ploy to oust him for his refusal to make large donations to then-President Chum Do Hwan, and reward another company, Daelim, whose chairman had a brother high up in the South Korean government. The Chos' lawsuit alleges that Daelim agreed to pay bribes to Chun's government and his family in exchange for being given Samho.

A spokesman for Daelim in Seoul would not comment directly on the allegations.

''It was such a long time ago,'' the spokesman said. ''Few people in the company know about the alleged takeover, and we do have any official position on the issue.''

Skeptics point out that Samho itself has flourished, in part through government contracts, at a time when the South Korean government regularly colluded the business to push the tiny nation to its remarkable economic recovery since World War II.

Ultimately, such government-business complicity and cavalier lending practices helped pitch South Korea into its current economic quagmire, requiring a bailout from the International Monetary Fund. As a condition of assistance, the IMF has demanded an end to crony capitalism and easy credit.

Cho bristles at suggestions that he ever participated in palm-greasing and cronyism.

''We never benefited from any relationship with the government. We've been completely victimized by it,'' he said, adding that other companies like Daelim have been the ones proven corrupt.

Indeed, Lee June Yong, who has been the head of Daelim throughout this period and whose brother was speaker of the South Korean parliament under President Chun, was found guilty in 1996 of paying a bribe to Chun's successor, Roh Tae Woo. Lee was sentenced to 2½ years in prison but received a pardon.

Daelim, meanwhile, has expanded significantly since swallowing up Samho in 1984. Once a minor player, it is now South Korea's 17th-largest chaebol, with a subsidiary in Houston that just closed its doors in January because of the escalating Asian financial crisis.

Also named as defendant in the Cho family's lawsuit is Cho Hung Bank, which facilitated the takeover of Samho. The bank has also gained a foothold in the U.S., setting up California Cho Hung Bank, based in Los Angeles and worth about $31 million, according to Dun & Bradstreet. The U.S. unit is also a defendant.

''It's groundless,'' California Cho Hung's attorney, Simon Hung, said of the lawsuit. ''The allegations . . . seem to be based on events that occurred many years ago, long before California Cho Hung Bank was established here in the United States. I don't know why they're bringing a lawsuit at this time here in the United States.''

In fact, South Korea's own judicial system has already heard a case similar to Samho's—and ruled in favor of the confiscated company. In 1993, the nation's Constitutional Court ruled that the Chun government had illegally dissolved the Kukje conglomerate on trumped-up charges of insolvency in 1985. Kukje's previous owners are now demanding compensation.

But the Cho family feels that the best chance for recovering what was once theirs now lies in the U.S. Bong Koo Cho and his wife have nursed such hope for years as they shuttled from home to home on the Westside, finally settling in their current Brentwood apartment after giving up a condominium in Santa Monica that they could no longer afford.

The Chos maintain their simply furnished one-bedroom apartment with some financial help from their six adult children, who all reside in the U.S. With their savings dwindling, they have applied for low-income assisted housing—a far cry from the days when the two presided over their 15,000-square-foot antique-filled home back in Seoul.

Most of the last two decades have been spent trying to restore Cho's health. His strokes left him partially paralyzed, forcing him to walk with a cane.

''I cannot describe the pain of watching the man who built Seoul's subway living out his last years in a small apartment in Los Angeles,'' Sally Cho Seabright wrote about her father in an essay to be published in a South Korean magazine. ''When I think of what my poor parents, indeed my whole family, have suffered, it makes me cry.''

For Peter Cho, 47, watching Daelim and Cho Hung Bank prosper in the U.S. has been especially galling. ''They brought their money to this country and expanded their business here. Obviously they must have brought my money in here.''

He now lives in Pacific Palisades and stays afloat by managing his father's sole source of income: a couple hundred acres of farmland in Kern County, purchased a few years before Samho's takeover in hopes that the area was ripe for development.

''That's the only business mistake my father's made,'' said Seabright, who lives in Maryland. Seabright has spearheaded the family's efforts to tell its story, enlisting the aid of a public relations firm in Washington and rounding supportive letters from politicians such as U.S. Sen. Dianne Feinstein (D–Calif.).

Her father, who hasn't returned to his homeland since Samho was seized, mostly reads and watches CNN, monitoring events in South Korea such as the inauguration Wednesday of the country's latest president, former opposition leader Kim Dae Jung. Jung has pledged to democratize the country further, an announcement Cho greets with caution.

''I don't believe it's entirely desirable for Korea to copy Western democracy and Western capitalism,'' Cho said. ''We have different cultures. Democracy as it's practiced in Korea will be different.''

But some form of democracy—including a free and open business culture—must come, Cho said, if only to prevent another situation similar to his.

''Something like this can never take place in a truly democratic country,'' Cho said.●

TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT

Mr. GORTON Mr. President, I ask unanimous consent that the Chair lay before the Senate a message from the House to accompany H.R. 629.

The PRESIDING OFFICER (Mr. FRIST) laid before the Senate a message from the House of Representatives announcing its disagreement to the amendment of the Senate to the bill (H.R. 629) entitled ''An Act to grant the consent of the Congress to the Texas Low-Level Radioactive Waste Disposal Compact'', and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ms. SNOWE. Mr. President, I rise today in strong support of H.R. 629, the Texas Compact Consent Act of 1997, as originally ratified by the three states of Maine, Vermont, and Texas to address the disposal of their low-level radioactive nuclear waste.

The States of Maine, Vermont and Texas are now approaching the end of a long journey that started in 1980, when Congress told the states to form compacts to solve their low-level waste disposal problems.

When this Compact is adopted as ratified by the three states, Mr. President, Texas, Maine and Vermont will become the forty second, forty third and forty fourth states to be given Congressional approval for forming a compact and will meet their responsibilities for the disposal of their low-level waste from universities, from hospital and medical centers, and from power plants and shipyards.

It is very important for my colleagues to know that the language ratified by each state is exactly the same language, and if any amendments are included by the conferees, the Compact would have to be once again returned to each state for reratification.

For the nine compacts that have been consented to by the United States Congress, not one of them has been amended by Congress. Not one of them.

Let me be clear: the law never intended for Congress to determine who pays what, how the storage is allocated, and where the site is located. To

the contrary: the intent of the law is for states to develop and approve these details, and for Congress to ratify the plan.

The Compact before us does not discuss any particular site for the disposal facility, but only says that Texas must develop a facility in a timely manner, consistent with all applicable state and federal environmental, health, and public safety laws. It is the decision of Texas as to where the facility will be sited and is not within the purview of the U.S. Senate to decide for them.

Further, absent the protection of the Compact, Texas must, I repeat must, open their borders to any other state for waste disposal or they will be in violation of the Interstate Commerce Clause of the U.S. Constitution. The Compact gives Texas the protection that oversight commissioners, mostly appointed by the elected Governor of Texas but also with a say from Maine and Vermont, will decide what is best for Texas.

As we send the Texas Compact to a Senate-House conference, I ask my colleagues to keep in mind that all that is required is the prompt approval of Congress for the Compact as originally ratified by Maine, Vermont, and Texas so that the Texas Compact members will be able to exercise appropriate control over their low level nuclear waste as Congress mandated.

I thank the Chair and look forward to my colleagues continued support of the Texas Compact as ratified by the States when it returns from conference.

Mr. GORTON. Mr. President, I ask unanimous consent that the Senate insist on its amendment and agree to the request of the House for a conference; that the Chair be authorized to appoint conferees on the part of the Senate; that upon appointment of the Senate conferees, a motion to instruct the conferees be agreed to which provides that the Senate conferees be instructed to include the Wellstone amendments in any conference agreement; and that once this consent is granted, together with other consent items I will go into later, Senator WELLSTONE be recognized to speak for up to 1 hour.

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

The PRESIDING OFFICER (Mr. FRIST) appointed Mr. THURMOND, Mr. HATCH and Mr. LEAHY conferees on the part of the Senate.

EXPRESSING SENSE OF CONGRESS THAT STATES SHOULD WORK MORE AGGRESSIVELY ATTACKING THE PROBLEM OF VIOLENT CRIMES

Mr. GORTON. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of House Concurrent Resolution 75 and, further, that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 75) expressing the sense of the Congress that States should work more aggressively to attack the problem of violent crimes committed by repeat offenders and criminals serving abbreviated sentences.

The Senate proceeded to consider the concurrent resolution.

Mr. GORTON. Mr. President, I ask unanimous consent that the resolution be agreed to; that the preamble be agreed to; that the motion to reconsider be laid upon the table; and that any statements relating to the resolution appear at the appropriate place in the RECORD.

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

The concurrent resolution (H. Con. Res. 75) was agreed to.

The preamble was agreed to.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. GORTON. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on the Executive Calendar: Calendar Nos. 502, 580 and 623. I further ask unanimous consent that the nominations be confirmed; that the motions to reconsider be laid upon the table; that the President be immediately notified of the Senate's action; and that the Senate then return to legislative session.

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

The nominations considered and confirmed are as follows:

UNITED STATES ENRICHMENT CORPORATION

Margaret Hornbeck Greene, of Kentucky, to be a Member of the Board of Directors of the United States Enrichment Corporation for a term expiring February 24, 2003.

DEPARTMENT OF JUSTICE

James K. Robinson, of Michigan, to be an Assistant Attorney General.

THE JUDICIARY

Robert D. Sack, of New York, to be United States Circuit Judge for the Second Circuit.

NOMINATION OF JAMES K. ROBINSON

Mr. HATCH. Mr. President, on August 31, 1995, some 1019 days ago, the head of the Department of Justice's Criminal Division, Assistant Attorney General Jo Ann Harris, resigned. Since that time, the Department of Justice has lacked a confirmed leader for this critical post. Indeed, the Acting Assistant Attorney General has had to recuse himself from one of the most important matters to come before the Department: the Clinton Administration's fund-raising abuses. The failure of the Clinton Administration to fill this crucial position has had, in my mind, a serious impact both on the performance of the Criminal Division and the credibility of its decisions. Over two and a half years later, I am glad to support the nomination of James K. Robinson to be Assistant Attorney General for the Criminal Division. This nomination was reported out of the Judiciary Committee in April by a unanimous vote, and I believe should receive the support of all Senators.

The Criminal Division represents the front line of the federal government's commitment to fight crime. We rely on the Criminal Division to enforce over 900 federal statutes and to develop enforcement policies to be implemented by the 94 U.S. Attorneys around the country. Within the division are sections that carry out national responsibilities crucial to protecting our citizens and property, including: Asset Forfeiture/Money Laundering, Child Exploitation and Obscenity, Fraud, Computer Crime and Intellectual Property, Narcotics and Dangerous Drugs, Organized Crime and Racketeering, Public Integrity, Terrorism and Violent Crime, and the Organized Crime Drug Enforcement Task Force. The importance of each of these sections cannot be overstated.

I believe that this nominee is up to this demanding task. James Robinson has compiled an impressive record of achievement. Following graduation from Wayne State University Law School, he clerked on the Michigan Supreme Court and then for Judge George Edwards of the United States Court of Appeals for the Sixth Circuit. He served with distinction as United States Attorney for the Eastern District of Michigan during the Carter Administration. Both before and after his service as U.S. Attorney, Mr. Robinson was a member of the Detroit law firm of Honigman Miller Schwartz & Cohn, first as an associate and then as a partner. Since 1993, he has been Dean and Professor of Law at his alma mater, Wayne State University Law School. Finally, Mr. Robinson has served on and often chaired numerous bar and civic associations, many of which related to his expertise in the law of evidence. He will need all of this experience and more to fulfill such a demanding position.

One of the most important duties assigned the head of the Criminal Division is to advise the Attorney General on the appointment of independent counsels. In my mind, Attorney General Reno was very poorly served by the Criminal Division over the past year while considering whether to appoint an independent counsel related to the fund raising efforts made by the President and Vice President in conjunction with the 1996 elections. While I was pleased to see the Department secure the indictments of Johnny Chung and Charlie Trie, I believe both the Division and the Attorney General misapplied the independent counsel statute by taking into consideration factors which the law does not allow.

There are many both inside and outside Congress, including this Senator, who believe that the statute has many flaws, but so long as the law is on the books it must be applied fairly and consistently. This Department of Justice has not done so, and I place a large part of the blame on the Criminal Division.

Congress has responded to the unacceptable levels of crime by increasing the Department of Justice's budget: in fact, the Department's budget has skyrocketed since 1994, rising from under 11 billion dollars in FY 1994 to over 20 billion dollars in FY 1998. However, I am concerned about the decline in federal prosecutions in several critical areas despite this increased funding. First, at a time when the administration is calling for more gun control, I am concerned that the Department of Justice is not adequately enforcing current gun laws. The annual number of weapons and firearms prosecutions brought by this Administration has plummeted. For example, federal weapons and firearms prosecutions are down 18.7 % since 1992.

More importantly, I am concerned that the Department of Justice is not enforcing current laws meant to punish gun-toting criminals. Specifically, the number of prosecutions made under Project Triggerlock has collapsed. Initiated by the Bush Administration, Project Triggerlock targets federal prosecution and tough federal sentences on the worst violent offenders committing crimes with guns. In its first year, FY 1992, the program worked remarkably well: 4,353 federal cases were brought against 7,048 defendants for violations of federal law involving the use of a firearm. Yet, the number of these cases has fallen throughout the Clinton Administration, and in FY 1997 the Department of Justice reported only 2,844 cases under Project Triggerlock, a stunning 34.6% decrease since 1992. Through the effective use of federal powers and resources, U.S. Attorneys can greatly assist state and local law enforcement in keeping the most dangerous offenders off the streets. Unfortunately, this extremely effective program has lost priority in the Clinton Administration.

I have been concerned about the performance of the Criminal Division and the United States Attorneys in a number of additional areas over the past several years. Whether it has been the intentional failure of U.S. Attorneys in California to enforce Indian gaming laws, the unfortunate surrender of our borders to drug trafficking, the recent decision to distort the Controlled Substances Act to allow doctors to use drugs to assist suicides, or the repeal of a memorandum by Attorney General Richard Thornburgh which ensured federal prosecutors did not settle with charging defendants with lesser violations while more serious offenses were ignored, the administration's crime fighting decisions have, in some areas, not met the high standard the public deserves. These concerns, however, do not diminish my recognition of the work of the thousands of federal law enforcement officials who ably carry out the responsibility of enforcing our federal laws.

As I pointed out at his confirmation hearing, Mr. Robinson has been nominated to a position of great trust. If confirmed, he will play a key role in advising the nation's chief law enforcement officer on matters of serious national concern. Mr. Robinson assured the Judiciary Committee that although he naturally would feel loyalty to the administration which selected him, he would stand above politics and serve the public.

During his confirmation hearing, I raised many of these important issues with Mr. Robinson. Although he was not in a position to have formed concrete opinions on some issues which have been debated between the Congress and the administration, I was heartened by his promise to work with the Congress and to bring fresh approaches to tough issues. By moving this nomination without further delay, the Congress will ensure that the Criminal Division once again will have the leadership it sorely needs to play a leading and effective role at the vanguard of federal law enforcement.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

ORDERS FOR TUESDAY, JUNE 16, 1998

Mr. GORTON. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. on Tuesday, June 16. I further ask unanimous consent that on Tuesday, immediately following the prayer, the routine requests through the morning hour be granted, and that the Senate then begin a period for morning business until 10:30 a.m., with Senators permitted to speak for up to 5 minutes each, with the following exceptions: Senator MACK, 15 minutes; Senator ROBERTS, 15 minutes; Senator DORGAN, 30 minutes.

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

Mr. GORTON. Mr. President, I further ask unanimous consent that following morning business, the Senate resume consideration of S. 1415, the tobacco bill.

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

Mr. GORTON. Mr. President, I further ask unanimous consent that the Senate stand in recess from 12:30 p.m. to 2:15 p.m. tomorrow to allow the weekly party conferences to meet.

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

PROGRAM

Mr. GORTON. Mr. President, for the information of all Senators, the Senate will reconvene tomorrow at 9:30 a.m. and begin a period for morning business until 10:30 a.m. Following morning business, the Senate will resume consideration of the tobacco bill with the Gorton amendment pending regarding attorneys' fees. It is expected that a time agreement will be reached with respect to the Gorton amendment with a vote occurring on, or in relation to, the amendment Tuesday afternoon. Following disposition of the Gorton amendment, it is hoped further amendments will be offered and debated throughout Tuesday's session. Therefore, rollcall votes are possible throughout tomorrow's session as the Senate continues to make progress on the tobacco bill.

As a final reminder to all Members, the official photo of the 105th Congress will be taken tomorrow at 2:15 p.m. in the Senate Chamber. All Senators are asked to be in the Chamber and seated at their desks following the party luncheons.

ORDER FOR ADJOURNMENT

Mr. GORTON. 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, following the remarks of the Senator from Minnesota, Mr. WELLSTONE.

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

CONGRESSIONAL BUDGET FOR THE UNITED STATES GOVERNMENT FOR FISCAL YEARS 1999, 2000, 2001, 2002, AND 2003

The PRESIDING OFFICER. The Chair announces that H. Con. Res. 284, the concurrent resolution on the budget, having been received from the House, the order of April 2, 1998, will be executed as follows: all after the resolving clause is stricken and the text of S. Con. Res. 86, as amended by the Senate, is inserted, and the resolution as thus amended is agreed to. It is further ordered that the Senate insist on its amendment, request a conference with the House, and the Chair appoints the following conferees on the part of the Senate.

The PRESIDING OFFICER appointed Mr. DOMENICI, Mr. GRASSLEY, Mr. NICKLES, Mr. GRAMM of Texas, Mr. BOND, Mr. GORTON, Mr. GREGG, Ms. SNOWE, Mr. ABRAHAM, Mr. FRIST, Mr. GRAMS, Mr. SMITH of Oregon, Mr. LAUTENBERG, Mr. HOLLINGS, Mr. CONRAD, Mr. SARBANES, Mrs. BOXER, Mrs. MURRAY, Mr. WYDEN, Mr. FEINGOLD, Mr. JOHNSON, and Mr. DURBIN conferees on the part of the Senate.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. I thank the Chair.

THE TEXAS-MAINE-VERMONT COMPACT

Mr. WELLSTONE. Mr. President, I would like to speak out this evening about an enormously important issue that has seldom, if ever, been addressed on the floor of the United States Senate. I understand my colleague needs to leave at 7, and I am going to try to figure out a way to accommodate him if at all possible. My understanding is, I will also have a chance to speak more about this in morning business.

This issue I want to address tonight has variously been called ''environmental discrimination,'' ''environmental equity,'' ''environmental justice,'' or ''environmental racism.'' These terms are used interchangeably to describe the well-documented tendency for pollution and waste dumps to be sited in poor and minority communities who lack the political power to keep them out.

Environmental justice has been at the center of the debate over H.R. 629, legislation granting congressional consent to the so-called Texas Compact. If passed unamended by this Congress, the Texas Compact would result in the dumping of low-level radioactive waste from nuclear reactors in Texas, Maine, and Vermont—and potentially from nuclear reactors all over the country—in the poor and majority-Latino town of Sierra Blanca in West Texas.

Environmental justice is an issue that demands the full attention of the Senate. If we pass this legislation unamended, we can no loner pretend to be innocent bystanders as one poor, minority community after another is victimized by political powerlessness—and, in some cases, by overt racism. We can no longer pretend that a remedy for this basic violation of civil rights is beyond our reach. That is the ultimate significance of this legislation—and of this debate.

The moral responsibility of the Senate is unavoidable and undeniable. If we approve H.R. 629 without conditions, the Compact dump will be built within a few miles of Sierra Blanca. There's really very little doubt about that. And if that happens, this poor Hispanic community could become the premier national repository for so-called ''low-level'' radioactive waste.

If we reject this Compact, on the other hand, the Sierra Blanca dump will not be built at all. The Texas Governor has said so publicly—more than once. It's as simple as that. The fate of Sierra Blanca rests in our hands.

Compact supporters would prefer that we consider the Compact without any reference to the actual location of the dump. But that simply cannot be done. It's true that H.R. 629 says nothing about Sierra Blanca. But we know very well where this waste will be dumped. In that respect, the Texas Compact is different from other compacts the Senate has considered.

The Texas legislature in 1991 already identified the area where the dump will be located. The Texas Waste Authority designated the site near Sierra Blanca in 1992. A draft license was issued in 1996. License proceedings are now in their final stages and should be completed by summer. Nobody doubts that the Texas authorities will soon issue that license.

There's only one reason why this dump might not get built—and that's if Congress rejects the Texas Compact. In an April 1998 interview, Texas Gov. George Bush said, ''If that does not happen,'' meaning congressional passage of the Compact, ''then all bets are off.'' In the El Paso Times of May 28, Gov. Bush said, ''If there's not a Compact in place, we will not move forward.''

For these reasons, we cannot fairly consider H.R. 629 without also considering the dump site that Texas has selected. Sierra Blanca is a small town in one of poorest parts of Texas, an area with one of the highest percentages of Latino residents. The average income of people who live there is less than $8,000. Thirty-nine percent live below the poverty line. Over 66 percent are Latino, and many of them speak only Spanish.

It is a town that has already been saddled with one of the largest sewage sludge projects in the world. Every week Sierra Blanca receives 250 tons of partially treated sewage sludge from across the country. Depending on what action Congress decides to take, this small town with minimal political clout may also become the national repository for low-level radioactive waste. And I understand plans for building even more dump sites are also in the works.

Supporters of the Compact would have us believe that the designation of Sierra Blanca had nothing to do with the income or ethnic characteristics of its residents. That it had nothing to do with the high percentage of Latinos in Sierra Blanca and the surrounding Hudspeth County—at least 2.6 times higher than the State average. That the percentage of people living in poverty—at least 2.1 times higher than the State average—was completely irrelevant.

They would have us believe that Sierra Blanca was simply the unfortunate finalist in a rigorous and deliberate screening process that fairly considered potential sites from all over the State. That the outcome was based on science and objective criteria. I don't believe any of this is true.

I am not saying science played no role whatsoever in the process. It did. Indeed, based on the initial criteria coupled with the scientific findings, Sierra Blanca was disqualified as a potential dump site. It wasn't until politics entered the picture that Sierra Blanca was even considered.

I think it is worth taking a moment to review how we got to where we are today. The selection criteria for the dump were established in 1981, and the Texas Waste Authority hired engineering consultants to screen the entire state for suitable sites.

In March 1985, consultants Dames & Moore delivered their report to the Authority. Using ''exclusionary'' criteria established by the Authority, Dames & Moore ruled out Sierra Blanca and the surrounding area, due primarily to its complex geology.

Let me quote from that report. Features ''applied as exclusionary as related to the Authority's Siting Criteria'' included ''the clearly exclusionary features of: complex geology; tectonic fault zones,'' et cetera. ''The application of exclusionary geological criteria has had a substantial impact'' in screening potential sites, the report observed.

In its final composite, the report explained, ''Complex geology and mountainous areas in West, West-Central, and the Panhandle of Texas were excluded,'' including the Sierra Blanca dump site.

The report also fund, ''Many tectonic faults occur in West Texas within massive blocks of mountain ranges. This area includes El Paso [and] Hudspeth'' counties ''and has undergone several phases or episodes of tectonic disturbance.''

Finally, it went on to observe that, ''Although not excluded, the remainder of Hudspeth Country does not appear to offer good siting potential.''

So much for the science. Repeatedly since the early 1980s, the Waste Authority has come back again and again to this politically powerless area. It has designated four potential sites in all, and—with one revealing exception—all of them were in Hudspeth County. There are only three communities in the entire County, all of them poor and heavily Latino, and all of them targeted by the Authority.

A 1984 public opinion survey commissioned by the Texas Waste Authority provides some useful context for the Authority's site selection process. The report, called ''An Analysis of Public Opinion on Low-Level Radioactive Waste Disposal in Selected Areas,'' noted the benefits of keeping Latinos uninformed.

The report states, ''One population that may benefit from [a public information] campaign is Hispanics, particularly those with little formal education and low-incomes. The Authority should be aware, however, that increasing the level of knowledge of Hispanics may simply increase opposition to the [radioactive dump] site, inasmuch as we have discovered a strong relationship in the total sample between increased perceived knowledge and increased opposition.''

The first site to be targeted was Dell City in Hudspeth County. The El Paso Herald-Post of March 6, 1984 recounts the controversy over that site selection. ''The [Texas Waste] Authority has set up certain criteria as guidelines for choosing a disposal site. It appears

to be ignoring its own rules.'' ''The Authority, instead of abiding by its written criteria, has set up an unspoken, alternate rule for locating the site. That is, 'The site shall be located where there are the fewest possible number of registered voters to protest.''' A disproportionately high number of Latinos in Hudspeth County are not registered to vote.

The Herald-Post goes on to describe some of the political maneuvering behind the initial selection of Hudspeth County. ''The plot thickens. The University of Texas system owns 500,000 acres of land around Dell City. Mrs. Dolph Briscoe, wife of the former governor, sits on the system's Board of Regents. Briscoe has extensive land holdings close to the other proposed site. So at a public meeting on October 25, 1983, in Dimmit County, Briscoe said he was encouraging the Authority to locate the site 'on state lands in Hudspeth County.'' The editorialists at the Herald-Post conclude, ''We haven't exactly got any heavyweights defending our interests in this matter.''

The one exception to the Authority's pattern of targeting the poor Latino communities in Hudspeth County was in 1985, after completion of the engineering consultants' report. Dames & Moore concluded that the ''best'' sites were in McMullen and Dimmit Counties, and the Waste Authority settled on a site in McMullen County. But this decision met with fierce opposition from politically powerful individuals. So the Authority decided once again to move the dump back to Hudspeth County.

At this point all pretense of objectivity was abandoned. The selection criteria were changed in 1985 so as to rule out the two ''best'' sites identified by Dames & Moore. The new criteria gave preference to sites located on state-owned land. This change had the effect of virtually guaranteeing selection of a site somewhere in Hudspeth County, large portions of which are owned by the state of Texas.

So the Waste Authority proceeded to designate, based on an informal and cursory process, five sites in Hudspeth County. Its clear choice, however, was Fort Hancock, one of the County's three poor Latino communities.

Unfortunately for the Authority, the more politically powerful city of El Paso next door decided to fight back. Together with Hudspeth County, El Paso filed suit against the site selection. They argued that the Hancock site was located in an area of complex geology—much like Sierra Blanca, incidentally—and lay on a 100-year flood plain. The amazing thing is that they won. In 1991 U.S. District Court Judge Moody ruled in their favor and ordered no dump could be built in Fort Hancock, Hudspeth County.

But the county's court victory was short-lived. The Waste Authority was clearly not about to give up. The Authority went back to the state legislature to get around Judge Moody's decision by once again changing the rules. A legislator from Houston, far to the East where the big utilities are based, proposed a bill that ignored all previous selection criteria and designated Fort Hancock once and for all. Interestingly enough, this maneuver aroused a great deal of public indignation, precisely because of the Authority's perceived discriminatory practice of dumping on Latino communities.

There was an impressive show of force against discrimination, but the outcome was not exactly what Hudspeth County had in mind. After Judge Moody's remarkable decision, lawyers for El Paso and the Waste Authority worked out a compromise. Fort Hancock would be saved, but a 400 square mile area further north in Hudspeth County would take its place. This oblong rectangle imposed on the map—an area that included Sierra Blanca—was subsequently dubbed ''The Box.'' The Texas legislature passed the so-called ''Box Law'' by voice vote only days before the end of session in May 1991.

Once again, the previous site selection procedures were stripped away. The Box Law repealed the requirement that the dump had to be on public land, the very requirement that has pointed the Authority towards Hudspeth County in the first place. This was necessary because, at that time, the Sierra Blanca site was not public land at all.

Most importantly, to prevent another troublesome lawsuit like the Fort Hancock debacle, the Box Law essentially stripped local citizens of the right to sue. It denied them all judicial relief other than an injunction by the Texas Supreme Court itself, and for this unlikely prospect citizens would be required to drive 500 miles to Austin.

This story is depressingly familiar. A similar scenario unfolds over and over again in different parts of the country, with different names and faces in every situation. Sometimes there is no intention by anyone to discriminate. But pervasive inequalities of race, income, and access to the levers of political power exercise a controlling influence over the siting of undesirable waste dumps.

The people who make these decisions sometimes are only following the path of least resistance, but in far too many instances the result is a targeting of poor, politically marginalized minority communities who lack the political muscle to do anything about it.

The remarkable thing about this story is that some people in Hudspeth County did fight back. Dell City fought back and won in the early 1980s. Fort Hancock fought back and won their court case in 1991. And make no mistake, the people of Sierra Blanca are fighting back, too.

Many of them have been here on the Hill. Father Ralph Solis, the parish priest for Sierra Blanca and Hudspeth County, was here in February, and visited many Senate offices. These people know that the odds are stacked against them, but they are persevering just the same.

One of the amendments I included in this bill is intended to give them a fighting chance. It gives them their day in court—the right to challenge this site selection on grounds of environmental justice. It says that the Compact cannot be implemented in any way—and that would include the siting process, the licensing process, or the shipment of waste to that site—that discriminates against communities because of their race, national origin, or income level.

If local residents can prove discrimination in court, then they can stop the Compact Commission from operating the dump. They don't have to prove intent, by the way, although that certainly would be sufficient. All they have to show is disparate treatment or disparate impact.

I believe very strongly that the Compact raises important and troubling issues of ''environmental justice.'' And a diverse array of civic organizations agree with me about this.

The Leadership Council on Civil Rights, the Texas NAACP, the Sierra Club, the League of United Latin American Citizens (or ''LULAC''), Greenpeace, the Bishop and the Catholic Diocese of El Paso, the House Hispanic Caucus, the United Methodist Church General Board of Church and Society, Friends of the Earth, Physicians for Social Responsibility, the Southwest Network for Environmental and Economic Justice, and the National Audubon Society, to name just a few, agree with me. I ask unanimous consent that a letter signed by these and other organizations be printed in the RECORD at the end of my statement.

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

(See exhibit 1.)

Mr. WELLSTONE. Mr. President, I know some of my colleagues don't believe issues of environmental justice are implicated here. Or they may think this is not a question for the Senate to decide. I believe this amendment meets those concerns. All my amendment does is give local residents the right to make their case in court. There is no guarantee they will win. After all, it is extremely difficult to prove environmental discrimination. I don't see how anyone would want to deny these people a chance to make their case.

Short of defeating the bill outright, I believe passing this amendment is the only way for us to do right by the people of Sierra Blanca.

Yet, as amazing as it sounds, Compact proponents also claim to have the best interests of Sierra Blanca at heart. They claim the Compact will protect local residents because it keeps out waste from states other than Maine and Vermont. They have used this argument again and again, in Sierra Blanca, in the Texas legislature,

in the House of Representatives, and they're using it again in the United States Senate.

Supporters of the Compact are trying to have it both ways. When challenged about the environmental justice of targeting Sierra Blanca, they respond that no site has been selected, and environmental justice can only be addressed if and when that ever happens.

Then in the same breath they insist that the dump in Sierra Blanca is definitely going forward and the Compact is therefore necessary to protect local residents from outside waste. So which is it? Either the Sierra Blanca dump is a done deal or it's not.

The truth is, the most likely scenario is that the dump will be built in Sierra Blanca if Congress approves this Compact, subject to any legal challenges, but the project will not go forward if Congress rejects the Compact.

The claim that the Compact will protect Sierra Blanca makes no sense on its face. The dump is unlikely to be built without congressional consent to this Compact; it does not need to be built; and the Compact would not protect Sierra Blanca in any event.

The simple fact of the matter is that the dump will most likely not be if the Compact fails. Governor Bush has made it very clear that the dump will not be built if Congress rejects the Compact. So the argument that Sierra Blanca needs the Compact for protection against outside waste is nonsensical. If Texas does not build a dump in Sierra Blanca, local citizens do not need to be protected from anything. Far from protecting Sierra Blanca, the Compact only ensures that a dump will be built in their community.

An article from the Texas Observer of last March explains why the Compact is necessary for the dump to go forward. ''Texas generates nowhere near enough waste on its own to fill a three million cubic feet dump, and by its own projections [the Texas Waste Authority] could not survive without Maine and Vermont's waste.''

Moreover, the Texas legislature has indicated it will not appropriate funding to build the dump if Congress rejects this Compact. Texas lawmakers refused the Waste Authority's request for $37 million for construction money in FY 1998 and FY 1999. In fact, the Texas House initially zeroed out all funding for the Authority, but funding for licensing was later restored in conference committee. My understanding is that construction funding was made contingent on passage of the Compact, whereupon Maine and Vermont will each be required to pay Texas over $25 million.

In fact, the Sierra Blanca dump does not really need to be built. You might have seen the headline in the New York Times on December 7 of last year: ''Warning of Excess Capacity in Nation's Nuclear Dumps—New Technology and Recycling Sharply Reduce the Volume of Nuclear Waste.''

The article discusses a study by Dr. Gregory Hayden, the Nebraska Commissioner for the Central Interstate Compact Commission. Dr. Hayden found that ''there is currently an excess capacity for low-level radioactive waste disposal in the United States without any change to current law or practice.''

He went on to explain, ''These disposal sites have had low utilization due to falling volumes since 1980. Thus, a high capacity remains for the future, without any change to the current configuration of which states may ship to which disposal site.'' Let me repeat the essential point: there is no compelling need for any new low-level radioactive waste dumps in this country. And if no new dump is built, nobody can argue that the Compact is needed to protect Sierra Blanca.

The most popular argument for building another dump involves disposal of medical waste. I'm sure all of you have heard it. It's claimed that waste from medical facilities and research labs is getting backed up—that it has to go somewhere.

But let me emphasize one central and indisputable fact: over the last few years, over 99 percent of the waste from Maine and Vermont has come from nuclear reactors. Less than one percent has been from hospitals and universities. And from all three states, 94 percent of the low-level waste between 1991 and 1994 came from reactors. This dump is being built—first and foremost—to dispose of radioactive waste from nuclear reactors, not from hospitals.

So why are the nuclear utilities hiding behind hospitals and universities? It's not very hard to figure out. In 1984 the Texas Waste Authority hired a public relations firm to increase the popularity of nuclear waste. The PR firm recommended, ''A more positive view of safe disposal technologies should be engendered by the use of medical doctors and university faculty scientists as public spokesmen for the [Texas Waste] Authority.'' ''Whenever possible,'' the report said, ''the Authority should speak through these parties.''

Well, that advice has been followed to the letter. We all have sympathies for hospital work and university research. I know I do. But that's beside the point. This controversy is really about waste from nuclear reactors.

If a dump is built nevertheless, the Compact offers little protection for local residents. The Compact Commission would be able to accept low-level radioactive waste from any person, state, regional body, or group of states. All it would take is a majority vote of the Commissioners, who are appointed by the Compact state governors.

Why should the people of Sierra Blanca expect unelected commissioners to keep waste out of their community? Is there anything in their recent experience that would justify such faith?

The fact is, the state will have every economic incentive to bring in more waste. The November 1997 report by Dr. Hayden concluded that ''the small volume of waste available for any new site would not allow the facility to take advantage of economies of scale. Thus, it would not even be able to operate at the low-cost portion of its own cost functions.''

The new dump will need high volume to stay profitable. The Texas Observer reports, ''A 1994 analysis by the Houston Business Journal suggests that the Authority would open the facility to other states to keep it viable.''

We have here the potential for establishing a new national repository for low-level nuclear waste. Not only will Texas have an incentive to bring in as much waste as possible, but the same will be true of nuclear utilities. The more waste goes to Sierra Blanca, the less they will be charged for disposal.

Rick Jacobi, General Manager of the Texas Waste Authority, told the Houston Business Journal: ''The site is designed for 100,000 cubic feet per year, which would be about $160 per cubic foot. But if only 60,000 cubic feet per year of waste arrives, the price would be $250 per cubic foot.'' That's a big difference.

As Molly Ivins says, ''That sure would drive up costs for Houston Lighting and Power and Texas Utilities.'' And the going rate at one existing dump is a whopping $450 per cubic foot. In the end, it will be in the economic interest of everyone—from the nuclear utilities to the Waste Authority—to ship as much waste to Sierra Blanca as they can.

My second amendment addresses this problem. Throughout the process of approving the Compact, supporters claimed the waste would be limited to three states. I want to hold them to that promise. My amendment puts that promise in writing.

I doubt anyone would disagree that this understanding was shared by everyone who participated in the Compact debate. If Compact supporters truly plan to limit waste to three states, which has been everyone's understanding all along, they can have no objection to my amendment. It's nothing but a protection clause. A nearly identical amendment—called the Doggett Amendment—was attached to the bill passed by the House.

There are other issues I was not able to address with amendments. I think there is a fundamental concern about whether this kind of disposal is safe at all. The League of Conservation Voters (LCV) warns that, despite the hazards involved, waste will be buried in soil trenches destined to leak, as have nuclear dumps in Kentucky, Illinois; and Nevada. LCV did score the House vote on final passage, and has announced that it may score Senate votes as well. I ask unanimous consent to place the LCV letter in the RECORD.

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

LEAGUE OF CONSERVATION VOTERS,
Washington, DC, March 12, 1998.

Re oppose the Texas Low-Level Radioactive Waste Disposal Compact Consent Act.

U.S. Senate,
Washington, DC

DEAR SENATOR: The League of Conservation Voters is the bipartisan, political arm of the national environmental movement. Each year, LCV publishes the National Environmental Scorecard, which details the voting records of members of Congress on environmental legislation. The Scorecard is distributed to LCV members, concerned voters nationwide and the press.

Soon the Senate may be voting on S. 270, The Texas Low-Level Radioactive Waste Disposal Compact Consent Act. LCV urges you to vote against this bill, which is the key to opening a new nuclear dump near Sierra Blanca, Hudspeth County, Texas.

More than 99% of the radioactive waste shipped from Maine and Vermont in recent years was generated by nuclear reactors. Despite the misleading classification of ''low-level,'' many of these wastes are highly concentrated and some can give a lethal dose in about five minutes. Atomic power plant waste in this category includes long-lived elements like plutonium-239, which remains hazardous for 240,000 years, and cesium-135, which remains hazardous for 20 million years.

Despite its hazards, the waste would be buried in Texas in unlined soil trenches destined to leak, as nuclear waste dumps in Kentucky, Illinois and Nevada have. A survey of 27 other nations with radioactive waste programs found that not one of these nations allows shallow land burial of such long-lasting nuclear materials.

The selection of a poor Mexican-American community (which is already the site of one of the largest sewage sludge projects in the U.S.) has caused local environmentalists to file a civil rights complaint against the Texas. Maine and Vermont radioactive waste agencies. Furthermore, dumping radioactive waste near Sierra Blanca, approximately 16 miles from the Rio Grande River, would violate the 1983 La Paz agreement between the U.S. and Mexico, which commits both countries to prevent, reduce and eliminate pollution affecting the border area.

LCV's Political Advisory Committee will consider including votes on S. 270 in compiling LCV's 1998 Scorecard. Thank you for your consideration of this issue. If you need more information please call Betsy Loyless in my office at 202/785–8683.

Sincerely,

DEB CALLAHAN,
President.

Mr. WELLSTONE. Mr. President, there is also an obvious concern about the unsuitability of Sierra Blanca's geology—the exclusionary criterion from the 1985 Dames & Moore report. Sierra Blanca is situated right in the middle of the state's only earthquake zone. Its 1993 license application stated that this is ''the most tectonically active area within the state of Texas.'' In April 1995 there was a 5.6 earthquake 100 miles away, in Alpine, Texas. And there have been two tremors in the area in the last four years.

Radioactive Waste Management Associates (RWMA) of New York has conducted an independent investigation of the dump site and found its geology unsuitable for disposal of radioactive waste. RWMA notes that

research by the Texas Low-Level Radioactive Waste Disposal Authority has found that [there is] a fault in the bedrock buried beneath the Sierra Blanca site. Groups of earth fissures up to seven feet deep occur nearby.

RWMA concludes that

some important natural features of the site—its seismic hazard, its buried fault, and nearby earth fissures—are not suited to radioactive waste isolation. In our professional opinion, these are fatal flaws which mean that the proposed Sierra Blanca site cannot provide a high degree of assurance of waste containment.

I ask unanimous consent to enter the letter from RWMA into the RECORD.

The concern about the environmental impact of this dump extends well beyond the border. The Mexican equivalent of the EPA announced its opposition on March 5 on grounds that the Sierra Blanca dump poses an environmental risk to the border region. On February 11, the Mexican Congress, represented by its Permanent Commission, declared

that the project in Sierra Blanca in Texas, and all such dumping projects along the border with Mexico, constitute an aggression against national dignity.

Moreover, the project apparently violates the 1983 La Paz Agreement between Mexico and the US, which commits both countries to prevent pollution affecting the border area. I ask unanimous consent to enter these statements by Mexican authorities into the RECORD.

The environmental justice amendments I proposed have been endorsed by several newspapers and civic organizations. The Fort Worth Star-Telegram of May 1, 1998 reads,

The amendment to the Texas/Maine/Vermont Compact by Minnesotan Sen. Paul Wellstone is a good one. Too often in our country's industrialized history, poor, politically powerless minority communities have been targeted for unwanted hazardous waste dumps. . . . The Wellstone amendment needs to stay in the final version of the bill.

The Leadership Conference on Civil Rights wrote to likely conferees on May 14, 1998,

The Senate-passed bill contains two amendments sponsored by Sen. Paul Wellstone that we urge the conferees to include in any final conference report.

The Leadership Conference states that

a matter of increasing concern to the civil rights community [is] the disparate treatment of poor and minority communities regarding environmental siting issues, also known as environmental justice.

In recent years, our nation has gained a better understanding of the national pattern of discrimination in the placement of waste and pollution sites in disproportionately poor and minority communities.

By the end of their letter, the Leadership Conference ''strongly urge the inclusion of the Wellstone/Doggett amendments in any final bill approved by Congress.''

The Methodist Church's General Board of Church and Society wrote on April 30, 1998, ''We applaud and support these [Wellstone] amendments. They are a small victory for the victims of environmental racism.''

The Sierra Club wrote on June 4, 1998, ''Sen. Paul Wellstone has introduced two amendments that would improve the bill,'' though the Sierra Club believes the bill remains deeply flawed. I ask unanimous consent that all these statements be placed in the RECORD.

Not everyone has been so supportive, of course. I think it would be appropriate for me to respond to some of the arguments that have been raised against my amendments.

First, it's been suggested that passage of my amendments would require states to reratify the Compact. Second, a recurring theme echoed by Compact supporters is that Congress has never before attached these kinds of conditions to a state compact. Third, Senators from Compact states have suggested that no environmental discrimination could possibly have occurred in this case because residents of Sierra Blanca actually support the dump. Finally, it has also been claimed that the Compact is a state or local matter, in which people from other states have no business interfering.

As a preliminary matter, I question the relevance of these arguments—at least with respect to the Wellstone/Doggett amendment. This question has already been settled. Both the House and Senate have agreed to limit waste to the three Compact states. There really is very little for the conference committee to decide. I do not understand why we are even having this discussion at this stage in the process.

Nevertheless, I do want to respond to some of these arguments individually. First: the reratification argument. I believe there may be some confusion as to what my amendments actually do. As the House parliamentarian found with respect to the Doggett amendment, these amendments do not actually alter the Compact itself. Instead, they impose conditions on the consent of Congress.

The Compact, for constitutional reasons, cannot go into effect without that consent. And Congress has already conditioned its consent on certain other requirements. My two amendments simply add to that list of congressional conditions.

With regard to the Wellstone/Doggett limitation, there's no reason why this amendment should require reratification. When the Compact made its way through the legislative process the first time, everybody understood that waste would be limited to the three states. My amendment only reaffirms the common understanding of everyone involved. Why should states be required to reaffirm a principle to which they have already given their consent?

I'm not sure this conclusion is really so controversial—even within the Compact states themselves. I have in my hands an internal memorandum from Roger Mulder of the State Energy Conservation Office of the Texas General Services Commission. Mr. Mulder was an environmental aide to Gov. Richards and handled Compact issues in the Richards Administration. His memo is addressed to John Howard, an environmental adviser to Governor Bush. It is

dated October 10, 1997, just days after passage of the Doggett amendment in the House.

The first line of the memo reads, ''There appears to be a unanimous agreement that the Doggett amendment does not require the Texas Compact to be returned to the state legislatures.'' ''Unanimous agreement.'' That's not just the view of Mr. Mulder. According to his memo, that view is universally held.

The Mulder memo goes on to note that ''Maine appears to be leading the charge in the effort to drop the Doggett amendment.'' The reason? ''There is speculation that Maine believes it can send its decommissioned waste to Barnwell, South Carolina,'' get credit for the waste it otherwise would have sent to Texas, and ''then sell that credit at a substantial profit for Maine.'' That's what Mr. Mulder's memo says, at least.

Nevertheless, I have been willing—and remain willing—to allay any legitimate concerns Compact supporters may have about the need for reratification. I offered to instruct conferees to put Congress on record—in the statement of managers—that no reratification is required. My offer was rejected.

The second argument advanced by Compact supporters is that no previous Compact has received such shabby treatment at the hands of Congress. Even if Congress had never before attached these kinds of conditions, that would say nothing about how Congress should treat THIS Compact. Why should we be bound by what prior Congresses have done?

And besides, this Compact is different from previous ones. We know in advance where the Texas dump will be located. And this particular site selection raises important questions of environmental justice.

Third, Compact supporters go so far as to claim that local residents actually support the Compact, and therefore no discrimination could have been involved in the site selection. Even if it were true that the dump enjoyed local support, I don't see what this has to do with site selection.

But more importantly, my argument that local residents should have a chance to challenge the dump site does not depend—one way or the other—on whether the proposed Compact dump is popular in Hudspeth County. I am simply saying that there should be some forum to resolve the claims of environmental discrimination that have been raised. I cannot say for certain what the outcome of such a challenge would be. But local residents should at least have a chance to make their case.

In any event, the argument that local residents support the dump is simply not true. I am surprised to hear it being made. Local congressmen of both parties seem to agree on this point. The Republican congressman who represents Hudspeth County, HENRY BONILLA, wrote to the Senate on March 13, 1998: ''My constituents adamantly oppose this legislation.''

In a letter to senators dated February 2, Democratic Congressmen DOGGETT, REYES, and RODRIGUEZ wrote,

> The [House] bill passed despite overwhelming opposition by the residents in Hudspeth County, Presidio County, Jeff Davis County, Culberson County, Val Verde County, Reeves County, Webb County, Brewster County, the cities of Sierra Blanca, Del Rio, Brackettville, Marfa, Van Horn, and Alpine, and the governor of the neighboring state of Chihuahua.

In fact, 22 of the surrounding counties have passed resolutions opposing the dump, as have 11 nearby cities. No city or county, to my knowledge, has passed a resolution in favor.

Jeff Davis County did pass a resolution of support while under the impression that the Compact would keep waste out of Texas. When informed that the Compact would do no such thing, they reversed their vote almost immediately. Compact lobbyists nevertheless continue to cite the first resolution.

The only poll ever taken in Hudspeth County showed massive opposition to the dump. In 1992 the Texas Waste Authority commissioned K Associates of El Paso to conduct a telephone poll. That poll found 64 percent of Hudspeth and Culberson County residents opposed the dump.

Opposition was surely even stronger than that, since poor residents without telephones were greatly underrepresented in the survey. Only 33 percent of respondents to this poll were Hispanic, while Hispanics account for 66 percent of the local population. As a general proposition, I understand that the dump is much more unpopular with the Latino majority than with the white minority.

I don't know anyone who has ever attended a local meeting over the dump could have any doubts about how local residents feel. Over 700 county residents showed up at a public hearing on April 21, 1992. While 90 people spoke, only two supported the dump. At another public hearing in August 1996, over 80 percent of those attending spoke out against the dump.

Local opponents of the dump have collected an overwhelming number of signatures in opposition. Over 800 local residents, all of them adults, have signed petitions opposing the dump. These include two out of four commissioners on the County Commissioner's Court—Wayne West and Curtis Carr. (A third commissioner—Jim Kiehne—has publicly stated his opposition).

My understanding is that dump supporters have only managed to collect around 30 to 40 names. Many who signed the petitions in support of the dump later said they were confused; the petition claimed to be protecting Sierra Blanca from outside waste. Some of them have also signed petitions opposing the dump.

I think the most reliable testimony about local opposition to the dump comes from Father Ralph Solis, the Catholic parish priest for Sierra Blanca and Hudspeth County. He visited Washington in February to let Senators know how much his parishioners oppose their dump:

> Before leaving for Washington D.C., the people of the parish said to me, ''Please, father, make them understand that we do not want radioactive nuclear waste.'' All of us in far west Texas implore the Senate to take a good look at us and realize that we are real people in danger and without any real voice. . . . We beg the Senate to stand with us as like our sisters and brothers from other faiths and Christian denominations from across the country. I am here with this group from West Texas, a few small voices trying to speak for so many. Please, we beg you, do not abandon us.

Citizens across the state seem to feel the same way. In a state wide poll conducted in October 1994, 82 percent of Texans opposed ''the proposal to store out-of-state radioactive materials in Texas near Sierra Blanca.'' Only 13 percent favored the proposal.

Senators from Compact states have touted the views of two local figures as proof of Sierra Blanca's support for the dump. One of these individuals is a banker who heads the local economic development commission, which is funded by the Texas Waste Authority. My understanding is that he is a resident of Santa Teresita, not of Sierra Blanca. He developed a connection to Sierra Blanca in 1994 when he became president of the local bank.

The other local figure is Judge James Peace, the County Judge who presides over the County Commissioners' Court. Both Judge Peace and other Compact supporters have claimed his reelection in March of this year, with 54 percent of the vote, is proof that local voters support the Compact. But can anyone honestly claim that the dump was an issue in his reelection campaign, or that local residents were aware of his position on the dump?

An editorial in the Hudspeth County Herald of April 17, 1998, addresses Judge Peace's claims. It says that the March elections were not a referendum on the dump, and that many other issues were involved. ''In no way, Judge Peace, was the dump implied in the last election.'' More importantly, it says, ''Your letter states that you have always been a vocal supporter of the dump . . . which is not true. Do you remember your first campaign? You told the folks when you sat in their living rooms that you were opposed to the dump.''

Judge Peace recently traveled to Washington and met with me in my office. He is a very nice man, and I very much enjoyed our meeting. Indeed, Judge Peace told me directly to my face that he supports the Wellstone/Doggett amendment. He later wrote me a letter reversing his position. I can see why local residents might be a little confused about where he stands.

Finally, it is argued that the Compact is a matter for the three states to decide, that selection of the dump site is Texas' business, and that outsiders should mind their own business. More specifically, I have been asked why, as

a senator from Minnesota, I should have such a deep and abiding interest in this matter.

The simple answer is that, if this were only a matter for the three states to decide, H.R. 629 would not be before the Senate. The Compact cannot go into effect without the consent of Congress. And the dump will not go forward without the Compact.

The decision whether to build this dump depends on how we decide to proceed on this bill. That's what it boils down to. It is quite obvious to me that we cannot avoid responsibility for our votes and our actions in this matter.

My driving concern has always been very simple. I cannot stand by and watch while a poor, politically powerless, Latino community is targeted to become the premier repository of low-level nuclear waste for the entire country. Much less give it my blessing. Not when I have the power to do something about it.

As a very basic proposition, I think we can all agree that it's wrong for poor, politically powerless, minority communities to be singled out for the siting of unwanted hazardous waste dumps. It's wrong when that happens in Sierra Blanca, and it's wrong when it happens in hundreds of other poor minority communities all across this country.

I want to do whatever I can to stop it, and I don't see why every one of us should not want to do the same. I don't understand why it should be considered unusual for a senator to care about these things. On the contrary, I think it should be unusual for a senator not to care about these things.

The broader point is that environmental justice is not just a local issue, but a national one. There are some issues of fundamental justice that rise to a level of national importance, and this is surely one of them.

I think it's high time for the Senate to just say ''no.'' Not just to the Sierra Blanca dump, but to a national pattern of discrimination in the location of waste and pollution. We have to face up to these urgent issues of environmental justice—sooner rather than later.

The primary reason I came to the floor today was to draw my colleagues' attention to the pressing issue of environmental justice. But I had another motive as well. I wanted to explain the history of the debate over this bill.

I wanted to make sure there is no confusion over what agreements have been made, how the Senate amendments would work, what the mandate of the conference committee is, and what we can expect if the conference violates that mandate.

Let us step back for a moment and review how we got to where we are today. Over the past year I expressed vehement opposition to any Compact legislation that did not address the issue of environmental justice. I offered my two amendments in an effort to do just that. The resulting standoff prevented this bill from coming to floor for almost a year.

Finally, about three months ago, senators from Compact states agreed to include my two amendments. On April 1 of this year, the Senate unanimously approved them both.

Unfortunately, however, after agreeing to my amendments, senators from Compact states suggested publicly that the amendments should be stripped in conference committee. So as a condition of going to conference, I insisted that conferees be instructed to keep the amendments in any bill reported back to the Senate.

Let me, since I will have time to talk more about this and I want to accommodate my colleague, talk about one other amendment that we have also attached to this piece of legislation.

This amendment, Mr. President, essentially says, if colleagues are going to say that there should only be radioactive waste from Maine and Vermont, if that is what the Texas legislature intended, then we should make it clear when we pass this compact that that will be the case. This was the Doggett amendment in the House of Representatives which passed the House, and this was also a part of an amendment that has passed the Senate as well.

Let me just kind of be clear about what this unanimous consent says. We are now instructing the conference committee that they are to support these two amendments, which the Senate has now gone on record supporting. All of my colleagues are on record, because the Senate has voted to support these two amendments, that the people at least should have a chance to go to court. And, if they can prove discrimination, they ought to be able to make their case.

They ought to at least be able to make that appeal. And secondly, if we are saying that this waste is only going to come from Maine and Vermont because the people in Sierra Blanca and people of Texas are worried this will become a national repository site for nuclear waste, then we make it clear in the amendments that, indeed, will be the case.

Now, Mr. President, in conclusion, although I will have more to say all week about this, Senators from the compact States were first reluctant to give those instructions. Their objections have delayed the conference for the last month. Then last week—and I am glad they did so—they withdrew their objections and agreed to insist on the Wellstone amendments. It was this agreement that will allow H.R. 629 to go to conference.

In other words, I will keep my word all the way through. I said I was just trying to get these amendments onto the bill because I think these amendments would lead to much more fairness and much more justice for the people in Sierra Blanca.

Well, now we are about to go to conference and I only want to emphasize one point. The Senate has now agreed unanimously, including Senators from the compact States, to instruct conferees on the Wellstone amendments. Conferees should not report back to the Senate any bill that has been stripped, where the amendments have been taken out. Without those environmental justice amendments, there should be no bill. If there is a compact which is approved without the people in Sierra Blanca having the right to challenge this in court, if they can show discrimination, and without the assurance that this waste will only come from Vermont and Maine, then this will be an injustice and the Senate should not let that happen. Any attempt to strip these amendments from the bill, which is what the nuclear utilities would like conferees to do, would make a mockery of the House and Senate votes to include the Wellstone and the Doggett language. It would make a mockery of Senate instructions and would make a mockery of our professed concern for environmental justice.

When the House and Senate have both decided to include these amendments, the conference committee really has no business trying to strip them out. I think that would be the kind of backroom deal that makes Americans disgusted with politics. That would be the legislative process at its worst—serving the interests of the nuclear utilities over interests of people who lack comparable access to the levers of political power.

If that happens, Mr. President, not only would Congress be denying a remedy for environmental discrimination, not only would Congress be giving a green light to the Sierra Blanca dump, not only would Congress be giving a seal of approval to the targeting of a poor majority-Latino community for disposal of radioactive waste, if the conference committee proceeded to drop these amendments, they would provide a striking example of unequal access to political power here in Washington that produces environmental discrimination in the first place.

The issue of environmental justice deserves better than that. The people of Sierra Blanca deserve better than that. And the American people have a right to expect a higher level of conduct from their elected representatives. I will take advantage of every procedural means at my disposal to make sure that does not happen.

Mr. President, to accommodate my colleague's schedule, the Presiding Officer, I conclude my remarks and yield the floor.

EXHIBIT NO. 1

SIERRA CLUB, LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC), PHYSICIANS FOR SOCIAL RESPONSIBILITY (PSR), NATIONAL AUDUBON SOCIETY, FRIENDS OF THE EARTH, U.S. PUBLIC INTEREST RESEARCH GROUP, PUBLIC CITIZEN, GREENPEACE, GREENPEACE MEXICO, CATHOLIC DIOCESE OF EL PASO, SAVE SIERRA BLANCA, AND 109 NATIONAL, INTERNATIONAL, REGIONAL, STATEWIDE AND LOCAL ORGANIZATIONS,

March 11, 1998.

Senator PAUL D. WELLSTONE,
U.S. Senate,
Washington, DC.

DEAR SENATOR WELLSTONE: We ask that you vote against S. 270, the ''Texas Low-Level Radioactive Waste Disposal Compact Consent Act'' because it:

Approves of what appears to be environmental racism that resulted in selecting a poor[1] Mexican American community[2] which does not want the dump[3] and is already the location of one of the largest sewage sludge projects in the country.[4] It is one of numerous proposed radioactive and hazardous facilities along the Mexican border.

Although the Compact does not expressly designate Hudspeth County, the Faskin Ranch near Sierra Blanca clearly has been chosen and a draft license approved. The decision Congress now faces on Compact approval cannot be made in a vacuum, ignoring serious environmental justice questions that have been raised about the site selection process. Congressional approval would make challenging the unjust procedures that have been carried out, in apparent contradiction of the 1994 Executive Order on environmental justice, more difficult because more out-of-state money, pressure and legal commitments will come to bear.

We caution Congress not to be complicit in what has become, whether intentional or not, a repulsive trend in this country of siting the most hazardous and undesirable facilities in poor communities with high percentages of people of color. Texas is second only to California, another proposed radioactive dump state, in the number of commercial hazardous waste facilities located in communities with above-national-average percent people of color.[5]

Deals with intensely radioactive materials which, despite their classification as ''low-level,'' are not low risk and include all the same elements as high-level waste from nuclear power and weapons. Nationally, nuclear power waste comprises the vast majority and medical waste consistently comprises less than one tenth of a percent of the radioactivity in so-called ''low-level'' waste.[6] For Main and Vermont, 99.5% to 100% is from nuclear reactors[7] and lasts for centuries. In contrast, medical treatment and diagnosis wastes characteristically have tiny amounts of relatively low-concentrations of radioactivity with very short hazardous lives.[8] Options other than burial with reactor waste are technically viable and need exploration.

Potentially threatens the Rio Grande by permitting burial of long-lasting (hundreds to millions of years hazardous[9]), highly concentrated wastes (some can give a lethal dose in about 5 minutes[10]) in soil trenches destined to leak[11] and requiring only 100 years of institutional control.[12]

According to the 1993 license application for the Sierra Blanca site, it is part of ''the most tectonically active area within the State of Texas.'' The atomic waste is proposed to be buried directly above a fault. This presents an unacceptable risk from earthquakes.

Violates the 1983 La Paz Agreement with Mexico in which both countries agreed to cooperate to ''. . . prevent, reduce and eliminate sources of pollution . . . which affect the border area . . .'' The site, approximately 16 miles from the Rio Grande, is well within the ''border area'' (63 miles on each side of the border).

Opens the door to waste from all over the country, despite claims to the contrary. The Compact has numerous provisions[13] for importing radioactive waste from more generators than those in Maine, Vermont and Texas. The Compact Commission (governors' appointees from Texas, Maine, Vermont and any future party states) will have the power, without legislative or local approval, to enter into agreements to take waste from out of compact.[14] With a majority vote of the Compact Commission and the Texas legislature, other states may become party states. So, to claim that the Compact protects from other states dumping is misleading and false.

Has numerous loopholes in the provisions that are touted to limit out-of-compact waste volume to 20% of the amount Texas dumps. This is misleading because it is the amount of radioactivity that is of concern. There is no limit on the amount of radioactivity that can be imported into the proposed Texas dump. Wastes imported from non-party states via agreements are not subject to the 20% limit. The limit is only an estimate based on a 50-year projection and it can be changed.[15] It does not apply to wastes brought in for ''processing.'' A major radioactive waste processor has entered into an option agreement[16] to lease property neighboring the proposed dump, thus indicating another avenue for unlimited volumes of radioactive waste going to Hudspeth County.

Appears to violate Title VI of the 1964 Civil Rights Act passed by Congress to prevent discriminatory activities and prohibiting use of federal money for programs that discriminate.[17]

Will result in thousands of miles of unnecessary transportation of dangerous radioactive materials including plutonium, cesium, and strontium from atomic power plants. Wastes will be trucked from Maine, Vermont, east Texas and, very likely, other locations, to the border area.

For these reasons, we urge that you give S. 270 close scrutiny and a ''No'' vote.

For further information (including contact information on the following signers) please contact Diane D'Arrigo at Nuclear Information and Resource Service (202) 328–0002 (ext 2).

Thank you,

Signers Opposing S. 270, The Texas Compact and Sierra Blanca Nuclear Waste Dump:

ACES/Hudspeth Directive for Conservation, Alliance for Survival, Americans for a Safe Future (CA), Arizona Safe Energy Coalition, Asociacion Mexicana de Estudios para la Defensa del Consumidor, Association Ecologica Santo Tomas, Audubon Council of TX, AWARE, Andrews, TX, Blue Ridge Environmental Defense League, Border Coalition Against Radiation Dumping, Border Environmental Network, California Communities Against Toxics, Catholic Diocese of El Paso, Center for Environmental Health, Citizen Alert (NV), Citizen Action Coalition of Indiana, Citizens Awareness Network (New England), Citizens Protecting Ohio, Citizens at Risk: Cape Cod (MA), Citizens Energy Coalition (NJ), Coalition for Nuclear Power Postponement (DE), Comite de Derechos Humanos de Tabasco, Committee for a Safe Energy Future (ME), Communities Helping Oppose Radioactive Dumping (NJ), Connecticut Opposed to Waste, Consejo Ecologico de Mazatlan, Conservation Council of North Carolina, Crescere, Desert Citizens Against Pollution, and Donald Judd Foundation (TX).

Earth Day Coalition (OH), Earth Island Institute, Earthjustice Legal Defense Fund, EarthWINS (WI), Environmental Coalition on Nuclear Power (PA), Fort Davis TX Chamber of Commerce, Friends of the Earth, GE Stockholders Alliance, Global Resource Action, Grandmothers for Peace Internat'l., Greenpeace, Greenpeace Mexico, Grupo De Los Cien, Grupos de Estudios Ambientales, Hightower Radio, Hoosier Env'tal Council (IN), HOPE (NE), Houston Audubon Society, Indigenous Environmental Network (AK), Indigenous Environmental Network, Internatl'l Env'tal Alliance of the Bravo, League of United Latin American Citizens (LULAC), Madres de East Los Angeles, Marfa TX Chamber of Commerce, Mennonite Central Committee, Wash. Office, Missouri Coalition for the Environment, and Movimiento Alterno para la Recuperacion de los Ecosistmas.

Nat'l Env'tal Coalition of Native Americans, National Audubon Society, NC WARN, NC Ground Zero, New England Coalition on Nuclear Pollution, Nuclear Guardianship Project, Nuclear Waste Citizens Coalition, Nuclear Information & Resource Service, Oilwatch Mexico, Oyster Creek (NJ) Nuclear Watch, Peace Farm, Amarillo, People Organized to Stop Toxics, Dallas, People for Community Recovery (IL), Physicians for Life, Physicians for Social Responsibility, Plutonium Free Future, Prairie Island Coalition (MN), Prairie Alliance (IL), Presbyterian Church USA, Wash. Office, Presidio County TX Attorney, Public Citizen, and Public Citizen Texas.

Radioactive Waste Management Associates, Rio Grande Restoration (NM), Safe Energy Communication Council, Save Sierra Blanca, Save Ward Valley, Shundahai Network, Sierra Club, Sierra Blanca Legal Defense Fund, SMART (Mothers Against Radioactive Transport), South West Organizing Project, Southern Organizing Committee for Economic and Social Justice, Southwest Network for Environmental and Economic Justice, Southwest Public Workers Union, Serious Texans Against Nuclear Dumping (STAND), Students for Earth Awareness, Texans United, The Greens/Green Party USA, and Three Mile Island Alert.

U.S. Public Interest Research Group, Union of American Hebrew Congregations, Union de Grupos Ambientalistas de Mexico, United Methodist General Board of Church & Society, Vermont Public Interest Research Group, Yggdrasil Institute (US/France), ZHABA, Water Information Network, West Texas Catholic Ministries, Westchester Peoples Action Coalition, and Women's International League for Peace & Freedom.

FOOTNOTE'S

[1] 1990 Census of Population and Housing, Hudspeth County, Texas, pg. 1. Per capita income $7,994.

[2] Neighbor, Howard D. ''Low-Level Radioactive Dumpsiting in West Texas: Another Example of Texas Racism?'' University of Texas at El Paso, delivery at WSSA/ABS, January 22, 1994, p.6: ''65% of Hudspeth County population is Mexican American.''

[3] Telephone survey prepared for Texas Low Level Radioactive Waste Disposal Authority by K Associates, El Paso, TX, January 1992.

[4] Salopek, Paul and David Sheppard, El Paso Texas, ''Desert-bound Waste: Poison or Promise?'' June 14, 1992, ''It will be the nation's largest effort to artificially fertilize desert rangeland with human waste.'' MERCO Joint Venture, an Oklahoma based waste handler is land spreading NY City sewage sludge in the same area as the proposed atomic waste site.

[5] Goldman, Benjamin A. and Laura Fitton, ''Toxic Wastes and Race Revisited,'' Center for Policy Alternatives, NAACP and United Church of Christ Commission for Racial Justice, 1994, p.11.

[6] DOE annual State-by-State Assessments of LLRW Shipped to and Received at Commercial Disposal Sites 1985–1995.

Footnotes at end of letter.

[7] State-by-State Assessment of Low-Level Radioactive Wastes Received at Commercial Disposal Sites, DOE/LLW–181 (1993), DOE/LLW–152 (1992) DOE/LLW–132 (1991), DOE/LLW–224 (1994), DOE/LLW–237 (1995).

[8] Hamilton, Minard, ''Radioactive Waste: The Medical Factor,'' Nuclear Information and Resource Service, January 1993.

[9] The hazardous life of a radioactive material is generally 10 to 20 half-lives, the time it takes to decay to a thousandth to a millionth of the original amount. The radioactive waste from atomic power plants that would go to Sierra Blanca includes plutonium-239 hazardous for 240,000 to 480,000 years, iodine-129 hazardous for 170 to 340 million years, cesium-135 hazardous for 20 to 40 million years, cesium-137 hazardous for 300 to 600 years, nickel 59 hazardous for 800,000 to 1.6 million years.

[10] Cesium-137 can be present in ''low-level'' radioactive waste up to 4600 curies per cubic meter (NRC 10 CFR 61.55 ''Waste Classification.''), and that amount can deliver a lethal dose in approximately 5 minutes.

[11] Nuclear Regulatory Commission (NRC) regulations 10 CFR 61.41 ''Protection of the General Public from releases of radioactivity'' allows ''[c]oncentrations of radioactive material [to be] . . . released to the general environment in ground water, surface water, air, soil, plants or animals'' that results in doses up to 25 millirems/year to whole body and any organ but the thyroid which can receive 75 millirems/year. ''Millirems are an expression of biological damage to tissue from ionizing radiation and not directly measurable. Such a standard is unenforceable, relying upon unverified computer modeling to predict, no guarantee, compliance.

[12] NRC regulations 10 CFR 61.59(b) NRC ''Institutional control. . . . institutional controls may not be relied upon for more than 100 years . . .''

[13] HR 629/S.270: Section 2.01(13) Texas, Maine and Vermont are only the ''initial'' party states; Section 3.05(6) Authority to ''[e]nter into an agreement with any person, state, regional body, or group of states for the importation of low-level radioactive waste into the compact for management or disposal . . .;'' Section 7.01 ''Any other state may be made eligible for party status . . .''

[14] HR 629/S.270: Section 3.05(6).

[15] HR 629/S.270: Section 7.09. The compact expressly provides for contracting and compacting with more states.

[16] ''Option Agreement,'' The Scientific Ecology Group, Inc. and Cynthia Hoover, March 7, 1994.

[17] Carman, Neil J., Lone Star Chapter Sierra Club, ''Civil Rights and Environmental Justice Executive Order applicability to proposed Low-Level Radioactive Waste Dump near Sierra Blanca, Texas'' letter, June 24, 1994.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 9:30 a.m., Tuesday, June 16.

Thereupon, the Senate, at 7:03 p.m., adjourned until Tuesday, June 16, 1998, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate June 15, 1998:

DEPARTMENT OF STATE

JAMES HOWARD HOLMES, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF LATVIA.

STEVEN ROBERT MANN, OF PENNSYLVANIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF TURKMENISTAN.

KENNETH SPENCER YALOWITZ, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF GEORGIA.

IN THE ARMY

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be brigadier general

COL. DALE R. BARBER, 0000.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be brigadier general

COL. ROBERT T. DAIL, 0000.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C. SECTION 12203:

To be brigadier general

COL. ROBERT A. COCROFT, 0000.

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C, SECTION 601:

To be vice admiral

REAR ADM. JAMES F. AMERAULT, 0000.

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY UNDER TITLE 10, U.S.C., SECTIONS 624 AND 628:

To be major

ANGELA D. MEGGS, 0000.

IN THE MARINE CORPS

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE TEMPORARY GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 6222:

To be captain

MICHAEL J. COLBURN, 0000.

IN THE NAVY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADES INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTIONS 624 AND 628:

To be commander

JOHN S. ANDREWS, 0000.
WILLIAM G. DAVIS, 0000.

To be lieutenant commander

GREGORY S. LEPKOWSKI, 0000.
WILLIAM M. STEELE, 0000.

CONFIRMATIONS

Executive nominations confirmed by the Senate June 15, 1998:

UNITED STATES ENRICHMENT CORPORATION

MARGARET HORNBECK GREENE, OF KENTUCKY, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE UNITED STATES ENRICHMENT CORPORATION FOR A TERM EXPIRING FEBRUARY 24, 2003.

DEPARTMENT OF JUSTICE

JAMES K. ROBINSON, OF MICHIGAN, TO BE AN ASSISTANT ATTORNEY GENERAL.

THE JUDICIARY

ROBERT D. SACK, OF NEW YORK, TO BE UNITED STATES CIRCUIT JUDGE FOR THE SECOND CIRCUIT.