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House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, January 30, 2001, at 2 p.m.

Senate

THURSDAY, JANUARY 25, 2001

The Senate met at 11:31 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. The prayer today will be offered by our guest Chaplain, Father James Francis Trainor, pastor at Saint Mary's/Saint Patrick's Parish, Wilmington, DE.

PRAYER

The guest Chaplain, Father James Francis Trainor, offered the following prayer:

Let us pray and bring ourselves into the presence of the Lord.

Loving God, Creator of all that is and all that shall be, who in Your providence have filled our lives with the opportunity for sufficiency in our everyday existence, give us a clear vision of the challenge You set before us as individuals and as a nation.

Help us to live this vision with such an appreciation of our blessing that we feel compelled to share that blessing and that sufficiency with all our sisters and brothers in the human family.

Lord, in a special way, guide and strengthen the men and women of this Senate as they seek daily to solve the problems and meet the challenges of this Nation. Help them to have that honest dedication which singles them out as Your humble servants. May they always remember that You are at their side, guiding their steps and weighing their actions.

Help these servants of the people, as they enter into a new year and a new millennium, to be filled with such courage that they fear not the tasks before them but meet them with confidence, remembering that they can do all things through You who strengthen them. May they recall that wisdom of old: ''Unless the Lord builds the city, you labor in vain, who build it.''—Psalm 127:1. May they walk always with You. Amen.

PLEDGE OF ALLEGIANCE

The Honorable WAYNE ALLARD, a Senator from the State of Colorado, led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

The PRESIDING OFFICER (Mr. ALLARD). The Senator from Delaware is recognized.

THE GUEST CHAPLAIN

Mr. BIDEN. Mr. President, it is my honor to welcome Father Jim Trainor to the Senate this morning, but I think it was his honor to be escorted to the President's chair by one of the great men of the Senate, Senator STROM THURMOND. I am sure one of the things that Father Trainor will take from this experience is, not particularly the fact that he gets to see Senator CARPER and me—he sees us all the time at home—but the fact he got to meet STROM THURMOND, the legendary STROM THURMOND.

Mr. THURMOND. Thank you. That is kind of you.

Mr. BIDEN. When Father Trainor put his hand out—Senator THURMOND was introduced to Father Trainor a moment before the prayer—he looked at Senator THURMOND and said: ''Senator, you are an inspiration.'' And you are an inspiration, STROM. You are an inspiration to all of us and you are a darned good friend of mine and I'm glad you got to meet my buddy, Father Jim Trainor.

My colleagues do not know this, but Father Trainor prays for us every Sunday in Wilmington. I think he prays particularly hard for me because he is always making an extra prayer—maybe the Irish part of him—praying for the politicians and public officials.

I say to the majority leader, Senator LOTT, I go to a church called Saint Joseph's on the Brandywine, an old church that was built by the Du Pont family for ''their Irish'' back at the turn of the century, the turn of the 19th century, the early 1800s.

But my daughter and my wife like to go to Saint Patrick's Church, which is an inner-city church that, when I was a kid growing up, was in an Irish parish, and is now in the middle of the city and the parish is predominantly African American. It has become the haven for everyone in need in the city. Father Trainor has been there for about 25 years and has built and rebuilt that parish.

There is a long series of steps to go up to the church. It is an old-fashioned church where the actual church altar is on the second floor and below are all the meeting rooms. You walk up these two flights of stairs and occasionally—I know my colleagues will find this hard to believe—I am late.

It is such an honor to be invited here and an honor to have an opportunity to invite someone here. As you all know,

this invitation went out over 6 months ago, a long time ago.

So I made the mistake of walking in a little bit late this Sunday evening for 5 o'clock mass. As I walked in the door, I knew I made a mistake. It was like being back in school. Father Trainor was up in the pulpit and I missed part of his sermon. He looked down to the congregation and he said: By the way, one other thing I want to tell you all. I want to tell you that I have had the great honor of being invited to open a session of the U.S. Senate this week. It came from the late JOE BIDEN—who just walked in the door. And then he proceeded to tell a story I hope he won't mind my telling.

He was standing in front of the entire congregation last Sunday—and by the way, this congregation attracts most of its people not from the parish. They are young professionals who come from all over the city to come into that 5 o'clock mass at night because of Father Trainor. It is always packed. It is literally standing room only. The few of us who are occasionally late, we stand a lot.

He told the following story: ''I want the congregation to pray for me,'' he said, ''because I hope I don't make the mistake I made the first time I was in Washington.''

I was a young seminarian, in graduate school, and I came to Baltimore to drop off my trunk early in the summer. I had a good friend with me who was wheelchair bound. It was his car. We decided to go visit Washington. The only thing I remember in Washington is everything is steps, steps, steps, steps. I was a pretty tough guy, and I would take that wheelchair and move it up the stairs.

He is going like this in the pulpit.

So we went all over the city. We finished up at the Capitol.

That was before, thanks to Bob Dole and others, we had accessible entrances to our buildings in 1961 or 1962. I don't remember the exact year.

He said:

I got to the Capitol steps and I looked up and said, ''Sweet Lord, I can't do that.'' I walked around the side. There was a nice Capitol Policeman there. I said, ''You guys have elevators here?'' He said, ''Sure, bring your friend in.'' I brought my friend in, and the officer said, ''You can use those elevators. You can use them. I am sure they won't mind because of the circumstances.''

Then two senatorial fellows got in the elevator and he said they both looked at him.

He said:

I didn't know what to say.

I hope I am saying this accurately.

He said:

Senators, I am sorry we are in here, but the police officer told us that because the other umbrella was broken, we could take this umbrella to the second floor.

He said:

I hope I don't do that when I say my prayer this time.

I told him a story. The first time I came here, I was a student at the University of Delaware. A number of my friends went to Georgetown, and I loved coming up here. On a Saturday morning, I came up. There was an unusual Saturday session which had just closed down.

There were no metal detectors. A lot of you guys worked here as pages and had experience as staff. I walked through the double doors. The Senate had just gone out. I just walked in. The doors were open. I walked back by the Marble Room. No one was around. I opened the Chamber doors, and I was in awe. I think we all felt that the first time we ever stood in this Chamber. I was in awe. Literally, it took my breath away.

I walked in, looked around, and I walked up and sat in the chair. I was not being a wise guy. I was in awe. I sat down in the President's chair, looking out, and all of a sudden this officer grabs me, spins me around, and stands me up. He scared the devil out of me, understandably. He knew what I was doing and arrested me.

Most of you do not know that there is a police station downstairs underneath this building. He took me down. By the time we got down there, he realized I was just a college student in total awe of this place.

I was elected to the Senate 10 years later. The first day I walked into the Senate Chamber, and a police officer tapped me on the shoulder. He said: Do you remember me, Senator?

I said: No, I don't.

He said: I arrested you 10 years ago when you came in.

We both had inauspicious starts in the Senate. I say to you, Father, your prayer was right on target, and the finish was much stronger than the finish I have had. I thank you for being here.

I conclude by saying it is genuinely an honor for the State of Delaware to have a Senate host Chaplain today. Reverend Ogilvie, I thank you. You are a consummate gentleman, and I appreciate the hospitality you offered to Father and always to all of us in the Senate.

I note for the RECORD and say to my colleague from Delaware, Senator CARPER, I only know of a total of three other Delawareans since I have been here who have ever been guest Chaplains. Senator CARPER knows them all: Rabbi Kenneth S. Cohen from Congregation Beth Shalom was a guest Chaplain in 1982, and Father Robert Balducelli from St. Anthony's Parish. We need a little Irish levity brought into this. Now we have it all covered in my State. I thank you again, Father Trainor. I know the majority leader wishes to speak. After he does, I want to ask permission to yield to my colleague from Delaware for brief comments.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. Mr. President, I have enjoyed the welcome speech from the Senator from Delaware, and I look forward to hearing from the other Senator from Delaware.

Welcome, Father Trainor. We all welcome you. Thank you for being here. You and our Chaplain, Lloyd Ogilvie, mean a great deal, obviously, to the Senators from Delaware, but also to the spirit of our country. We thank you for being here this morning and being our guest Chaplain.

COMMITTEE ASSIGNMENTS

Mr. LOTT. Mr. President, today I enter into the RECORD the majority party committee assignments for the 107th Congress. I thank all Members for their cooperation during this organization effort. I send to the desk the majority committee assignments. I understand Senator DASCHLE will be presenting his committee assignments later.

The committee assignments are as follows:

REPUBLICAN ''A'' COMMITTEE ASSIGNMENTS FOR THE 107TH CONGRESS

(Note: All committees have an equal number of Republicans and Democrats)

AGRICULTURE

Senators Lugar, Helms, Cochran, McConnell, Roberts, Fitzgerald, Thomas, Allard, T. Hutchinson, and Crapo.

APPROPRIATIONS

Senators Stevens, Cochran, Domenici, Specter, Bond, McConnell, Burns, Shelby, Gregg, Bennett, Campbell, Craig, K. Hutchison, and DeWine.

ARMED SERVICES

Senators Warner, Thurmond, McCain, B. Smith, Inhofe, Santorum, Roberts, Allard, T. Hutchinson, Sessions, Collins, and Bunning.

BANKING

Senators Gramm, Shelby, Bennett, Allard, Enzi, Hagel, Santorum, Bunning, Crapo, and Ensign.

COMMERCE

Senators McCain, Stevens, Burns, Lott, K. Hutchison, Snowe, Brownback, G. Smith, Fitzgerald, Ensign, and Allen.

ENERGY

Senators Murkowski, Domenici, Nickles, Craig, Campbell, Thomas, Shelby, Burns, Kyl, Hagel, and G. Smith.

ENVIRONMENT AND PUBLIC WORKS

Senators B. Smith, Warner, Inhofe, Bond, Voinovich, Crapo, Chafee, Specter, and Campbell.

FINANCE

Senators Grassley, Hatch, Murkowski, Nickles, Gramm, Lott, Jeffords, Thompson, Snowe, and Kyl.

FOREIGN RELATIONS

Senators Helms, Lugar, Hagel, G. Smith, Thomas, Frist, Chafee, Allen, and Brownback.

GOVERNMENTAL AFFAIRS

Senators Thompson, Stevens, Collins, Voinovich, Domenici, Cochran, Gregg, and Bennett.

HEALTH, EDUCATION, LABOR, AND PENSIONS

Senators Jeffords, Gregg, Frist, Enzi, T. Hutchinson, Warner, Bond, Roberts, Collins, and Sessions.

JUDICIARY

Senators Hatch, Thurmond, Grassley, Specter, Kyl, DeWine, Sessions, Brownback, and McConnell.

REPUBLICAN ''B'' COMMITTEE ASSIGNMENTS FOR THE 107TH CONGRESS

AGING

Senators Craig, Jeffords, Burns, Shelby, Santorum, Collins, Enzi, T. Hutchinson, Fitzgerald, and Ensign.

BUDGET

Senators Domenici, Grassley, Nickles, Gramm, Bond, Gregg, Snowe, Frist, G. Smith, Allard, and Hagel.

ETHICS

Senators Roberts, Voinovich, and Thomas.

INDIAN AFFAIRS

Senators Campbell, Murkowski, McCain, Domenici, Thomas, Hatch, and Inhofe.

INTELLIGENCE

Senators Shelby, Kyl, Inhofe, Hatch, Roberts, DeWine, Thompson, and Lugar.

JOINT ECONOMIC COMMITTEE

Senators Bennett, Brownback, Sessions, Crapo, and Chafee.

RULES

Senators McConnell, Warner, Helms, Stevens, Cochran, Santorum, Nickles, Lott, and K. Hutchison.

SMALL BUSINESS

Senators Bond, Burns, Bennett, Snowe, Enzi, Fitzgerald, Crapo, Allen, and Ensign.

VETERANS' AFFAIRS

Senators Specter, Murkowski, Thurmond, Jeffords, Campbell, Craig, and T. Hutchinson.

Mr. DASCHLE. Mr. President, the following are the Democratic committee assignments for the 107th Congress. One more Democratic Senator will be added to the Energy Committee at next Tuesday's conference. The Energy Committee list will be reprinted in next Tuesday's RECORD to reflect that change.

DEMOCRAT COMMITTEE ASSIGNMENTS FOR THE 107TH CONGRESS

AGRICULTURE

Senators Harkin, Leahy, Conrad, Daschle, Baucus, Lincoln, Miller, Stabenow, Nelson (NE), and Dayton.

APPROPRIATIONS

Senators Byrd, Inouye, Hollings, Leahy, Harkin, Mikulski, Reid, Kohl, Murray, Dorgan, Feinstein, Durbin, Johnson, and Landrieu.

ARMED SERVICES

Senators Levin, Kennedy, Byrd, Lieberman, Cleland, Landrieu, Reed, Akaka, Nelson (FL), Nelson (NE), Carnahan, and Dayton.

BANKING

Senators Sarbanes, Dodd, Johnson, Reed, Schumer, Bayh, Miller, Carper, Stabenow, and Corzine.

COMMERCE

Senators Hollings, Inouye, Rockefeller, Kerry, Breaux, Dorgan, Wyden, Cleland, Boxer, Edwards, and Carnahan.

ENERGY

Senators Bingaman, Akaka, Dorgan, Graham, Wyden, Landrieu, Bayh, Feinstein, Schumer, and Cantwell.

ENVIRONMENT

Senators Reid, Baucus, Graham, Lieberman, Boxer, Wyden, Carper, Clinton, and Corzine.

FINANCE

Senators Baucus, Rockefeller, Daschle, Breaux, Conrad, Graham, Bingaman, Kerry, Torricelli, and Lincoln.

FOREIGN RELATIONS

Senators Biden, Sarbanes, Dodd, Kerry, Feingold, Wellstone, Boxer, Torricelli, and Nelson (FL).

GOVERNMENTAL AFFAIRS

Senators Lieberman, Levin, Akaka, Durbin, Torricelli, Cleland, Carper, and Carnahan.

HEALTH, EDUCATION, LABOR AND PENSIONS

Senators Kennedy, Dodd, Harkin, Mikulski, Bingaman, Wellstone, Murray, Reed, Edwards, and Clinton.

JUDICIARY

Senators Leahy, Kennedy, Biden, Kohl, Feinstein, Feingold, Schumer, Durbin, and Cantwell.

BUDGET

Senators Conrad, Hollings, Sarbanes, Murray, Wyden, Feingold, Johnson, Byrd, Nelson (FL), Stabenow, and Clinton.

RULES

Senators Dodd, Byrd, Inouye, Feinstein, Torricelli, Schumer, Breaux, Daschle, and Dayton.

SMALL BUSINESS

Senators Kerry, Levin, Harkin, Lieberman, Wellstone, Cleland, Landrieu, Edwards, and Cantwell.

VETERANS

Senators Rockefeller, Graham, Akaka, Wellstone, Murray, Miller, and Nelson (NE).

SPECIAL COMMITTEE ON AGING

Senators Breaux, Reid, Kohl, Feingold, Wyden, Bayh, Lincoln, Carper, Stabenow, and Carnahan.

JOINT ECONOMIC

Senators Reed, Kennedy, Sarbanes, and Corzine.

INTELLIGENCE

Senators Graham, Levin, Rockefeller, Feinstein, Wyden, Durbin, Bayh, and Edwards.

INDIAN AFFAIRS

Senators Inouye, Conrad, Reid, Akaka, Wellstone, Dorgan, and Johnson.

ETHICS

Senators Reid, Akaka, and Lincoln.

Mr. LOTT. Mr. President, the Senate will now be in a period for morning business and will adjourn after that morning business until 12 noon on Monday. During Monday's and Tuesday's session, we will consider three Cabinet nominations with the votes to occur at 2:45 p.m. on Tuesday, unless we get an agreement for some change. Right now, Senators should expect recorded votes at 2:45 p.m. on Tuesday.

I must say early, so I will not be accused of not putting Senators on alert, already we are being squeezed on both ends of the week. Senators say: Please don't have any votes after Wednesday night. Oh, please don't have any votes before Tuesday night.

We are not going to be able to do that, and we are going to have to start on Mondays. We are going to have to have votes on Tuesday mornings, Thursdays and Thursday nights, too. I realize it is early in the session and we are not under the gun, but we do need to get done as soon as possible the other nominations that have been agreed to so we can move to the last nomination and debate and vote on that one.

Those votes on confirmation at 2:45 p.m. will be Elaine Chao to be Secretary of Labor, Gale Norton to be Secretary of the Interior, and Gov. Christine Todd Whitman to be Administrator of the Environmental Protection Agency.

I ask all Senators for their assistance. Senator REID from Nevada is here. I know he has been working on helping move these along, especially Governor Whitman to be Administrator of EPA. I thank Senators on both sides of the aisle for that cooperation.

DISCHARGE AND REFERRAL OF S. 21

Mr. LOTT. Mr. President, I ask unanimous consent that S. 21 be discharged from the Committee on Finance and be referred to the Committees on Budget and Governmental Affairs, per the order of August 4, 1977.

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

Mr. LOTT. I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I certainly support the leader's efforts to have us work a full workweek in the Senate Chamber. I do say we can really develop some bad habits. I know our leader has already been requested to see if we can get off on Wednesday nights. We really have to get started having some votes on more than 3 days a week.

I also say to the leader that we worked hard on this side, as I have indicated. There is a spirit of bipartisanship. I think that was helped yesterday with the meeting at the White House.

We really want to move these along, and the record should reflect, except for one nomination, Tuesday afternoon they will all have been completed. We hope in the foreseeable future we will be able to work the final one, debate it, resolve it. Hopefully, that can be done expeditiously.

We are willing to do the best we can. The record should reflect, with the remaining nomination, there are tons of questions. I know the committees are trying to work their way through that so we can have those answers so the debate can take place expeditiously.

Mr. LOTT. Mr. President, if I may respond to Senator REID's comments, with regard to the questions that need to be answered by the designee to be Attorney General, former Senator Ashcroft, this very morning we worked to encourage that those questions be answered as quickly as possible and gotten to the committee. Hopefully, that will be done today, and I understand Senator DASCHLE, if that can be done, is going to work with us to see if we can move that nomination in a reasonable time next week. I appreciate that very much.

Senator REID touched on our meeting with the President yesterday morning. It was a bipartisan, bicameral meeting. I thought it was a very good meeting. Again, the President was reaching out to the Congress and to the American people through their leaders. That was the sixth meeting he has had with congressional leaders in only 3 days as President, or workweek as President. He did have Sunday.

It has been Republicans, Democrats, leaders on education, the elected leaders, but the thing I liked about it, it

was not just an effort to reach out with platitudes of courtesy. We got into a discussion on issues, not in great depth, but Senators and Congressmen were able to raise points of concern and interest. I think there was a belief on both sides that it was a very positive meeting. I hope this is the first of many of that type in the months to come.

I will be glad to yield the floor at this time so others may speak.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, before the majority leader leaves, the one referral the majority leader made we just learned has not been cleared by Finance yet.

Mr. LOTT. Mr. President, I thought it was routine business and thought it had been cleared.

ORDER FOR REFERRAL VITIATED

Mr. LOTT. Mr. President, I ask unanimous consent that the agreement be withheld, until we make sure it has been cleared, as always.

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

Mr. CARPER addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

THE GUEST CHAPLAIN

Mr. CARPER. Mr. President, I want to briefly thank Senator BIDEN for inviting Father Trainor to open this session of the Senate with the prayer that he has given. Senator BIDEN shared with us a story of his first visit here as a very young man, and his second visit, at 30 years old, when he was sworn into office, barely just old enough to take the oath.

When I think of his youth, the first time he stepped into this room as a Senator, and the first time I stepped into this room as a Senator earlier this month, I am so old, they named me a member of the Aging Committee. So there is a little bit of difference between his perception and mine. But I am delighted to be here and just thrilled to be able to welcome Father Trainor today.

JOE BIDEN mentioned that Senator THURMOND is an inspiration to us all. I just want to say Father Trainor continues to serve as an inspiration to us all, whether we be Catholic—or in my case, Protestant—or some other faith.

St. Pat's is in the inner-city part of Wilmington. It is an urban parish and an urban ministry, but people actually worship there from all over the northern part of our State.

I will be privileged to worship there, too, in a month or 2 at the end of our St. Patrick's Day parade, which winds down and ends right at the front door of St. Patrick's Church. We will go in and worship together—people of all faiths. We will appreciate the warm welcome, the hospitality, and the grace that is shared at that time.

I want to say one other word, if I may, about St. Pat's and Father Trainor. In a passage of Scripture in the New Testament, Matthew 25, people are gathered at the Heavenly Gates. Some are going to get in and some are not, and those who are going to be extended the privilege of living there forever in Heaven are told: When I was hungry, you fed me; when I was thirsty, you gave me something to drink; when I was naked, you clothed me; when I was sick and in prison, you came to visit me.

I just want to say at St. Pat's, as much as any church, as much as any parish in our State, that litmus test is still adhered to. And for those who are thirsty or hungry or homeless, or sick, they have a place to go.

I just want to say to Father Trainor, thank you for all that you do to make that the case and for sharing the Gospel with all of us and for really serving as a wonderful example. We welcome you here today. I am delighted to be able to be here to join with Senator BIDEN for this opportunity, and to say that the umbrellas still do work here, as Senator BIDEN alluded to earlier, and so do the elevators.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. I thank the Chair.

JUDGE ROGER GREGORY

Mr. ALLEN. Mr. President, I rise today to address the appointment of Roger L. Gregory to the U.S. Court of Appeals for the Fourth Circuit and the pending approval process of the Senate.

Judge Gregory was appointed to the bench during the congressional recess in December. He was sworn into office last Thursday, on January 18, 2001, in Charlottesville, VA. To many, this recess appointment was unacceptable because the President had nominated Judge Gregory last summer and he was never considered by the Senate or the Judiciary Committee before adjournment sine die.

There are Senators who understandably believe that promises and understandings have been breached concerning recess appointments. However, it is my belief that in Roger Gregory, the Fourth Circuit—and, indeed, America—has a well-respected and honorable jurist who will administer justice with integrity and dignity. He will, in my judgment, decide cases based upon and in adherence to duly adopted laws and the Constitution. I respectfully urge my colleagues and the administration to join me in supporting Judge Gregory.

I want to share with you my observations, and let you all know a bit more about Roger Gregory, the man.

Judge Gregory is a testament to what can be achieved in America through hard work and personal determination. He is the first person in his family to finish high school. He went on to graduate summa cum laude from Virginia State University, where his mother had once worked as a maid. He received his juris doctorate degree—his law degree—from the University of Michigan and later taught at Virginia State as an adjunct professor. Before his investiture as a judge, as a founding partner of the firm of Wilder & Gregory, Judge Gregory was a highly respected litigator representing mostly corporate and municipal clients in his hometown of Richmond, VA.

Last week, Roger Gregory became the first African American to be seated on the Fourth Circuit of the U.S. Court of Appeals.

He has been active in many civic and community affairs. He and I both served together on the Board of the Historic Riverfront Foundation in Richmond. He has served for many years on the board of directors of the Christian Children's Fund, the Richmond Renaissance Foundation, and the Black History Museum, among others.

In 1983, Commonwealth Magazine named Roger Gregory as one of ''Virginia's Top 25 Best and Brightest.'' In 1997, he was a recipient of the National Conference of Christians and Jews Award. He has an AV rating in Martindale-Hubbell, which is the highest combined legal ability and general recommendation rating given to lawyers. He has been a leader of the Old Dominion Bar Association, having served as President from 1990 through 1992.

A few weeks ago, I had the opportunity to personally sit down and talk with and kind of interview Judge Gregory. I am truly impressed and comfortable with his judicial philosophy. Judge Gregory understands that the judicial branch is not the legislative branch. He believes in the rule of law and stated that he would adhere to precedents established by the Fourth Circuit and the Supreme Court to guide his decisions.

During our conversation, Judge Gregory told me that he does not believe justice is what he called, ''result oriented,'' and instead, he believes the ''administration of justice is a process.'' He was firm in his conviction that his charge as a judge is to ''follow the rule of law and not participate in an activist court; as result-oriented judges are very dangerous.''

Moreover, Judge Gregory articulated to me an appreciation of the rights, prerogatives, and powers reserved to the States in our Federal system. In particular, Judge Gregory believes the States have broad powers to regulate and pass laws, and that unless the law is clearly repugnant and violates established constitutional principles, he believes the laws enacted by legislators should be upheld and respected by the courts.

Mr. President, and fellow Senators, I am cognizant that this body has the prerogative of ''advice and consent'' and could deny Judge Gregory a permanent appointment. No one should mistake my support of Judge Gregory's

confirmation with approval of the manner in which the former President handled this nomination.

At the time this nomination was first sent to the Senate last summer, I pledged to consider the nominee on his merits but took exception to the lateness of the nomination. It seemed to me the timing was calculated to accomplish a short-term political objective more than to achieve confirmation of a judge, and I felt that Mr. Gregory deserved better treatment.

Whatever the motive, the tardiness of the former President's action put the Senate in an impossible position. And the recess appointment has only compounded the harm. Still, we must act in the best interest of the judiciary and the country. I ask my colleagues today to recognize that no good for our judiciary or our country can be achieved by now striking back at the former President.

Let us rise above this procedural aggravation and act in a statesmen-like manner.

Mr. President, I submit to you and to my colleagues that Judge Roger L. Gregory is an exemplary citizen of the Commonwealth of Virginia. He has a sense of the properly restrained role of the judiciary and is eminently qualified to serve with distinction.

Mr. President, I respectfully ask my colleagues to hold the requisite hearing, after which I believe you will share my positive impression of Judge Roger Gregory, and thereafter confirm him to the U.S. Court of Appeals for the Fourth Circuit.

Thank you, Mr. President.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I ask unanimous consent that I may proceed irrespective of the adjournment order.

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

Mr. WARNER. Mr. President, I wish to advise my colleagues, I will not take a lengthy period.

I commend my partner in the Senate, Senator GEORGE ALLEN, a man for whom I have had the highest respect for so many years. We have worked together now for close to two decades, and this is our first joint appearance on the floor of the Senate; it is for a very important reason. I commend my colleague for his remarks and wish to associate myself with each and every word he has said.

Mr. President, I met Judge Gregory on July 13, shortly after he was nominated, and thereafter I sent a letter to the chairman of the Judiciary Committee in which I asked for hearings. I ask unanimous consent that letter be printed in the RECORD.

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

UNITED STATES SENATE,
Washington, DC, September 15, 2000.

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

DEAR MR. CHAIRMAN: Thank you for your willingness over the past several weeks to repeatedly discuss with me the nomination of Roger Gregory to serve as a judge on the United States Court of Appeals for the Fourth Circuit.

I am confident that Roger Gregory would serve as an excellent jurist on this distinguished court. I regret that the President, for reasons unknown to me, did not nominate Mr. Gregory until very near to the end of this Congress; however, I remain steadfast in my belief that the Senate should act on his nomination. Therefore, I once again respectfully request that you schedule a confirmation hearing for Mr. Gregory.

With kind regards, I am

Sincerely,

JOHN WARNER.

Mr. WARNER. I have prepared a letter to the President of the United States, George W. Bush, dated today, and my distinguished colleague has joined me in signing this letter. It is very short, and I shall read it:

DEAR MR. PRESIDENT: As a Virginian, Judge Roger Gregory is now serving in the United States Court of Appeals for the Fourth Circuit. The circumstances preceding his oath of office taken on January 18, 2001 are well known.

In the course of this process, we publicly announced—

That is Senator ALLEN and myself—

our support for then nominee Gregory and requested that the Judiciary Committee hold a confirmation hearing. Now, Judge Gregory's future tenure on the Fourth Circuit rests with your administration and, subject to your decision, then with the Senate's Judiciary Committee and the full Senate under its ''Advice and Consent'' responsibilities.

We continue to support Judge Gregory's nomination.

We have interviewed Judge Gregory, consulted with members of the bar, Judiciary, and others throughout the Commonwealth of Virginia about Judge Gregory's credentials. It is our belief that Judge Gregory is a well qualified candidate who will serve with distinction.

We fully respect the responsibilities you have to carefully review the overall situation regarding the Fourth Circuit and the views of the Chief Judge. Historically, Presidents have sought to achieve geographic representation in a circuit with members drawn from the several states within the circuit. It may well be that following your review of the Fourth Circuit, you will consider nominating or supporting a slate of candidates to provide to each state within the Fourth Circuit as a judge.

As you know, the Fourth Circuit serves the states of Virginia, West Virginia, North Carolina, South Carolina and Maryland. Currently, of the 11 judges sitting on the Fourth Circuit, four are Virginians, three are South Carolinians, two come from Maryland, and two are West Virginians.

We respectfully request that Judge Gregory's name be among those names that you support for confirmation to the Fourth Circuit.

Now, a few personal observations. I always go back to the Constitution and article I:

All legislative Powers herein granted shall be vested in a Congress of the United States. . . .

Then we proceed to article II:

The executive Power shall be vested in a President of the United States. . . .

And lastly, article III:

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their offices during good Behaviour. . . .

Three coequal branches of Government, and we are addressing an issue relating to a member of a coequal branch of the Federal Government, a sitting Federal judge. In my judgment, despite all of the unusual aspects of the nominating process, we should support this jurist, if for no other reason, out of respect for the Senate towards the coequal branch of another part of our Republic and the members therein.

Now, as I say, I interviewed him. I have known him. He is a law partner of one of our distinguished living former Governors, Governor Wilder.

My colleague pointed out he would be the first African American on the Fourth Circuit. It was my privilege many years ago, then as a relatively junior Senator, to nominate an African American, the first in the history of the Commonwealth of Virginia, to serve in the Federal judiciary, James Spencer.

I say to my colleague, I am privileged to join with him in now supporting this eminently qualified jurist for continuation on the Fourth Circuit.

Out of respect to our former colleague, Senator Robb, we should note that he was very much involved in the nomination process that preceded in the fall.

Lastly, I will say, with regard to the advice and consent role of the Senate, each time we exercise that important constitutional responsibility—I guess I speak for myself—I consider the nominees of a President are human beings, people with sensitivities that all of us have, people who have families, people who have friends. I will have that very much in mind as we proceed to consideration of our role with regard to Judge Gregory. Sometimes we lose sight of that. Couple that with the fact that we are examining a member of a coequal branch of our Federal Government and of our Republic. For that reason we should accord him every respect we can.

Nevertheless, we shall examine thoroughly such qualifications as our colleagues wish to raise. It is my hope and, indeed, my expectation that eventually this Chamber will render its advice and consent such that Judge Gregory may continue as a member of the Fourth Circuit.

Mr. BIDEN. Will the Senator yield for a moment?

Mr. WARNER. Yes, indeed.

Mr. BIDEN. Mr. President, one of the reasons why the senior Senator from Virginia is so well respected in this place is not only the fact that he is a consummate gentleman, but he pays

tribute to and honors the traditions of this great place.

I am aware that today was the maiden speech of his new colleague and our new colleague, the former Governor of Virginia.

I recall 28 years ago, when I got here, one's maiden speech was taken in a much more formal way, not by the speaker but by other Members of the Senate. I remember when I made my first speech, Senator John Stennis, Senator Allen, Senator Mansfield, Senator Javits all came and sat. I don't even remember what it was. It was an innocuous speech. They were all gracious enough to sit, turn their chairs, and act as if I was delivering the Declaration of Independence. I appreciated it very much.

Unlike my maiden speech, the maiden speech of the former Governor of the State of Virginia portends well for this body. To come here in the first speech he makes, to be in support of not the process but the person, who the Senators from Virginia could easily have concluded, because it was a Democratic nominee originally, should no longer remain on the bench because of the recess appointment and the manner in which it was taken, I take the speech of the Senator from Virginia to be more than merely about the nominee, who I agree is incredibly well qualified, having sat on the Judiciary Committee and sitting on the Judiciary Committee and being aware of his background.

I thank the Senator from Virginia, Mr. ALLEN, for making a maiden speech that meant something, that meant something about an individual and sent a signal to this body that I hope we on both sides of the aisle emulate for the next 2 years; that is, that we should look beyond partisan advantage and look to quality, the quality of what we are doing.

I compliment him on his maiden speech. I compliment him on the substance of the speech. I compliment my friend from Virginia, senior Senator, for being here. Senator ALLEN could have spoken about the dome, and he would have been here because that is the nature of the man. He understands the traditions of this place. They mean something. I am glad I get to serve with him.

Mr. WARNER. Mr. President, I express my profound appreciation and respect for my colleague from Delaware. We have enjoyed a very warm, personal, and professional relationship throughout my 23 years. I note that my colleague from Delaware has been here a number of years beyond that.

And I don't know of any Members, except maybe Senator BYRD or Senator THURMOND, who feel more deeply about the traditions here than my colleague from Delaware. I believe this morning was the longest speech on record with regard to a visiting member of the clergy, but it was heartfelt and it was fascinating to sit and listen.

These are some of the rare moments we share in this great institution when events such as that take place. I commend him and thank him. I know Senator BIDEN is the former chairman of the Judiciary Committee and he is well experienced regarding judicial nominations and the advice and consent role. Indeed, you noted the maiden speech of GEORGE ALLEN. The majority leader leaned over a few minutes ago and said beneath the tones of the system here, ''Usually, we wait 3 months.''

Two of us reminded the leader that this is a very important subject and one on which, indeed, the Senator could have extolled other aspects, particularly regarding education. But I think he chose the subject wisely, I say to my colleague from Virginia, and he chose the time wisely, because we should be without a moment's doubt in the minds of our colleagues about our support for this nominee and, indeed, our respect for the judicial branch.

I thank my colleague for the privilege of joining him today, and I commend him for his remarks. I also thank my colleague from Delaware.

I yield the floor.

The PRESIDING OFFICER (Mr. BUNNING). The Senator from Missouri is recognized.

Mr. BOND. Mr. President, I ask unanimous consent that I may be permitted to proceed as in morning business notwithstanding the order for the recess.

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

APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, and upon the recommendation of the majority leader, pursuant to 22 U.S.C. 2761, as amended, appoints the Senator from Alaska (Mr. STEVENS) as Chairman of the Senate Delegation to the British-American Interparliamentary Group conference during the 107th Congress.

The Chair, on behalf of the Vice President, pursuant to 22 U.S.C. 276h–276k, as amended, appoints the Senator from Alabama (Mr. SESSIONS) as Chairman of the Senate Delegation to the Mexico-U.S. Interparliamentary Group conference during the 107th Congress.

The Chair, on behalf of the Vice President, pursuant to 22 U.S.C. 276d–276g, as amended, appoints the Senator from Alaska (Mr. MURKOWSKI) as Chairman of the Senate Delegation to the Canada-U.S. InterParliamentary Group conference during the 107th Congress.

WELCOMING SENATOR ALLEN TO THE SENATE

Mr. BOND. Mr. President, I join my colleague from Virginia and my colleague from Delaware in welcoming our new member from the State of Virginia. Frankly, I am delighted to see another former Governor join this body. I wish there were more of us here. I know the Senator from Virginia will have a great deal to offer. He has already made a significant contribution, and it was a pleasure for me to be able to be here and to hear his first speech. I know not only from that speech, but from his actions, he is going to be an extremely valuable Member of this body. I think the senior Senator from Virginia will agree that having additional ''wahoos'' is always a good idea.

Mr. WARNER. I thank our colleague.

We wish the Senator well in the coming weeks. He is about to experience something that will require courage and God's will and godspeed.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

(The remarks of Mr. BOND pertaining to the introduction of S. 189 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

OFFICE OF COMPLIANCE REPORT TO CONGRESS

Mr. THURMOND. Mr. President, pursuant to Section 102(b) of the Congressional Accountability Act of 1995 (2 U.S.C. sec. 1302(b)), the Board of Directors of the Office of Compliance have submitted a report to Congress. This document, dated December 31, 2000 is titled a ''Review and Report on the Applicability to the Legislative Branch of Federal Laws Relating to Terms and Conditions of Employment and Access to Public Services and Public Accommodations.''

Section 102(b) requires this report to be printed in the CONGRESSIONAL RECORD, and referred to committees with jurisdiction. Therefore, I ask unanimous consent that the report be printed in the RECORD and that the report be appropriately referred.

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

SECTION 102(b) REPORT—REVIEW AND REPORT ON THE APPLICABILITY TO THE LEGISLATIVE BRANCH OF FEDERAL LAWS RELATING TO TERMS AND CONDITIONS OF EMPLOYMENT AND ACCESS TO PUBLIC SERVICES AND PUBLIC ACCOMMODATIONS

(Prepared by the Board of Directors of the Office of Compliance pursuant to section 102(b) of the Congressional Accountability Act of 1995, 2 U.S.C. §1302(b), December 31, 2000)

Section 102(a) of the Congressional Accountability Act (CAA) lists the eleven laws that, ''shall apply, as prescribed by this Act, to the legislative branch of the Federal Government.''[1] Section 102(b) directs the Board of Directors (Board) of the Office of Compliance (Office) to: ''review provisions of Federal law (including regulations) relating to (A) the terms and conditions of employment (including hiring, promotion, demotion, termination, salary, wages, overtime compensation, benefits, work assignments or reassignments, grievance and disciplinary procedures, protection from discrimination in personnel actions, occupational health and safety, and family and medical and other leave) of employees, and (B) access to public services and accommodations.''

''And, on the basis of this review, ''[b]eginning on December 31, 1996, and every 2 years thereafter, the board shall report on

(A) whether or to what degree the provisions described in paragraph (1) are applicable or inapplicable to the legislative branch, and (B) with respect to provisions inapplicable to the legislative branch, whether such provisions should be made applicable to the legislative branch.''

I. BACKGROUND

In December of 1996, the Board completed its first biennial report mandated under section 102(b) of the CAA (1996 Section 102(b) Report or 1996 Report).[2] In that Report the Board reviewed and analyzed the universe of federal law relating to labor, employment and public access, made initial recommendations, and set priorities for future reports. To conduct its analysis, the Board organized the provisions of federal law according to the kinds of entities to which they applied, and systematically analyzed whether and to what extent they were already applied to the legislative branch or whether the legislative branch was already covered by other comparable legislation. This analysis generated four comprehensive tables of laws which were categorized as: (1) provisions of law generally applicable in the private sector and/or in state and local government that also are already applicable to entities in the legislative branch, a category which included nine of the laws made applicable by the CAA; (2) provisions of law that apply only in the federal sector, a category which included the two exclusively federal-sector laws applied to the legislative branch by the CAA; (3) private-sector and/or state- and local-government provisions of law that do not apply in the legislative branch, but govern areas in which Congress has already applied to itself other, comparable provisions of law and; (4) private-sector laws which do not apply or have only very limited application in the legislative branch.

The Board then turned to its task of recommending which statutes should be applied to the legislative branch. In light of the large body of statutes that the Board had identified and reviewed, the Board determined that it could not make recommendations concerning every possible change in legislative-branch coverage. In setting its priorities for making recommendations from among the categories of statutes that the Board had identified for analysis and review, the Board sought to mirror the priorities of the CAA. Because legislative history suggested that the highest priority of the CAA was the application of private-sector protections to congressional employees where those employees had little or no protection, the Board focused its recommendations in its first report on applying the private-sector laws not currently applicable to the legislative branch.

The Board also determined in its 1996 Section 102(b) Report that, because of the CAA's focus on coverage of the Congress under private-sector laws, the Board's next priority should be to review the inapplicable provisions of the nine private-sector laws generally made applicable by the CAA. In December 1998 the Board set forth the results of that review in its second biennial report under Section 102(b) of the CAA (1998 Section 102(b) Report or 1998 Report).[3]

The 1998 Section 102(b) Report was divided into three parts. In Part I the Board reviewed laws enacted after the 1996 Section 102(b) Report, resubmitted the recommendations made in its 1996 Report, and made additional recommendations as to laws which should be made applicable to the legislative branch. In Part II the Board analyzed which provisions of the private-sector CAA laws do not apply to the legislative branch and recommended which should be made applicable. In Part III of the 1998 Report, although not required by section 102(b) of the CAA, the Board reviewed coverage of the General Accounting Office (GAO), the Government Printing Office (GPO) and the Library of Congress (the Library) under the laws made applicable by the CAA and made recommendations to Congress with respect to changing that coverage. The Board noted that the study mandated by Section 230 of the CAA which was submitted to Congress in 1996[4] did not include recommendations to Congress with respect to coverage of these three instrumentalities.[5] The Board concluded that the 1998 Section 102(b) Report, which focused on omissions in coverage of the legislative branch under the laws generally made applicable by the CAA, provided the opportunity for the Board to make recommendations to Congress regarding coverage of GAO, GPO and the Library under those laws.[6] As discussed in Section IV.C below, the Board Members identified three principal options for Congress to consider but were divided in their recommendation as to which option was preferable.

In the preparation of this 2000 Section 102(b) Report, the third biennial report issued under section 102(b) of the CAA, the Board has reviewed new statutes or statutory amendments enacted after the Board's 1998 Section 102(b) Report was prepared. The Board has also reviewed the Section 102(b) reports issued in 1996 and 1998 and the analysis and recommendations contained therein.

II. REVIEW OF LAWS ENACTED AFTER THE 1998 SECTION 102(b) REPORT

After reviewing all federal laws and amendments relating to terms and conditions of employment or access to public accommodations and services passed since October 1998, the Board concludes that there are no new provisions of law which should be made applicable to the legislative branch. As in the two previous Section 102(b) reports, the Board excluded from consideration those laws that, although employment-related, (1) are specific to narrow or specialized industries or types of employment not found in the legislative branch (e.g., employment in fire protection activities, or the armed forces); (2) established government programs of research, data collection, advocacy, or training, but do not establish correlative rights and responsibilities for employees and employers (e.g., statutes authorizing health care research); (3) authorize, but do not require, that employers provide benefits to employees, (e.g., so-called ''cafeteria plans''); or (4) are not applicable to public sector employment (e.g., an amendment clarifying the treatment of stock options under the FLSA).

III. 1996 SECTION 102(b) REPORT

In preparation for the first Section 102(b) Report, as noted earlier, the Board reviewed the entire United States Code to identify laws and associated regulations of general application that relate to terms and conditions of employment or access to public services and accommodations. Noting the underlying priorities of the Act itself, the Board chose to focus its 1996 Report on the identified provisions of law generally applicable in the private sector for which there was no similar coverage in the legislative branch. The Board has reviewed the 1996 Section 102(b) Report and the recommendations contained therein, as well as the additional discussion of those recommendations found in the 1998 Section 102(b) Report.

The Board of Directors again submits the following recommendations which were made in the 1996 Section 102(b) Report and resubmitted in the 1998 Section 102 (b) Report:

(A) Prohibition against discrimination on the basis of bankruptcy (11 U.S.C. §525).—Section 525(a) provides that ''a governmental unit'' may not deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under the bankruptcy statutes. The provision currently does not apply to the legislative branch. For the reasons set forth in the 1996 Section 102(b) Report, the board has determined that the rights and protections against discrimination on this basis should be applied to the legislative branch.

(B) Prohibition against discharge from employment by reason of garnishment (15 U.S.C. §1674(a)).—Section 1674(a) prohibits discharge of any employee because his or her earnings ''have been subject to garnishment for any one indebtedness.'' This section is limited to private employers, so it currently has no application to the legislative branch. For the reason set forth in the 1996 Section 102(b) Report, the Board has determined that the rights and protections against discrimination on this basis should be applied to the legislative branch.

(C) Prohibition against discrimination on the basis of jury duty (28 U.S.C. §1875).—Section 1875 provides that no employer shall discharge, threaten to discharge, intimidate, or coerce any permanent employee by reason of such employee's jury service, or the attendance or scheduled attendance in connection with such service, in any court of the United States. This section currently does not cover legislative-branch employment. For the reason set forth in the 1996 Section 102(b) Report, the Board has determined that the rights and protections against discrimination on this basis should be applied to the legislative branch.

(D) Titles II and III of the Civil Rights Act of 1964 (42 U.S.C. §§2000a to 2000a–6, 2000b to 2000b–3).—These titles prohibit discrimination or segregation on the basis of race, color, religion, or national origin regarding the goods, services, facilities, privileges, advantages, and accommodations of ''any place of public accommodation'' as defined in the Act. Although the CAA incorporated the protections of titles II and III of the ADA, which prohibit discrimination on the basis of disability with respect to access to public services and accommodations, it does not extend protection against discrimination based upon race, color, religion, or national origin with respect to access to such services and accommodations. For the reasons set forth in the 1996 Section 102(b) Report, the Board has determined that the rights and protections afforded by titles II and III of the Civil Rights Act of 1964 against discrimination with respect to places of public accommodation should be applied to the legislative branch.

IV. 1998 SECTION 102(b) REPORT

A. Part I of the 1998 Report (new laws enacted and certain other inapplicable laws)

In the first part of the 1998 Section 102(b) Report, the Board noted the enactment of two new employment laws and concluded that no further action was needed because substantial provisions of each had been made applicable to the legislative branch. Next, as noted above, the Board discussed and resubmitted the recommendations made in the 1996 Section 102(b) Report. In addition, the Board made three new recommendations, one based upon further review and analysis of statutes discussed in the 1996 Section 102(b) Report and two others based upon experience gained by the Board in the administration and enforcement of the CAA.

The Board of Directors resubmits the three new recommendations made in Part I of the 1998 Section 102(b) Report:

(1) Employee protection provisions of environmental protection statutes (15 U.S.C.

§2622; 33 U.S.C. §1367; 42 U.S.C. §§300J–9(i), 5851, 6971, 7622, 9610).—These provisions generally protect an employee from discrimination in employment because the employee commences proceedings under applicable statutes, testifies in any such proceeding, or assists or participates in any way in such a proceeding or in any other action to carry out the purposes of the statutes. For the reasons stated in the 1998 Section 102(b) Report, the Board believes that these provisions are applicable to the legislative branch. However, because it is possible to construe certain of these provisions as inapplicable, the Board has concluded that legislation should be adopted clarifying that the employee protection provisions in the environmental protection statutes apply to all entities within the legislative branch.

(2) Employee ''whistleblower'' protection.—Civil service law[7] provides broad protection to ''whistleblowers'' in the executive branch and at GAO and GPO, but these provisions do not apply otherwise in the legislative branch. Employees subject to these provisions are generally protected against retaliation for having disclosed any information the employee reasonably believes evidences a violation of law or regulation, gross mismanagement or abuse of authority, or substantial danger to public health or safety. The Office has continued to receive a number of inquiries from legislative branch employees concerned about protection against possible retaliation by an employing office for the disclosure of what the employee perceives to be such information. For the reasons set forth in the 1998 Section 102(b) Report, the Board has determined that whistleblower protection comparable to that provided to executive branch employees under 5 U.S.C. §2302(b)(8) should be provided to legislative branch employees.

(3) Coverage of special-purpose study commissions.—Certain special-purpose study commissions that include members appointed by Congress or by officers of Congressional instrumentalities are not expressly listed in section 101(9) of the CAA in the definition of ''employing offices'' covered under the CAA. For the reasons set forth in the 1998 Section 102(b) Report, the Board recommends that Congress specifically state whether the CAA applies to special-purpose study commissions, both when it creates such commissions and for those already in existence.

B. Part II of the 1998 Report (inapplicable private-sector provisions of CAA laws)

In the second part of the 1998 Section 102(b) Report, the Board considered the specific exceptions created by Congress from the nine private-sector laws made applicable by the CAA[8] and made a number of recommendations respecting the application of currently inapplicable provisions, ''focusing on enforcement, the area in which Congress made the most significant departures from the private-sector provisions of the CAA laws'.[9] The Board noted that it intended that those recommendations ''should further a central goal of the CAA to create parity with the private sector so that employers and employees in the legislative branch would experience the benefits and burdens as the rest of the nation's citizens''.[10]

The Board of Directors has reviewed the 1998 Report and resubmits each of the following recommendations made in Part III of the 1998 Section 102(b) Report:

(1) Authority to investigate and prosecute violations of §207 of the Act, which prohibits intimidation and reprisal.—Enforcement authority with respect to intimidation or reprisal is provided to the agencies that administer and enforce the CAA laws[11] in the private sector. For the reasons set forth in the 1998 Report, the Board has concluded that the Congress should grant the Office the same authority to investigate and prosecute allegations of intimidation or reprisal as each implementing Executive Branch agency has in the private sector.

(2) Authority to seek a restraining order in district court in case of imminent danger to health or safety.—Section 215(b) of the CAA provides the remedy for a violation of the substantive provisions of the OSHAct made applicable by the CAA. Among other things, the OSHAct authorizes the Secretary of Labor to seek a temporary restraining order in district court in the case of imminent danger. The General Counsel of the Office, who enforces the OSHAct provisions as made applicable by the CAA, has concluded that Section 215(b) of the CAA gives him the same standing to petition the district court for a temporary restraining order. However, it has been suggested that the language of section 215(b) does not clearly provide that authority. For the reasons set forth in the 1998 Section 102(b) Report, the Board recommends that the CAA be amended to clarify that the General Counsel has the standing to seek a temporary restraining order in federal district court and that the court has jurisdiction to issue the order.

(3) Record-keeping and notice-posting requirements.—For the reasons set forth in the 1998 Section 102(b) Report, the Board has concluded that the Office should be granted the authority to require that records be kept and notices posted in the same manner as required by the agencies that enforce the provisions of law made applicable by the CAA in the private sector.

(4) Other enforcement authorities.—For the reasons set forth in the 1998 Section 102(b) Report, the Board generally recommends that Congress grant the Office the remaining enforcement authorities that executive-branch agencies utilize to administer and enforce the provisions of law made applicable by the CAA in the private sector.

C. Part III of the 1998 Report (options for coverage of the three instrumentalities)

In the third part of the 1998 Report, the Board, building upon its extensive Section 230 Study, exhaustively re-examined the current coverage of GAO, GPO and the Library under the CAA laws, and identified and discussed three principal options for coverage of these instrumentalities:

(A) CAA Option.—Coverage under the CAA, including the authority of the Office of Compliance as it administers and enforces the CAA. (The Board here took as its model the CAA as it would be modified by enactment of the recommendations made in Part II of its 1998 Report.)

(B) Federal-Sector Option.—Coverage under the statutory and regulatory regime that applies generally in the federal sector, including the authority of executive-branch agencies as they administer and enforce the laws in the federal sector.

(C) Private-Sector Option.—Coverage under the statutory and regulatory regimes that apply generally in the private sector, including the authority of the executive-branch agencies as they administer and enforce the laws in the private sector.

The Board noted that other hybrid models could be developed or, it could ''be possible to leave the 'patchwork' of coverages and exemptions currently in place at the three instrumentalities and fill serious gaps in coverage on a piecemeal basis.''[12]

The Board compared the three options against the current regimes at GAO, GPO and the Library, as well as against each other, and identified the significant effects of applying each option. The Board unanimously concluded that coverage under the private sector model was not the best of the options. However, the Board was divided as to which of the remaining options should be adopted. Two Board Members recommended that the three instrumentalities be covered under the CAA, with certain modifications, and two other Board Members recommended that the three instrumentalities be made fully subject to the laws and regulations generally applicable in the executive branch of the federal sector.[13]

A review of the analysis, discussion and recommendations contained in the Section 230 Study and Part III of the 1998 Section 102(b) Report demonstrates the complexity of the issues relating to coverage of GAO, GPO and the Library under the CAA laws. The current regime is an exceedingly complicated one, with differences evident both between and among instrumentalities and between and among the eleven CAA laws. Any proposals for changes in existing coverage must not only take into account the existing statutory regime, but also the practical effects of any recommended changes, as well as the mandates of the CAA, including Section 230. Indeed, the degree of the difficulties and challenges encountered in determining how the coverage of the instrumentalities might be modified is evidenced by the fact that after three years of study and experience, the Members of the Board in 1998 were unable to arrive at a consensus on the manner in which the CAA laws should be applied and enforced at GAO, GPO and the Library.

While the current Board Members are mindful of the institutional benefits of providing Congress with a clear recommendation as to coverage of the instrumentalities, the Board is of the view that further study and consideration of the questions presented is warranted in light of the complexity of the issues and the substantial impact that a modification would have on the instrumentalities and their employees.

The Board believes that Congress, and the instrumentalities and their employees, would derive greater benefit from a recommendation based upon further study, consideration and experience on the part of Board Members. Therefore, the Board has determined not to make any recommendations with respect to coverage of GAO, GPO and the Library under the CAA laws at this time.

ENDNOTES

[1] The nine private-sector laws made applicable by the CAA are: the Fair Labor Standards Act of 1938 (29 U.S.C. §201 et seq.) (FLSA), Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e et seq.) (Title VII), the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) (ADA), the Age Discrimination in Employment Act of 1967 (29 U.S.C. §621 et seq.) (ADEA), the Family and Medical Leave Act of 1993 (29 U.S.C. §2611 et seq.) (FMLA), the Occupational Safety and Health Act of 1970 (29 U.S.C. §651 et seq.) (OSHAct), the Employee Polygraph Protection Act of 1988 (29 U.S.C. §2001 et seq.) (EPPA), the Worker Adjustment and Retraining Notification Act (29 U.S.C. §2101 et seq.) (WARN Act), and section 2 of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). The two federal-sector laws made applicable by the CAA are: Chapter 71 of title 5, United States Code (relating to federal service labor-management relations) (Chapter 71), and the Rehabilitation Act of 1973 (29 U.S.C. §701 et seq.). This report uses the term ''CAA laws'' to refer to these eleven laws.

[2] Section 102(b) Report: Review and Report of the Applicability to the Legislative Branch of Federal Law Relating to Terms and Conditions of Employment and Access to Public Services and Accommodations (Dec. 31,1996).

[3] Section 102(b) Report: Review and Report on the Applicability to the Legislative Branch of Federal Law Relating to Terms and Conditions of Employment and Access to Public Services and Accommodations (Dec. 31, 1998).

[4] Section 230 of the CAA mandated a study of the status of the application of the eleven CAA laws to GAO, GPO and the Library to ''evaluate whether the rights, protections and procedures, including administrative and judicial relief, applicable to [these instrumentalities] . . . are comprehensive and effective . . . includ[ing] recommendations for any improvements in regulations or legislation.'' Originally, the Administrative Conference of the United States was charged with carrying out the study and making recommendations, but when the Conference lost its funding, the responsibility for the study was transferred to the Board.

[5] Section 230 Study: Study of Laws, Regulations, and Procedures at The General Accounting Office, The Government Printing Office and The Library of Congress (December 1996) (Section 230 Study).

[6] The Board also found that resolution of existing uncertainty as to whether GAO, GPO and Library employees alleging violations of sections 204–207 of the CAA may use CAA procedures was an additional reason to include recommendations about coverage.

[7] See, e.g., 5 U.S.C. §2302(b)(8).

[8] The private-sector laws made applicable by the CAA are listed in note 1, at page 1, above.

[9] 1998 Section 102(b) Report at 16.

[10] Id. At 17.

[11] The only exception is the WARN Act which has no such authorities.

[12] 1998 Section 102(b) Report at 27.

[13] In December 1998, at the time the 1998 Section 102(b) Report issued, there were four Board members; the fifth Board member's term had expired and a new appointee had not yet been named. Since the issuance of the 1998 Report the terms of the four Board members who participated in that Report have expired. At present, the five-Member Board of Directors is again at its full complement; three Members were appointed in October 1999 and two Members were appointed in May 2000.

DEPARTMENT OF ENERGY NONPROLIFERATION PROGRAMS

Mr. BINGAMAN. Mr. President, the Secretary of Energy Advisory Board recently completed a review of the Department of Energy's (DOE) nonproliferation programs with Russia and released a report card assessing the contributions and needs of those programs. Two renowned Americans, former Senator Howard Baker and Lloyd Cutler, served as co-chairmen of a bipartisan task force comprised of technical experts, respected academicians and distinguished Congressmen and Senators from both political parties representing both chambers of the Congress. My colleagues will be interested to know that former Senators on the task force included Senators Baker, Boren, Hart, McClure, Nunn, and Simpson. Former House Members included Representatives Derrick, Hamilton, and Skaggs. In short, this task force brought together an experienced bipartisan group of esteemed experts whose views are well respected to examine the status of DOE's nonproliferation programs with Russia. The report they have produced should be required reading for everyone concerned about what the nation needs to do to meet our most important national security requirements.

No one could question that the greatest risks of proliferating weapons and materials of mass destruction (WMD) come from the massive WMD infrastructure left behind when the Soviet Union dissolved. Experts estimate that the former Soviet Union produced more than 40,000 nuclear weapons and left behind a huge legacy of highly enriched uranium (HEU) and plutonium—enough to build as many or more than 40,000 additional nuclear weapons. We are just now beginning to comprehend the vast quantities of chemical and biological weapons produced in the former Soviet Union. We have learned much about the stockpiles of nuclear, biological, and chemical materials that still exist in today's Russia. We have a fuller understanding of the extensive industrial infrastructure in Russia which is still capable of conducting research and producing such weapons. We are anxiously aware of the thousands of experienced Russian scientists and technicians who worked in that complex, many of whom are in need of a stable income.

Those huge numbers assume frightening implications when one considers that two years ago, conspirators at a Russian Ministry of Atomic Energy facility were caught trying to steal nuclear materials almost sufficient to build a nuclear weapon. At the same time, the mayor of Krasnoyarsk, a closed ''nuclear city'' in the Russian nuclear weapons complex, warned that a popular uprising was unavoidable in his city since nuclear scientists and other workers had not been paid for many months and that basic medical supplies were not available to serve the population. In December, 1998, Russian authorities arrested an employee at Russia's premier nuclear weapons laboratory in Sarov for espionage and charged him with attempting to sell nuclear weapon design information to agents from Iraq and Afghanistan. I am certain that many of my colleagues in the Senate have heard the stories regarding attempted smuggling of radioactive materials by Russian Navy personnel aboard their decaying submarine fleet. There are numerous other incidents that bring the Russian proliferation threat from incomprehensible quantities to real life threats of massive destruction.

In reviewing those threats and the various DOE programs underway to meet those dangers, the task force drew several major conclusions and recommendations on how we should proceed to reduce and ultimately eliminate the proliferation threats posed by Russia. Mr. President and colleagues of the Senate, let me cite those findings and recommendations for you.

The task force found that the ''most urgent unmet national security threat to the United States today is the danger that weapons of mass destruction or weapons—usable material in Russia could be stolen and sold to terrorists or hostile nation states and used against American troops abroad or citizens at home.'' They noted that ''current nonproliferation programs in the Department of Energy, the Department of Defense (DoD), and related agencies have achieved impressive results (in supporting nonproliferation objectives) . . ., but their limited mandate and function fall short of what is required to address adequately the threat.''

The task force calls for the new Administration and the 107th Congress to increase our efforts to meet the proliferation threat, the dimensions of which we are only beginning to fully understand. In so doing, the report recommends that we undertake a net assessment of the threat, develop a strategy to meet it using specific goals and measurable objectives, establish a centralized command of our financial and human resources needed to do the job, and identify criteria for measuring the benefits to the United States of expanded nonproliferation programs. In particular, the task force urges the President in consultation with the Congress and in cooperation with the Russian Federation to quickly formulate a strategic plan to prevent the outflow of Russian nuclear weapons scientific expertise and to secure or neutralize all nuclear weapons-usable material in Russia during the next eight to ten year period. The task force estimates that it would take less than one percent of the U.S. defense budget or less than $30 billion over the next decade to do the job.

In short there is no more cost effective way to achieve our own national security goals than by investing in the DOE and DoD nonproliferation programs being conducted in cooperation with Russia. I urge the President, members of his administration, and my colleagues in the Senate to understand the importance of these programs to the nation. As we proceed in the uncharted waters of relations between the United States and Russia in the coming months and years, I hope we will be mindful of the central importance of these programs to our national security and to their great significance to cooperative relationships between our countries. I urge all of you to read this report carefully and support its recommendations during the forthcoming legislative cycle.

ADDITIONAL STATEMENTS

RECOGNIZING MR. JIM NICHOLSON

• Mr. CAMPBELL. Mr. President, I would like to take this opportunity to congratulate and recognize a fellow Coloradan, Mr. Jim Nicholson, the former chairman of the Republican National Committee. My friend and colleague has provided the State of Colorado, the Nation and the Republican

Party outstanding service where he has devoted countless hours and tireless efforts with the Republican National Committee. I am here today to say a heartfelt ''Thank You Jim,'' on behalf of all Coloradans.

He rose through the ranks of the Republican National Committee over the years. Based on his record of ability and accomplishments, he was elected Chairman where he served with honor and distinction.

Jim Nicholson has definitely demonstrated his commitment to ideals and an organization that has changed so dramatically over the years. His dedication and experience in business and politics will be sorely missed, but I know he will not be far away.

Also, Jim's quiet demeanor belies his gung-ho nature. As a ranger in Vietnam, he proved his dedication to a cause. And, Jim brought that same gung-ho quality to Washington where his efforts in the Republican National Committee gave us all a stronger voice and better means of resolving the hardships that all Americans face everyday. I would also like to mention his major role in helping win a trifecta in the last election, where Republicans won the White House, a majority in the House and retention of the Senate for the first time in many years.

When I first heard that Jim's tenure was coming to an end I was pleased for him and his wonderful family, but I also realized that the Republican Party, the State of Colorado and the entire Nation will be losing a devoted advocate.

I remember conversations with individuals telling me about his commitment and his passion for duty and honor. Well, I think Jim epitomizes duty and honor. Through boom and bust he has always been on the right side and I admire his steadfast devotion.

Jim and I have shared numerous experiences in our different roles. We have attended dinners and speeches together, and we have fought side by side in Colorado and in Washington. I know that he will still be involved in our lives, and I hope that our paths soon cross again. He has been a great professional associate and a greater friend. I wish Jim only the best in his next career move.●

RUTLAND HIGH SCHOOL BAND

● Mr. LEAHY. Mr. President, I would like to take a moment to commend Vermont's Rutland High School Band that performed Saturday, January 20, 2001, at the Inauguration of our Nation's 43rd President. The Rutland High Band represented our State with dignity and pride, celebrating one of our country's finest traditions, the peaceful transfer of power from one administration to the next. Their outstanding performance made me proud to be a Vermonter.

Hours of practice and preparation shone through during their two hour and fifteen minute performance. Ninety-two talented students made up this extraordinary band.

Students woke up on Inauguration Day at 4 a.m. in order to arrive at the Pentagon for an early morning security check, then played on a stage at the corner of Pennsylvania Avenue and Sixth Street, both before and after the President's swearing-in ceremony. Their dedication to excellence set an example for all of us.

The band was directed by Marc Whitman, who is a motivated and worthy leader of his students. Under his supervision, the Rutland High School Band was a true asset to the Inauguration festivities. I congratulate each and every band member and their musical directors on a superb job on January 20. All Vermonters are proud of them.

Mr. President, I ask to have printed in the RECORD an excerpt from an article about the band that appeared in the Rutland Daily Herald on January 22.

The article follows:

[From the Rutland Herald, Jan. 22, 2001]

HAIL (AND RAIN) TO THE CHIEF

(By Kevin O'Connor)

Ask anyone in the Rutland High School band: Playing at George W. Bush's inaugural Saturday left its mark.

Make that watermark.

''To see the bands, the floats, the protestors and the signs was significant, and then to be a part of that experience was something in itself,'' saxophonist Charles Romeo said. ''We made our place in history and being in the rain makes it better—it's a better story to tell.''

The 18-year-old senior was one of 92 students who soaked up the chance to represent Vermont at inaugural ceremonies this past weekend in Washington, DC.

Rutland High first played for a president when John F. Kennedy took office in 1961—a moment frozen in time by a blizzard of snow and 22-degree winds.

Forty years later, the band again took the inaugural by storm.

How wet did it get?

''Very, very wet,'' French horn player Devon Balfour said in a phone interview after the band returned to its hotel late Saturday night. ''We were all drenched, but I don't think it mattered to many of us, because it was so exciting.''

Students were set to wake Saturday as early as 4 p.m. so they could reach a Pentagon security check by 6:30 a.m., and play on a stage at the corner of Pennsylvania Avenue and Sixth Street before and after the president's swearing-in.

But the weather almost washed out their plans. Inaugural organizers didn't commit to outdoor ceremonies until late Friday, leaving the band, its two music teachers and 10 parent chaperons wondering for hours.

''I didn't even consider it as an option,'' band director Marc Whitman said of cancellation, ''but the kids would have gotten their chance to swim in the hotel pool all day.''

Band members didn't march in the inaugural parade like their predecessors, but instead performed for some of the thousands of spectators around the U.S. Capitol from 10:30 to 11:30 a.m. and 12:45 to 2 p.m.●

WILLIMANTIC LIONS CLUB

● Mr. LIEBERMAN. Mr. President, I rise today to honor the Willimantic Lions Club of Willimantic, Connecticut. On February 24, they will be celebrating their 60th Year of Service to the Greater Windham/Willimantic Community.

Since the Willimantic Lions Club was established 60 years ago, they have reached out to assist many members of the community but especially the blind and visually impaired. Their members have worked to provide eye exams, eyeglasses, low vision devices and guide dogs for members of the community through a variety of local fundraisers. The Lions Club also has lent its support to such worthwhile local causes as soup kitchens, the Red Cross, Special Olympics, the Boy and Girl Scouts and academic scholarships for local students.

As the Willimantic Lions Club has grown over the years, it has attracted more than 700 men and women as members of their club. Their numerous good works have touched many lives and demonstrated the true value of volunteerism. The people of Connecticut thank the Willimantic Lions Club and all its members for their service, dedication, and contributions to our state.●

GUN SAFETY

● Mr. LEVIN. Mr. President, on October 16, 2000, Mr. Charlton Heston, President of the National Rifle Association (NRA), gave a speech at a campaign rally in Grand Rapids, Michigan. On the campaign trial in Michigan, Mr. Heston asserted that Vice President Al Gore's position on guns had changed and suggested that ''in any other time or place, you'd be looking for a lynching mob.''

Such inflammatory and extremist remarks are an outrage. The NRA itself should condemn them. The fact that an average of ten children suffer gun-related deaths each day demands that we work together to end gun violence, yet Mr. Heston's comments serve only to further polarize the debate over guns and gun safety.

Although some in the crowd at the NRA rally in October may have been in support of Mr. Heston's rhetoric, the majority of people in Michigan reject the hate that was exuded by NRA's leader that October day in Michigan. In November, voters in Michigan also demonstrated that they oppose the tactics of the gun lobby and voters around the country voiced their support for gun safety measures, such as closing the gun show loophole that gives youth and criminals illegitimate access to firearms.

Mr. President, the American people have called on all of us to work toward decreasing the amount of gun violence in their schools and communities, and I am hopeful that the 107th Congress will be able to respond to their call by passing responsible gun safety legislation.●

RESTORING MILITARY RETIREES' CONCURRENT RECEIPT

• Ms. LANDRIEU. Mr. President, last year I had the honor of celebrating the fifty-sixth anniversary of D-Day with thousands of U.S. Veterans in my hometown of New Orleans. Listening to these men account their travails along the Normandy shores and honoring the memories of their fallen comrades, I was stirred with a sense of awe for our country's greatest patriots, America's military veterans.

I joined historian Stephen Ambrose at the opening of our National D-Day museum, where we memorialized not only those fallen in World War II's European Theater, but in Pacific battles as well.

As we recalled General Douglas MacArthur's fateful proclamation in 1942, I shuddered with the irony of it all—MacArthur, forced to retreat off Corregidor in the Philippines for Australia, vowed, I shall return. He did, and led our Nation to the most decisive victory in modern history. MacArthur's promise was heralded as a testament to America's convictions. Our troops fulfilled their duty to our country, defeating the Axis powers resoundingly. But our country never fully fulfilled its obligations to its troops. Promised compensation for service related disabilities, U.S. veterans have been denied critical benefits owed to them.

For over one hundred years, the Pentagon has cut into military retirees' incomes, acquiring non-appropriated funds off the backs of disabled veterans. This so-called concurrent receipt issue derives from an fiscal year 1892 appropriations bill. That's right, 1892.

In the aftermath of the Mexican War, Congress had hoped to prevent veterans from burdening America's budget by acquiring more than one pension payment. At this time, some veterans were receiving retired pay, disability pension, active duty pay, and a pension based on a disability from the Mexican War of 1846–1848. Congress decided to forbid such dual compensation for either past or current service and a disability pension. The fiscal year 1892 appropriations legislation for veterans' benefits included the first prohibition of concurrent receipt.

Since its inception, Members of Congress have tried to overturn concurrent receipt prohibitions, but have failed. Indeed, in the last Congress, we began to make substantial ground in our effort. I supported an amendment to the Senate's Defense Authorization Bill to permit retired members of the Armed Forces who have a service-connected disability to receive military retirement pay concurrently with veteran's disability compensation. House conferees over this bill rejected the provision. Instead, Congress was only able to secure $100 to $300 monthly special compensation for severely disabled retirees.

I can only hope that this measure will be the first of several steps that the Federal government takes to meet its commitments to our disabled military retirees. U.S. soldiers, sailors, airmen, and marines still put their lives and abilities on the line for our nation's defense. And yet, the government fails to meet its commitments in compensation. I predict that we will not overcome our services' recruiting and retention crises until we begin to restore such critical retiree benefits. In so doing, the United States will promote its national security and honor its guardians of liberty; our troops and our country deserve no less.•

TRIBUTE TO ELIZABETH SEWELL

• Mr. EDWARDS. Mr. President, I rise today to note with sadness the recent death of North Carolina author Elizabeth Sewell. Dr. Sewell succumbed to her third bout with cancer on January 12, at the age of 81.

Dr. Sewell was a writer of international renown. She authored four novels, three volumes of poetry, and 5 volumes of criticism, as well as scores of short stories.

Dr. Sewell was born in India and educated at Cambridge University in England. She made Greensboro, North Carolina her home starting in 1960 and became a citizen of the United States in 1974.

A gifted writer and thinker, Dr. Sewell studied and wrote on topics as diverse as race relations in the South, the role of the imagination in science and literature, and life in the academic world.

Her work garnered the prestigious poetry, fiction and non-fiction award from the American Academy and Institute of Arts and Letters in 1981.

Elizabeth Sewell was more than a prolific writer. She was also a talented teacher who shared her love of great literature with students in North Carolina and elsewhere.

She served as a visiting professor and writer-in-residence at Vassar College, the University of Notre Dame, and Bennett College in Greensboro. She became Joe Rosenthal Professor of Humanities at the University of North Carolina at Greensboro in 1974.

As North Carolinians, we are proud to claim Elizabeth Sewell as one of our own. All Americans—indeed, people all over the world—were privileged that she chose to share her many gifts with us.•

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–400. A communication from the President of the United States, transmitting, pursuant to law, the report on the budget for fiscal year 2002; referred jointly, pursuant to the order of January 30, 1975, as modified by order of April 11, 1986; to the Committees on Appropriations; and the Budget.

EC–401. A communication from the Federal Register Liaison Officer, Office of Thrift Supervision, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Disclosure and Reporting of CRA-Related Agreements'' (RIN1550–AB32) received on January 4, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–402. A communication from the Chairman of the Board of Governors, Federal Reserve System, and the Secretary of the Treasury, transmitting jointly, pursuant to law, a report on the feasibility and desirability of mandatory subordinated debt; to the Committee on Banking, Housing, and Urban Affairs.

EC–403. A communication from the Federal Register Liaison Officer, Office of Thrift Supervision, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Interagency Guidelines Establishing Standards for Safeguarding Customer Information and Rescission of Year 2000 Standards for Safety and Soundness'' (RIN1550–AB36) received on January 5, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–404. A communication from the President of the United States, transmitting, pursuant to law, a report on the national emergency with respect to Yugoslavia; to the Committee on Banking, Housing, and Urban Affairs.

EC–405. A communication from the Senior Banking Counsel, Office of the General Counsel, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Financial Subsidiaries'' (RIN1505–AA85) received on January 5, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–406. A communication from the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determinations for January 21, 2000'' (65 FR 80362) received on January 10, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–407. A communication from the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determinations for December 21, 2000'' (65 FR 80364) received on January 10, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–408. A communication from the Assistant to the Board of Governors, Federal Reserve System, transmitting, pursuant to law, the report of a rule entitled ''Bank Holding Companies and Change in Bank Control'' (Docket No. R–1065) received on January 11, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–409. A communication form the Senior Banking Counsel, Departmental Offices, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Merchant Banking Investments'' (RIN1505–AA78) received on January 12, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–410. A communication from the Legislative and Regulatory Activities Division, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Disclosure and Reporting of CRA-Related Agreements'' (RIN1550–AB32) received on January 12, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–411. A communication from the Deputy Secretary of the Department of Housing and Urban Development, transmitting, pursuant to law, a report relating to the update of management reform efforts for 2020; to the Committee on Banking, Housing, and Urban Affairs.

EC–412. A communication from the Secretary of the Division of Investment Management, Office of Disclosure Regulation, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''Investment Company Names'' (RIN3235–AH11) received on January 17, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–413. A communication from the Counsel for Legislation and Regulations, Office of Housing, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Discontinuation of the Section 221(d)(2) Mortgage Insurance Program'' ((RIN2502–AH50)(FR–4588–F–02)) received on January 23, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–414. A communication from the Secretary of the Division of Investment Management, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''Disclosure of Mutual Fund After-Tax Returns'' (RIN3235–AH77) received on January 23, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–415. A communication from the Counsel for Legislation and Regulations, Office of the Secretary, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Determining Adjusted Income in HUD Programs Serving Persons with Disabilities: Requiring Mandatory Deductions for Certain Expenses; and Disallowance for Earned Income'' ((RIN2501–AC72)(FR–4608–F–02)) received on January 23, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–416. A communication from the President of the United States, transmitting, pursuant to law, a report relating to lifting and modifying measures with respect to the Federal Republic of Yugoslavia; to the Committee on Banking, Housing, and Urban Affairs.

EC–417. A communication from the President of the United States, transmitting, pursuant to law, a report concerning the prohibition of importing rough diamonds from Sierra Leone; to the Committee on Banking, Housing, and Urban Affairs.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. AKAKA (for himself, Mr. DURBIN, Mr. ROCKEFELLER, Mr. INOUYE, Mr. CLELAND, Mr. SARBANES, Ms. MIKULSKI, Mr. KOHL, Mr. HARKIN, Mr. BAUCUS, Mr. JEFFORDS, Mr. LEAHY, Mr. LIEBERMAN, Mrs. LINCOLN, Mr. KENNEDY, Mr. EDWARDS, Mr. REED, Mr. BINGAMAN, Mr. JOHNSON, and Mr. DASCHLE):

S. 177. A bill to amend the provisions of title 19, United States Code, relating to the manner in which pay policies and schedules and fringe benefit programs for postmasters are established; to the Committee on Governmental Affairs.

By Mr. WELLSTONE (for himself, Mr. HARKIN, Mr. FEINGOLD, Mr. CONRAD, and Mr. DORGAN):

S. 178. A bill to permanently reenact chapter 12 of title 11, United States Code, relating to family farmers; to the Committee on the Judiciary.

By Mr. DORGAN:

S. 179. A bill to amend the Internal Revenue Code of 1986 to phase in a full estate tax deduction for family-owned business interests and to increase the unified credit exemption; to the Committee on Finance.

By Mr. FRIST (for himself, Mr. FEINGOLD, Mr. BROWNBACK, Mr. LIEBERMAN, Mr. DEWINE, Mr. SANTORUM, Mr. CLELAND, and Mr. SESSIONS):

S. 180. A bill to facilitate famine relief efforts and a comprehensive solution to the war in Sudan; to the Committee on Foreign Relations.

By Mr. SHELBY:

S. 181. A bill to amend the Internal Revenue Code of 1986 to phase out the taxation of social security benefits; to the Committee on Finance.

By Ms. SNOWE (for herself and Mr. KERRY):

S. 182. A bill to amend the Small Business Act with respect to the microloan program; to the Committee on Small Business.

By Ms. SNOWE:

S. 183. A bill to enhance Department of Education efforts to facilitate the involvement of small business owners in State and local initiatives to improve education; to the Committee on Finance.

By Mr. DORGAN (for himself and Mr. CRAIG):

S. 184. A bill to amend title 18, United States Code, to eliminate good time credits for prisoners serving a sentence for a crime of violence, and for other purposes; to the Committee on the Judiciary.

By Mr. DORGAN (for himself and Mr. CRAIG):

S. 185. A bill to provide incentives to encourage stronger truth in sentencing of violent offenders, and for other purposes; to the Committee on the Judiciary.

By Mr. JOHNSON:

S. 186. A bill to provide access and choice for use of generic drugs instead of nongeneric drugs under Federal health care programs, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Ms. SNOWE (for herself and Mr. GRASSLEY):

S. 187. A bill to establish the position of Assistant United States Trade Representative for Small Business, and for other purposes; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one Committee reports, the other Committee have thirty days to report or be discharged.

By Ms. COLLINS (for herself and Mrs. BOXER):

S. 188. A bill to amend the Internal Revenue Code of 1986 to modify the tax credit for electricity produced from certain renewable resources; to the Committee on Finance.

By Mr. BOND:

S. 189. A bill to amend the Internal Revenue Code of 1986 to provide tax relief for small businesses, and for other purposes; to the Committee on Finance.

By Mr. FRIST:

S. 190. A bill to amend the Federal Food, Drug, and Cosmetic Act to grant the Secretary of Health and Human Services the authority to regulate tobacco products, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. FEINGOLD:

S. 191. A bill to abolish the death penalty under Federal Law; to the Committee on the Judiciary.

By Mr. FEINGOLD (for himself and Mr. LEAHY):

S. 192. A bill to amend title 9, United States Code, with respect to consumer credit transactions; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. WELLSTONE (for himself, Mr. HARKIN, Mr. FEINGOLD, Mr. CONRAD, and Mr. DORGAN):

S. 178. A bill to permanently reenact chapter 12 of title 11, United States Code, relating to family farmers; to the Committee on the Judiciary.

Mr. WELLSTONE. Mr. President, I rise today along with Senators HARKIN, FEINGOLD, CONRAD, and DORGAN to introduce legislation that would make permanent Chapter 12 of the U.S. Bankruptcy Code.

Chapter 12, the Chapter of the Bankruptcy Code designated for farmers, provides critical protection for family farmers who find themselves in desperate economic circumstances. Ideally, the goal of federal farm policy should be to sustain the ability of family farmers to produce and sell a competitive product, to preserve healthy and viable rural communities and to keep family farmers out of bankruptcy. However, when farmers are forced to seek bankruptcy protection, Chapter 12, because it is tailored specifically to farmers, often allows the farmer to keep his or her farm while reorganizing debt and making payments to creditors.

Extension of Chapter 12 is made all the more urgent by the current state of the farm economy. Prices are now so low that many family farmers are lucky to stay in business as market prices are lower than their cost of production. The value of field crops is expected to have been more than 24 percent lower in 2000 than it was in 1996—42 percent lower for wheat, 39 percent lower for corn, and 26 percent lower for soybeans. But farmers' expenses are not falling by the same amount. In fact, they are not falling at all. Farmers cannot maintain cash flow if their selling prices are falling through the floor while their buying prices are shooting through the roof.

Chapter 12 expired on June 30th of last year. Efforts last year to extend it or to make it permanent were held hostage to controversial bankruptcy ''reform'' legislation and, as a result, Congress adjourned in December without taking any action to reinstate this critical safety net. This legislation would make Chapter 12 a permanent part of the code, eliminating the need for future extensions. It is also retroactive to July 1, 2000.

I hope that in the 107th Congress we can stop using farmers as pawns in the debate over bankruptcy reform. Permanent Chapter 12 is completely noncontroversial. We could pass this bill by unanimous consent tomorrow, and we should. I note that a nearly identical measure has been introduced in the House by Congressman NICK SMITH. Given that the House last year passed two chapter 12 extensions which the Senate declined to act on, if the Senate this year took leadership on this issue and passed this bill, the House would swiftly follow. Farmers have been

without this safety net long enough, and I urge my colleagues to take action by passing this measure.

Mr. DORGAN:

S. 179. A bill to amend the Internal Revenue Code of 1986 to phase in a full estate tax deduction for family-owned business interests and to increase the unified credit exemption; to the Committee on Finance.

Mr. DORGAN. Mr. President, today I rise to introduce legislation to address an estate tax problem that many Americans want fixed without delay.

Over the years, I have heard from farmers, bankers and other business people in North Dakota and elsewhere who say it is nearly impossible for them to pass along the family business to their children to operate because of the estate taxes they would pay. They say emphatically that a family should never be forced to sell off any portion of their business just to pay the estate tax. I think they're absolutely right!

I believe that families who want to pass their business to other family members to own and operate should never have to worry about losing that business or farm to taxes. The sale of a portion of a family business to pay estate taxes does not happen very often, but it shouldn't happen at all. In fact, families ought to know that our federal tax laws will be supportive of their enterprises because of the importance of such businesses to this nation's economic well-being. And that's exactly what the bill I'm introducing would do.

This legislation is nearly identical to a bill I authored in the last Congress. It increases the current estate tax exemption for family business assets to $10 million over the next five years, and then totally eliminates the tax for them starting in the year 2006. At that time, family-owned and operated businesses will be completely exempt from the tax.

I have spoken often on the Senate floor about the importance of the family as an economic unit as well as a social unit. This nation was built upon an economy of family-based farms and businesses, and it is crucial that we strive to keep the family farms and businesses that we have, and to encourage new ones. I think that is why there's already wide agreement in the Senate that we should act to reform the estate tax to help ensure the continuity of family businesses.

We ought to address this critical family business estate tax issue early in this Congress and save for later, if necessary, those other parts of the estate tax on which there is still significant disagreement. My bill offers a common sense approach for changing the estate tax to help family enterprises survive to the next generation.

The legislation that I'm introducing today differs in two important ways from the bill, S. 3098, that I authored last year. First, I have added a provision to increase the general unified estate tax credit that is available to everyone from $675,000 to $4 million per couple by the year 2006. This will help families wishing to pass along to the children or grandchildren significant stock, proceeds from a life insurance policy or other assets they may have acquired over the years. Second, my bill makes the general credit and family-owned business exemption fully portable. This would help ensure that a surviving spouse will get the full benefit of any unused general credit or family-owned business exemption without having to have hired a sophisticated and costly tax advisor.

Let me briefly clarify one point. Together, the provisions of my legislation would effectively abolish the estate tax for over 99 percent of all taxpayers. But it does not exempt from estate taxes entirely the heirs of multi-billion dollar investment fortunes and the like, as the tax bill passed by the majority party last summer would have done.

Many of us voted against that bill because we believed that complete estate tax repeal along with the other sizable tax cuts proposed at that time threatened to put us right back into federal budget deficits once again. That is certainly something I can not support.

We also were concerned that repealing the estate tax completely would shift the burden of paying for the federal government even more onto the working men and women of this country. That is not fair. The gap between the very rich and everyone else has gotten wider in recent years, and repealing the estate tax in its entirety would only make it worse. I also think it is reasonable to ask those who have benefitted most from our democracy in the past to contribute to its security and well-being in the future.

I know that there is disagreement on these and other points. But they do deserve an honest debate, and I expect that we will have such a debate later in this Congress. But as I have said previously, we should not hold family based farms and businesses hostage to that debate and we should move quickly on estate tax reforms where there is already strong bipartisan agreement.

By Mr. FRIST (for himself, Mr. FEINGOLD, Mr. BROWNBACK, Mr. LIEBERMAN, Mr. DEWINE, Mr. SANTORUM, Mr. CLELAND, and Mr. SESSIONS):

S. 180. A bill to facilitate famine relief efforts and a comprehensive solution to the war in Sudan; to the Committee on Foreign Relations.

Mr. FRIST. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 180

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Sudan Peace Act''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The Government of Sudan has intensified its prosecution of the war against areas outside of its control, which has already cost more than 2,000,000 lives and has displaced more than 4,000,000.

(2) A viable, comprehensive, and internationally sponsored peace process, protected from manipulation, presents the best chance for a permanent resolution of the war, protection of human rights, and a self-sustaining Sudan.

(3) Continued strengthening and reform of humanitarian relief operations in Sudan is an essential element in the effort to bring an end to the war.

(4) Continued leadership by the United States is critical.

(5) Regardless of the future political status of the areas of Sudan outside of the control of the Government of Sudan, the absence of credible civil authority and institutions is a major impediment to achieving self-sustenance by the Sudanese people and to meaningful progress toward a viable peace process.

(6) Through manipulation of traditional rivalries among peoples in areas outside their full control, the Government of Sudan has effectively used divide and conquer techniques to subjugate their population, and internationally sponsored reconciliation efforts have played a critical role in reducing the tactic's effectiveness and human suffering.

(7) The Government of Sudan is utilizing and organizing militias, Popular Defense Forces, and other irregular units for raiding and slaving parties in areas outside of the control of the Government of Sudan in an effort to severely disrupt the ability of those populations to sustain themselves. The tactic is in addition to the overt use of bans on air transport relief flights in prosecuting the war through selective starvation and to minimize the Government of Sudan's accountability internationally.

(8) The Government of Sudan has repeatedly stated that it intends to use the expected proceeds from future oil sales to increase the tempo and lethality of the war against the areas outside its control.

(9) Through its power to veto plans for air transport flights under the United Nations relief operation, Operation Lifeline Sudan (OLS), the Government of Sudan has been able to manipulate the receipt of food aid by the Sudanese people from the United States and other donor countries as a devastating weapon of war in the ongoing effort by the Government of Sudan to subdue areas of Sudan outside of the Government's control.

(10) The efforts of the United States and other donors in delivering relief and assistance through means outside OLS have played a critical role in addressing the deficiencies in OLS and offset the Government of Sudan's manipulation of food donations to advantage in the civil war in Sudan.

(11) While the immediate needs of selected areas in Sudan facing starvation have been addressed in the near term, the population in areas of Sudan outside of the control of the Government of Sudan are still in danger of extreme disruption of their ability to sustain themselves.

(12) The Nuba Mountains and many areas in Bahr al Ghazal, Upper Nile, and Blue Nile regions have been excluded completely from relief distribution by OLS, consequently placing their populations at increased risk of famine.

(13) At a cost which has sometimes exceeded $1,000,000 per day, and with a primary focus on providing only for the immediate food needs of the recipients, the current

international relief operations are neither sustainable nor desirable in the long term.

(14) The ability of populations to defend themselves against attack in areas outside the Government of Sudan's control has been severely compromised by the disengagement of the front-line sponsor states, fostering the belief within officials of the Government of Sudan that success on the battlefield can be achieved.

(15) The United States should use all means of pressure available to facilitate a comprehensive solution to the war in Sudan, including—

(A) the multilateralization of economic and diplomatic tools to compel the Government of Sudan to enter into a good faith peace process;

(B) the support or creation of viable democratic civil authority and institutions in areas of Sudan outside government control;

(C) continued active support of people-to-people reconciliation mechanisms and efforts in areas outside of government control;

(D) the strengthening of the mechanisms to provide humanitarian relief to those areas; and

(E) cooperation among the trading partners of the United States and within multilateral institutions toward those ends.

SEC. 3. DEFINITIONS.

In this Act:

(1) GOVERNMENT OF SUDAN.—The term ''Government of Sudan'' means the National Islamic Front government in Khartoum, Sudan.

(2) OLS.—The term ''OLS'' means the United Nations relief operation carried out by UNICEF, the World Food Program, and participating relief organizations known as ''Operation Lifeline Sudan''.

SEC. 4. CONDEMNATION OF SLAVERY, OTHER HUMAN RIGHTS ABUSES, AND TACTICS OF THE GOVERNMENT OF SUDAN.

Congress hereby—

(1) condemns—

(A) violations of human rights on all sides of the conflict in Sudan;

(B) the Government of Sudan's overall human rights record, with regard to both the prosecution of the war and the denial of basic human and political rights to all Sudanese;

(C) the ongoing slave trade in Sudan and the role of the Government of Sudan in abetting and tolerating the practice; and

(D) the Government of Sudan's use and organization of ''murahalliin'' or ''mujahadeen'', Popular Defense Forces (PDF), and regular Sudanese Army units into organized and coordinated raiding and slaving parties in Bahr al Ghazal, the Nuba Mountains, Upper Nile, and Blue Nile regions; and

(2) recognizes that, along with selective bans on air transport relief flights by the Government of Sudan, the use of raiding and slaving parties is a tool for creating food shortages and is used as a systematic means to destroy the societies, culture, and economies of the Dinka, Nuer, and Nuba peoples in a policy of low-intensity ethnic cleansing.

SEC. 5. SUPPORT FOR AN INTERNATIONALLY SANCTIONED PEACE PROCESS.

(a) FINDINGS.—Congress hereby recognizes that—

(1) a single viable, internationally and regionally sanctioned peace process holds the greatest opportunity to promote a negotiated, peaceful settlement to the war in Sudan; and

(2) resolution to the conflict in Sudan is best made through a peace process based on the Declaration of Principles reached in Nairobi, Kenya, on July 20, 1994.

(b) UNITED STATES DIPLOMATIC SUPPORT.—The Secretary of State is authorized to utilize the personnel of the Department of State for the support of—

(1) the ongoing negotiations between the Government of Sudan and opposition forces;

(2) any necessary peace settlement planning or implementation; and

(3) other United States diplomatic efforts supporting a peace process in Sudan.

SEC. 6. MULTILATERAL PRESSURE ON COMBATANTS.

It is the sense of Congress that—

(1) the United Nations should be used as a tool to facilitating peace and recovery in Sudan; and

(2) the President, acting through the United States Permanent Representative to the United Nations, should seek to—

(A) revise the terms of Operation Lifeline Sudan to end the veto power of the Government of Sudan over the plans by Operation Lifeline Sudan for air transport of relief flights and, by doing so, to end the manipulation of the delivery of those relief supplies to the advantage of the Government of Sudan on the battlefield;

(B) investigate the practice of slavery in Sudan and provide mechanisms for its elimination; and

(C) sponsor a condemnation of the Government of Sudan each time it subjects civilians to aerial bombardment.

SEC. 7. REPORTING REQUIREMENT.

Section 116 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n) is amended by adding at the end the following:

''(g) In addition to the requirements of subsections (d) and (f), the report required by subsection (d) shall include—

''(1) a description of the sources and current status of Sudan's financing and construction of oil exploitation infrastructure and pipelines, the effects on the inhabitants of the oil fields regions of such financing and construction, and the Government of Sudan's ability to finance the war in Sudan;

''(2) a description of the extent to which that financing was secured in the United States or with involvement of United States citizens;

''(3) the best estimates of the extent of aerial bombardment by the Government of Sudan forces in areas outside its control, including targets, frequency, and best estimates of damage; and

''(4) a description of the extent to which humanitarian relief has been obstructed or manipulated by the Government of Sudan or other forces for the purposes of the war in Sudan.''.

SEC. 8. CONTINUED USE OF NON-OLS ORGANIZATIONS FOR RELIEF EFFORTS.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the President should continue to increase the use of non-OLS agencies in the distribution of relief supplies in southern Sudan.

(b) REPORT.—Not later than 90 days after the date of enactment of this Act, the President shall submit a detailed report to Congress describing the progress made toward carrying out subsection (a).

SEC. 9. CONTINGENCY PLAN FOR ANY BAN ON AIR TRANSPORT RELIEF FLIGHTS.

(a) PLAN.—The President shall develop a contingency plan to provide, outside United Nations auspices if necessary, the greatest possible amount of United States Government and privately donated relief to all affected areas in Sudan, including the Nuba Mountains, Upper Nile, and Blue Nile, in the event the Government of Sudan imposes a total, partial, or incremental ban on OLS air transport relief flights.

(b) REPROGRAMMING AUTHORITY.—Notwithstanding any other provision of law, in carrying out the plan developed under subsection (a), the President may reprogram up to 100 percent of the funds available for support of OLS operations (but for this subsection) for the purposes of the plan.

By Mr. SHELBY:

S. 181. A bill to amend the Internal Revenue Code of 1986 to phase out the taxation of Social Security benefits; to the Committee on Finance.

Mr. SHELBY. Mr. President, I rise today to introduce the Older Americans Tax Fairness Act of 2001. My bill would completely eliminate the unjust taxation of Social Security benefits by the end of 2005. The premise of my legislation is simple: Social Security benefits were never intended to be taxed. At its inception and continuing on for the next fifty years, Social Security benefits were exempt from taxation. Budgetary shortfalls in 1984 and 1993, however, led to the taxation of these benefits. The economic situation of America is now such that the continued taxation of Social Security benefits is wasteful and unnecessary.

Under the current law, beneficiaries of Social Security are taxed on as much as 85 percent of their benefits. Furthermore, under the latest changes made by the Clinton Administration, some older Americans find themselves in a situation where for every dollar they earn over a threshold amount, $1.85 is subject to tax. In addition to being fundamentally and logically unfair, I believe such taxation provides senior citizens with a strong disincentive to work. In other words, taxation of benefits creates a situation where many senior citizens decide to not work rather than to earn additional income which may trigger taxation of their Social Security benefits.

Working senior citizens add a wealth of knowledge and experience to the workplace. As such, we must make sure that our American workforce is not deprived of these valuable assets. Our laws should encourage, not discourage, older Americans with a desire to work to continue contributing to our society. Unfortunately, that is not what is happening today.

Despite disincentives to work, many older Americans are forced to do so to be able to pay for living expenses, healthcare, prescription drugs and other essentials. To these people, every penny counts in determining whether they are able to meet these costs. However, when we tax Social Security benefits, we make it virtually impossible for millions of older Americans to make ends meet. In effect, taxation of Social Security benefits forces many Americans to endure stressful situations in what should be a special time of their lives. Clearly, we cannot allow such an unjust situation to continue.

The taxation of Social Security benefits impacts a wide segment of society, including a large portion of the middle class. For example, a person with $35,000 in income and $10,000 in benefits pays almost $1,000 more in taxes than he or she would, had the Clinton-Gore increase not been enacted. By repealing the 1993 Clinton-Gore increase, as well

as the 1984 tax on Social Security benefits, my bill would give millions of Americans the financial freedom and security they deserve.

Mr. President, every day my office receives letters and calls from older Americans throughout the country voicing their opinions on the taxation of Social Security benefits. Their message is clear—stop the unfair taxation of these benefits. I ask my colleagues to listen to their constituents and to do the right thing by joining me in support of this bill.

By Ms. SNOWE (for herself and Mr. KERRY):

S. 182. A bill to amend the Small Business Act with respect to the microloan program; to the Committee on Small Business.

Ms. SNOWE. Mr. President, I rise today to reintroduce legislation I first offered during the 106th Congress during the Senate Small Business Committee's consideration of legislation to reauthorize the Small Business Administration.

This legislation is very simple and straight forward. It is designed to enhance the SBA Microloan program, which provides small, short-term loans for purchase of machinery and equipment, furniture and fixtures, inventory, supplies, and working capital for small businesses. These loans are made through SBA-approved nonprofit groups or intermediaries, which also provide counseling and educational assistance to firms or individuals.

Under the Microloan program, intermediaries operate both as lenders and as technical asistance providers. Through technical assistance, the intermediaries help the borrower to develop a business plan, to secure financing and to learn how to operate a business. I am very proud of the four Microloan intermediaries in my home state of Maine: Coastal Enterprises, Northern Maine Development Company, Eastern Maine Development Company, and Community Concepts. Mr. President, these organizations do great work in my state, and I am pleased to have this opportunity to recognize them.

I have long been a supporter of the Microloan program, and I am proud to sponsor this legislation today, which is designed to enhance and expand the program. The purpose of the legislation I am introducing today is to support efforts to increase the reach of and the number of Microlenders by authorizing peer-to-peer mentoring where experienced lending intermediaries can share their knowledge and experience with other intermediaries or organizations looking to develop a mcirolending program.

Currently, there are no resources to support such activities. Under this legislation, industry would develop a network of intermediaries with training experience and develop a system to match them with intermediaries seeking assistance. Under my bill, the program would authorize $1 million annually, and the funding would come out of already-authorized funding for Microloan technical assistance.

I hope this legislation will be a constructive step in the ongoing effort to improve the successful Microloan program, and I urge my colleagues to join me in supporting this effort.

By Ms. SNOWE:

S. 183. A bill to enhance Department of Education efforts to facilitate the involvement of small business owners in State and local initiatives to improve education; to the committee on Finance.

Ms. SNOWE. Mr. President, I rise to introduce legislation, the Small Business Employment and Education Act of 2001, which is designed to enhance federal efforts to facilitate the involvement of small business owners and entrepreneurs in state and local initiatives to improve the quality of education programs for our young people.

In 1999, the Small Business Committee, of which I am a member, held a hearing chaired by Senator BOND, chairman of the committee, on the challenges facing the small business community as a result of the failure of many of our educational institutions to teach students the basic skills that are necessary to succeed in today's work environment. The committee heard testimony from a number of small businesses and organizations about this growing problem.

And just how big is the problem? A 1999 American Management Association survey on workplace testing found that approximately 36 percent of employees tested for basic skills were found to be deficient in these skills, and small businesses reported deficiency rates well above the national average. Sixty percent of AMA-member companies reported that the availability of skilled manpower was scarce, and 67 percent believe that the shortages will continue.

A 1999 NFIB report found that 18 percent of NFIB members report that finding qualified labor is the single most important problem facing their business today.

Likewise, a 1999 poll of U.S. Chambers of Commerce found that 83 percent reported the ability—or lack thereof—to find qualified workers was among their biggest concerns, and 53 percent said education is the single most pressing public policy issue to them.

This information clearly illustrates that the business community, and small businesses in particular, have an important stake in the education of our youth. One of the most fundamental needs that any growing business faces is the need for employees with basic skills, and concerns have been expressed by the small business community that many students are not graduating with the basic skills in reading, writing, mathematics, and science—skills they need to succeed in today's workplace or become the entrepreneurs of tomorrow.

The fact of the matter is, Mr. President, the growth of high-skilled jobs is outpacing growth in all other fields. We must not allow basic skills to slip away if we are to remain competitive in an increasingly aggressive and technology-based global market.

Small business is the driving force behind our economy, and as we authorize the Elementary and Secondary Education Act, we must take into account the needs of businesses, and small businesses in particular. To that end, locally-driven initiatives are crucial. In order to create jobs, we must encourage small business expansion and foster small business entrepreneurship and, and I believe that education initiatives are key to this.

Under the Small Business Employment and Education Enhancement Act, the Department of Education would disseminate information and facilitate the sharing of information designed to assist small businesses in working with school systems in an effort to improve our educational institutions. For example, the agency would publish guidance materials, best practices, checklists and other materials on the World Wide Web, in Department of Education publications and articles, letters, links to related World Wide Web sites, public service announcements, and through other means at the Department's disposal.

The Department of Education would establish a centralized database of materials and act as a clearinghouse for information on initiatives that have proven successful.

The Secretary of the Department of Education would also establish an Office of Small Business Education to promote efforts to address the needs of small businesses though education programs. This division would work to remove any existing impediments to partnerships between school systems and small businesses, and propose solutions to education-related problems facing small businesses.

The goal of the bill I am introducing today is to facilitate partnerships between communities and businesses. I believe it should be easy for communities that are interested in designing business/school partnerships to get the information they need on how to do so. With access to the kinds of sources envisioned in this legislation, communities would be able to model a program after a proven approach.

In addition, my bill authorizes technical assistance to be administered by the Office of Small Business Education to be used to provide guidance to small businesses, small business organizations, school systems, and communities working cooperatively to enhance the teaching of basic skills.

The bill would also establish tax credits to encourage companies to provide work study, internship, or fellowship opportunities for students and teachers.

Finally, the bill includes a provision directing the Department of Education

to conduct a study and report to Congress on the challenges facing small businesses in obtaining workers with adequate skills; an assessment of the impact on small businesses of the skills shortage; the costs to small businesses associated with this shortage; and the recommendations of the Secretary on how to address these challenges.

Mr. President, I hope this legislation will provide a foundation for cooperative initiatives between small businesses and school systems, and I look forward to working with the Small Business Committee, the Senate Health, Education, Labor, and Pensions Committee and others as we work to reauthorize the Elementary and Secondary Education Act.

By Mr. DORGAN (for himself and Mr. CRAIG):

S. 184. A bill to amend title 18, United States Code, to eliminate good time credits for prisoners serving a sentence for a crime of violence, and for other purposes; to the Committee on the Judiciary.

S. 185. A bill to provide incentives to encourage stronger truth in sentencing of violent offenders, and for other purposes; to the Committee on the Judiciary.

Mr. DORGAN. Mr. President, I offer legislation today that would strengthen our Trust in Sentencing guidelines and limit the ability of violent criminals to be released early due to ''good time'' credits.

Let me tell you why we need these bills. If you commit murder in this country, on average, you are going to be sentenced to about 21 years in jail but that criminal will serve, on average, only 10 years behind bars.

Most people will be startled to hear that. And why is this the case? Because people are let out early. Murderers go to prison, and they get ''good time,'' time off for good behavior: If you want to get out early, just be good in prison, and we will put you back on the streets. A murderer can get credit for good behavior. That sounds like an oxymoron to me.

And what happens when you are put back on the streets? You read the stories. These people commit crimes again. They rape or they rob or they kill. They molest children. They repeat their crimes.

I am introducing legislation today, along with my friend Senator CRAIG of Idaho to address this problem. The point of it is very simple. I believe that in the criminal justice system we ought to have different standards for those who commit acts of violence. Everyone in this country who commits acts of violence ought to understand: You go to prison, and your address is going to be your jail cell until the end of your sentence.

I do not mind early release for nonviolent offenders. If prison officials want to use ''good time'' as a management tool for nonviolent criminals, fine. But for violent offenders, we ought to have a society in which everyone understands: If you commit an act of violence, the prison cell is your address to the end of your sentence. No good time off for good behavior, no getting back to the streets early. You are going to be in prison to serve your term. My legislation says, this is an important standard for state and federal prisons.

We know the current system isn't working. Too many violent offenders are sent back to America's streets. There is a way to stop that. My legislation will do so.

By Mr. JOHNSON:

S. 186. A bill to provide access and choice for use of generic drugs instead of nongeneric drugs under Federal health care programs, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. JOHNSON. Mr. President, today, I am introducing legislation as one more step in my fight to combat rising prescription drug prices and reduce the cost of medication for consumers in this country. My legislation, called the Generic Pharmaceutical Access and Choice For Consumers Act of 2001, aims to reduce the cost of prescription medication to American taxpayers and the U.S. government by encouraging the use of Food and Drug Administration (FDA) approved, therapeutically equivalent generic prescription drugs within the federal health care programs, except if the non-generic form is either ordered by the prescribing physician or requested by the patient.

The Generic Pharmaceutical Access and Choice For Consumers Act of 2001 establishes a straightforward and cost-effective means of increasing consumers' access and choice to safe, affordable generic prescription drugs under federal health care programs which could result in savings of millions of dollars.

The Federal Employee Health Benefits Program (FEHBP), which spends approximately $18.4 billion providing health insurance coverage to its' estimated nine million enrollees, including employees, retirees and their families, spends nearly twenty percent, $3.6 billion, of their insurance program costs on pharmaceutical benefits alone. This year brought little relief when the Office of Personnel Management (OPM) announced that FEHBP premium increases for the year 2001 were on average 10.5 percent, mostly attributable to the cost increase in prescription drug plans to fill prescriptions with FDA approved, therapeutically equivalent generic prescription drugs. In fact, the rising cost of prescription drugs accounts for about 40 percent of the total rise in premiums for this year alone.

In 1997, about one-third of all prescriptions under the FEHBP were for generic drugs. The Office of Personnel Management (OPM), which administers the FEHBP, estimated that total costs for prescription drugs would drop by about fifteen percent if half of all prescriptions were for generic drugs.

A 1998 study conducted by the Congressional Budget Office estimates that generic pharmaceutical substitution saves consumers nationwide approximately eight to ten billion dollars a year.

Some FEHBP plans and other federal health care programs do to some extent encourage the use of generic prescription drugs but the practice is not mandatory or universally incorporated into all programs. The Generic Pharmaceutical Access and Choice For Consumers Act simply directs all federal health care programs that provide prescription drug plans to fill prescriptions with FDA approved, therapeutically equivalent generic prescription drugs, except if the non-generic form is either ordered by the prescribing physician or requested by the patient.

I believe we can take greater steps to increase the utilization of high-quality, FDA approved generic drugs, which cost between twenty-five and sixty percent less than brand-name drugs, resulting in an estimated average savings of fifteen to thirty dollars on each prescription filled. In fact, independent studies have even estimated that generics provide an average savings of $45.50 for each prescription drug sold.

Generic pharmaceutical drugs are widely accepted by both consumers and the medical profession, as the market share held by generic drugs compared to brand-name prescription drugs has more than doubled during the last decade, from approximately nineteen to forty-three percent, according to the Congressional Budget Office. Yet, despite accounting for just over forty percent of the prescriptions drugs dispensed, generic drugs represent only 8 percent of the total dollar volume spent on drugs in this country. Studies have shown that consumers can save an additional $1.32 billion per year for every one percent increase in the use of generic drugs. That is why I strongly believe that generic pharmaceutical utilization can help both consumers and the government reduce the cost of prescription drugs.

Since there exists no current coverage for outpatient prescription drugs under the Medicare program, a second component of my bill includes a sense-of-the-Senate that, to the extent feasible, a preference for the safe and cost-effective use of generic drugs be considered in conjunction with any legislation that adds a prescription drug benefit to the Medicare program. I strongly believe that the utilization of high-quality, safe generic pharmaceutical drugs in a Medicare prescription drug benefit would provide a built in cost control mechanism that would help ensure the economic feasibility and sustainability of any new benefit.

And third, the bill I am introducing today works to prevent a tactic used by the brand drug industry to prevent generics from reaching the consumer by convincing state legislatures to pass unwarranted restrictions to the substitution of generic versions of brand name drugs. The campaign that some brand name drug companies lobby in

some states is nothing more than an attempt by the brand name companies to protect their market share. The Generic Pharmaceutical Access and Choice For Consumers Act increases the level playing field for generic drugs by requiring the Food and Drug Administration (FDA), where appropriate, to determine that a generic pharmaceutical is the therapeutic equivalent of its' brand-name counterpart, and affording national uniformity to that determination.

The legislation would also prevent a State from establishing or continuing any requirement that keeps generic pharmaceutical drugs off the market once FDA has determined that a generic drug is ''therapeutically equivalent'' to a brand name drug. This provision will ensure that generic prescription drugs get to the market in a timely fashion and provide consumers with access and choice to low cost, high-quality alternatives.

As the year continues, I hope that we will move forward in a constructive debate about providing relief from the escalating costs of prescription drugs. However, I believe that minimizing cost through full access to generic drugs must be part of any effort to address the prescription drug pricing issue. I introduced the Generic Pharmaceutical Access and Choice For Consumers Act of 2001 to lay the ground work early in these discussions and take some constructive steps in the right direction so that the American public can get the full benefit of safe, affordable generic prescription drugs and taxpayers are treated right at the same time.

I ask unanimous consent that the full text of the legislation be printed in the RECORD.

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

S. 186

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Generic Pharmaceutical Access and Choice for Consumers Act of 2001''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.

TITLE I—REQUIRING THE USE OF GENERIC DRUGS

Sec. 101. Requiring the use of generic drugs under the Public Health Service Act.
Sec. 102. Application to Federal employees health benefits program.
Sec. 103. Application to medicare program.
Sec. 104. Application to medicaid program.
Sec. 105. Application to Indian Health Service.
Sec. 106. Application to veterans programs.
Sec. 107. Application to recipients of uniformed services health care.
Sec. 108. Application to Federal prisoners.

TITLE II—THERAPEUTIC EQUIVALENCE REQUIREMENTS FOR GENERIC DRUGS

Sec. 201. Therapeutic equivalence of generic drugs.

TITLE III—GENERIC PHARMACEUTICALS AND MEDICARE REFORM

Sec. 301. Sense of the Senate on requiring the use of generic pharmaceuticals under the medicare program.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress makes the following findings:

(1) Generic pharmaceuticals are approved by the Food and Drug Administration on the basis of scientific testing and other information establishing that such pharmaceuticals are therapeutically equivalent to brand-name pharmaceuticals, ensuring consumers a safe, efficacious, and cost-effective alternative to brand-name innovator pharmaceuticals.

(2) The pharmaceutical market has become increasingly competitive during the last decade because of the increasing availability and accessibility of generic pharmaceuticals.

(3) The Congressional Budget Office estimates that—

(A) the substitution of generic pharmaceuticals for brand-name pharmaceuticals will save purchasers of pharmaceuticals between $8,000,000,000 and $10,000,000,000 each year; and

(B) quality generic pharmaceuticals cost between 25 percent and 60 percent less than brand-name pharmaceuticals, resulting in an estimated average savings of $15 to $30 on each prescription filled.

(4) Independent studies have estimated that generics provide an average savings of $45.50 for each prescription drug sold.

(5) Generic pharmaceuticals are widely accepted by both consumers and the medical profession, as the market share held by generic pharmaceuticals compared to brand-name pharmaceuticals has more than doubled during the last decade, from approximately 19 percent to 43 percent, according to the Congressional Budget Office.

(6) Generic pharmaceuticals can save consumers an additional $1,320,000,000 each year for each 1 percent increase in the use of such pharmaceuticals.

(7) Generic pharmaceutical use can help both consumers and the Government reduce the cost of prescription drugs.

(b) PURPOSES.—The purposes of this Act are—

(1) to reduce the cost of prescription drugs to the United States Government and to beneficiaries under Federal health care programs while maintaining the quality of health care by requiring the use of generic drugs rather than nongeneric drugs, unless no therapeutically equivalent generic drug has been approved under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or the nongeneric drug is specifically—

(A) ordered by the prescribing provider; or

(B) requested by the individual for whom the drug is prescribed; and

(2) to increase the utilization of generic pharmaceuticals by requiring the Food and Drug Administration, where appropriate, to determine that a generic pharmaceutical is the therapeutic equivalent of its brand-name counterpart, and by affording national uniformity to that determination.

TITLE I—REQUIRING THE USE OF GENERIC DRUGS

SEC. 101. REQUIRING THE USE OF GENERIC DRUGS UNDER THE PUBLIC HEALTH SERVICE ACT.

(a) IN GENERAL.—Part B of title II of the Public Health Service Act (42 U.S.C. 238 et seq.) is amended by adding at the end the following new section:

''SEC. 247. USE OF GENERIC DRUGS REQUIRED.

''(a) REQUIREMENT.—Each grant or contract entered into under this Act that involves the provision of health care items or services to individuals shall include provisions to ensure that any prescription drug provided for under such grant or contract is filled by providing the generic form of the drug involved, unless no generic form of the drug has been approved under the Federal Food, Drug, and Cosmetic Act or the nongeneric form of the drug is specifically—

''(1) ordered by the prescribing provider; or

''(2) requested by the individual for whom the drug is prescribed.

''(b) DEFINITIONS.—In this section:

''(1) GENERIC FORM OF THE DRUG.—The term 'generic form of the drug' means a drug that is the subject of an application approved under subsection (b)(2) or (j) of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355), for which the Secretary has made a determination that the drug is the therapeutic equivalent of a listed drug under section 505(o) of that Act (21 U.S.C. 355(o)).

''(2) NONGENERIC FORM OF THE DRUG.—The term 'nongeneric form of the drug' means a drug that is the subject of an application approved under—

''(A) section 505(b)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)(1)); or

''(B) section 505(b)(2) of such Act and that has been determined to be not therapeutically equivalent to any listed drug.

''(3) PRESCRIPTION DRUG.—The term 'prescription drug' means a drug that is subject to the provisions of section 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to any drug furnished on or after the date of enactment of this Act.

SEC. 102. APPLICATION TO FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM.

(a) IN GENERAL.—Section 8902 of title 5, United States Code, is amended by adding at the end the following new subsection:

''(p) If a contract under this chapter provides for the provision of, the payment for, or the reimbursement of the cost of any prescription drug (as defined in paragraph (3) of section 247(b) of the Public Health Service Act), the carrier shall provide, pay, or reimburse the cost of the generic form of the drug (as defined in paragraph (1) of such section), except that this subsection shall not apply if the nongeneric form of the drug (as defined in paragraph (2) of such section) is specifically—

''(1) ordered by the prescribing provider; or

''(2) requested by the individual for whom the drug is prescribed.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any prescription drug furnished during contract years beginning on or after January 1, 2002.

SEC. 103. APPLICATION TO MEDICARE PROGRAM.

(a) IN GENERAL.—Section 1861(t) of the Social Security Act (42 U.S.C. 1395x(t)) is amended by adding at the end the following new paragraph:

''(3) For purposes of paragraph (1), the term 'drugs' means the generic form of the drug (as defined in section 247(b)(1) of the Public Health Service Act), unless no generic form of the drug has been approved under the Federal Food, Drug, and Cosmetic Act or the nongeneric form of such drug (as defined in section 247(b)(2) of such Act) is specifically—

''(A) ordered by the health care provider; or

''(B) requested by the individual to whom the drug is provided.''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by this section shall apply with respect to any prescription drug furnished on or after the date of enactment of this Act.

(2) MEDICARE+CHOICE PLANS.—In the case of a Medicare+Choice plan offered by a Medicare+Choice organization under part C of title XVIII of the Social Security Act (42 U.S.C. 1395w–21 et seq.), the amendment made by this section shall apply to any prescription drug furnished during contract years beginning on or after January 1, 2002.

SEC. 104. APPLICATION TO MEDICAID PROGRAM.

(a) IN GENERAL.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended—

(1) in paragraph (64), by striking ''and'' at the end;

(2) in paragraph (65), by striking the period at the end and inserting ''; and''; and

(3) by adding the following new paragraph:

''(66) provide that the State shall, in conjunction with the program established under section 1927(g), provide for the use of a generic form of a drug (as defined in paragraph (1) of section 247(b) of the Public Health Service Act), unless no generic form of the drug has been approved under the Federal Food, Drug, and Cosmetic Act or the nongeneric form of the drug (as defined in paragraph (2) of such section) is specifically—

''(A) ordered by the provider; or

''(B) requested by the individual to whom the drug is provided.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to any prescription drug furnished under State plans that are approved or renewed on or after the date of enactment of this Act.

SEC. 105. APPLICATION TO INDIAN HEALTH SERVICE.

(a) IN GENERAL.—Title II of the Indian Health Care Improvement Act (25 U.S.C. 1621 et seq.) is amended by adding at the end the following new section:

''SEC. 225. USE OF GENERIC DRUGS REQUIRED.

''In providing health care items or services under this Act, the Indian Health Service shall ensure that any prescription drug (as defined in paragraph (3) of section 247(b) of the Public Health Service Act) that is provided under this Act is the generic form of the drug (as defined in paragraph (1) of such section) involved, unless no generic form of the drug has been approved under the Federal Food, Drug, and Cosmetic Act or the nongeneric form of the drug (as defined in paragraph (2) of such section) is specifically—

''(1) ordered by the prescribing provider; or

''(2) requested by the individual for whom the drug is prescribed.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to any prescription drug furnished on or after the date of enactment of this Act.

SEC. 106. APPLICATION TO VETERANS PROGRAMS.

(a) USE OF GENERIC DRUGS REQUIRED.—Subchapter III of chapter 17 of title 38, United States Code, is amended by inserting after section 1722A the following new section:

''§ 1722B. Use of generic drugs required

''When furnishing a prescription drug (as defined in paragraph (3) of section 247(b) of the Public Health Service Act) under this chapter, the Secretary shall furnish a generic form of the drug (as defined in paragraph (1) of such section), unless no generic form of the drug has been approved under the Federal Food, Drug, and Cosmetic Act or the nongeneric form of the drug (as defined in paragraph (2) of such section) is specifically—

''(1) ordered by the prescribing provider; or

''(2) requested by the individual for whom the drug is prescribed.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 of such title is amended by inserting after the item relating to section 1722A the following new item:

''1722B. Use of generic drugs required.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to any prescription drug furnished on or after the date of enactment of this Act.

SEC. 107. APPLICATION TO RECIPIENTS OF UNIFORMED SERVICES HEALTH CARE.

(a) USE OF GENERIC DRUGS REQUIRED.—Chapter 55 of title 10, United States Code, as amended by section 751(b) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398), is amended by adding at the end the following new section:

''§ 1111. Use of generic drugs required

''The Secretary of Defense shall ensure that each health care provider who furnishes a prescription drug (as defined in paragraph (3) of section 247(b) of the Public Health Service Act) furnishes the generic form of the drug (as defined in paragraph (1) of such section), unless no generic form of the drug has been approved under the Federal Food, Drug, and Cosmetic Act or the nongeneric form of the drug (as defined in paragraph (2) of such section) is specifically—

''(1) ordered by the prescribing provider; or

''(2) requested by the individual for whom the drug is prescribed.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1109 the following new item:

''1111. Use of generic drugs required.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to any drug furnished on or after the date of enactment of this Act.

SEC. 108. APPLICATION TO FEDERAL PRISONERS.

(a) IN GENERAL.—Section 4006(b) of title 18, United States Code, is amended by adding at the end the following new paragraph:

''(3) USE OF GENERIC DRUGS REQUIRED.—The Attorney General shall ensure that each health care provider who furnishes a prescription drug (as defined in paragraph (3) of section 247(b) of the Public Health Service Act) to a prisoner charged with or convicted of an offense against the United States furnishes the generic form of the drug (as defined in paragraph (1) of such section), unless no generic form of the drug has been approved under the Federal Food, Drug, and Cosmetic Act or the nongeneric form of the drug (as defined in paragraph (2) of such section) is specifically—

''(A) ordered by the prescribing provider; or

''(B) requested by the prisoner for whom the drug is prescribed.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to any prescription drug furnished on or after the date of enactment of this Act.

TITLE II—THERAPEUTIC EQUIVALENCE REQUIREMENTS FOR GENERIC DRUGS

SEC. 201. THERAPEUTIC EQUIVALENCE OF GENERIC DRUGS.

(a) IN GENERAL.—Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) is amended—

(1) by adding at the end the following new subsection:

''(o)(1) For each application filed under subsection (b)(2) or subsection (j), the Secretary shall determine whether the drug for which the application is filed is the therapeutic equivalent of the drug for which the investigations have been made under subsection (b)(1)(A) (in this subsection referred to as the 'reference drug') or the listed drug referred to in subsection (j)(2)(A)(i). For applications approved after the date of enactment of this subsection, the Secretary's determination shall be made before the approval of the application. For such applications approved before such date, the most recent determination made by the Secretary shall be confirmed.

''(2) For purposes of paragraph (1), a drug is the therapeutic equivalent of a reference drug or a listed drug if—

''(A) each active ingredient of the drug and either the reference drug or the listed drug is the same;

''(B) the drug and either the reference drug or the listed drug—

''(i) are of the same dosage form;

''(ii) have the same route of administration;

''(iii) are identical in strength or concentration; and

''(iv) are expected to have the same clinical effect and safety profile when administered to patients under conditions specified in the labeling; and

''(C) the drug does not present a known bioequivalence problem, or if the drug presents such a problem, the drug is shown to meet an appropriate bioequivalence standard.

''(3) With respect to a drug for which a therapeutic equivalence determination has been made or confirmed under this subsection, no State or political subdivision of a State may establish or continue in effect with respect to therapeutic equivalence of the drug to either a reference drug or a listed drug, any requirement which is different from, or in addition to, or is otherwise not identical with, the Secretary's determination or confirmation under this subsection.''; and

(2) in subsection (j)(7)(A), by adding at the end the following:

''(iv) The Secretary shall include in each revision of the list under clause (ii) on or after the date of enactment of this clause the official and proprietary name of each reference drug or listed drug that is therapeutically equivalent to a drug approved under subsection (b)(2) or under this subsection during the preceding 30-day period, as determined under subsection (o).''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act.

TITLE III—GENERIC PHARMACEUTICALS AND MEDICARE REFORM

SEC. 301. SENSE OF THE SENATE ON REQUIRING THE USE OF GENERIC PHARMACEUTICALS UNDER THE MEDICARE PROGRAM.

It is the sense of the Senate that legislative language requiring the safe and cost-effective use of generic pharmaceuticals should be considered in conjunction with any legislation that adds a comprehensive prescription drug benefit to the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

By Ms. SNOWE (for herself and Mr. GRASSLEY):

S. 187. A bill to establish the position of Assistant United States Trade Representative for Small Business, and for other purposes; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one committee reports, the other committee has thirty days to report or be discharged.

Ms. SNOWE. Mr. President, I rise today to introduce legislation on behalf of our Nation's small business community. This legislation will benefit small businesses by requiring an

estimate of the cost of each piece of congressional legislation on small businesses before Congress enacts the legislation, and also by creating an assistant U.S. Trade Representative for Small Business.

Small business is the driving force behind our economy, and in order to create jobs—both in my home State of Maine and across the Nation— we must encourage small business expansion.

Nationwide, an estimated 13 to 16 million small businesses account for over 99 percent of all employers. They also employ over 50 percent of the workers. Small businesses account for virtually all of the new jobs being created. Maine, in particular, is a state with a historical record of self-reliance and small business enterprise. In Maine, of the roughly 36,660 employers, 97.6 percent are small businesses. Maine also boasts an estimated 71,000 self-employed persons. Surveys credit small businesses with all of the new jobs in Maine as well.

I believe that small businesses are the most successful tool we have for job creation. They provide a substantial majority of the initial job opportunities in this country, and are the original—and finest—job training program. Unfortunately, as much as small businesses help our own economy—and the Federal Government—by creating jobs and building economic growth, government often gets in the way. Instead of assisting small business, government too often frustrates small business efforts.

Federal regulations create more than 1 billion hours of paperwork for small businesses each year, according to the Small Business Administration. Moreover, because of the size of some of the largest American corporations, U.S. commerce officials too often devote a disproportionate amount of time to the needs and jobs in corporate America rather than in small businesses.

My legislation will address these two challenges facing small businesses, and I hope it will both encourage small business expansion and fuel further job creation.

One, this legislation will require a cost analysis of legislative proposals before new requirements are imposed on small businesses. Too often, Congress approves well-intended legislation that shifts the costs of programs to small businesses. This proposal will help avert such unintended consequences.

According to the U.S. Small Business Administration, small business owners spend at least 1 billion hours a year filling our government paperwork, at an annual cost that exceeds $100 billion. Before we place yet another obstacle in the path of small business job creation, we should understand the costs our proposals will impose on small businesses.

This bill will require the Director of the Congressional Budget Office to prepare for each committee an analysis of the costs to small businesses that would be incurred in carrying out provisions contained in new legislation. This cost analysis will include an estimate of costs incurred in carrying out the bill or resolution for a 4-year period, as well as an estimate of the portion of these costs that would be borne by small businesses. This provision will allow us to fully consider the impact of our actions on small businesses—and through careful planning, we may succeed in mitigating unintended costs.

Two, this legislation will direct the U.S. Trade Representative to establish a position of Assistant U.S. Trade Representative for Small Business. The Office of the U.S. Trade Representative is overburdened, and too often overlooks the needs of small business. This is a concern that I have heard time and again from those in the small business community. A new Assistant U.S. Trade Representative would promote exports by small businesses and work to remove foreign impediments to exports.

Mr. President, I am convinced that this legislation will truly assist small businesses, resulting not only in additional entrepreneurial potential but also in good new jobs. I urge my colleagues to join me in supporting this legislation.

By Ms. COLLINS (for herself and Mrs. BOXER):

S. 188. A bill to amend the Internal Revenue Code of 1986 to modify the tax credit for electricity produced from certain renewable resources; to the Committee on Finance.

Ms. COLLINS. Mr. President, I rise today to introduce the Biomass Energy Equity Act of 2001. I am pleased to be joined in this effort by Senator BOXER, my colleague from California. This legislation makes a commonsense change to the renewable energy production tax credit by expanding it to include additional types of biomass plants. I would like to take a few minutes now to discuss the need for this important bill and to describe what it would do.

Simply put, biomass energy production uses combustion to turn wood and organic waste into energy in an environmentally sound process. Biomass takes a public liability, organic waste, and converts it into a public asset, energy.

The renewable energy production tax credit enacted in 1992 provides incentives to the solid-fuel biomass and wind energy industry to develop economically viable and environmentally responsible renewable sources of electricity. In enacting that legislation, Congress recognized that biomass energy offers substantial environmental benefits, specifically a reduced dependence on oil and coal, a desirable alternative to open field burnings and the landfilling of organic material, and a net reduction of greenhouse gas emissions.

Unfortunately, the 1992 legislation was drafted too narrowly to realize the full benefits of biomass energy production. The 1992 act narrowly defined an eligible biomass facility as including only so-called closed-loop biomass plants. Closed-loop biomass is a hypothetical form of electricity generation where the fuel is planted, grown, and harvested specifically and solely for the fuel of the power plant. This definition rules out the significant environmental benefit of disposal of organic waste otherwise destined for a landfill or field-burning and, therefore, remains unused. Since the biomass tax credit was passed, no taxpayer, not one, has taken advantage of the tax benefit.

Simply put, the closed-loop tax credit is not a sufficient incentive to develop a costly ''fuel plantation,'' which entails large-scale land purchases, property taxes, and growing material for the sole purpose of burning it. By demanding that newly grown material be used rather than organic waste, the closed-loop biomass definition flies in the face of the commonly accepted environmental principle that products should be put to as many ''highest value'' uses as possible.

The legislation that I introduce today would expand the eligibility of the biomass tax credit to include conventional biomass plants. This legislation is designed to encourage a source of energy generation that offers substantial air quality, waste management, and greenhouse gas reduction benefits. The national biomass industry currently uses over 22,000,000 tons of wood waste a year. The waste the biomass industry converts into energy otherwise would be disposed of in one of three ways: burned in an open field, which generates pollution instead of energy; landfilled, where it fills limited landfill space and biodegrades, emitting methane, carbon dioxide, and other greenhouse gases; or left in the woods or fields, increasing the risk and severity of forest fires.

The air quality benefits of biomass energy are of particular importance. According to the Northeast States for Coordinated Air Use Management, an organization of all the Northeastern States' Air Quality Bureaus, biomass energy produces less nitrogen oxide than alternatives and generates virtually no sulfur dioxide, particulate matter, or mercury. Biomass energy production also results in a net reduction of greenhouse gases.

In addition to their environmental benefits, biomass plants contribute to the economy of many rural towns throughout America. Because of their dependence on organic waste, biomass facilities are usually located in rural areas where they are often important engines of economic growth. For example, in the small town of Sherman, Maine, a biomass facility provides 56 percent of the property tax base. It also directly employs 24 individuals and indirectly provides work for hundreds of truck drivers, wood operators, mill workers and maintenance contractors.

In another small town of Maine, Athens, a biomass facility provides a third

of that small town's tax base and directly employs 20 people, while supporting a local wood operator who, in turn, employs 40 people.

The point is, the economy in many of the small towns in Maine, in towns such as Livermore, Ashland, Greenville, Fort Fairfield, Stratton, and West Enfield benefit considerably from these biomass facilities. In total, there are over 100 biomass facilities in the United States, representing an investment in excess of $7 billion. These facilities contribute jobs, property taxes and a disposal point for waste products. In addition, rural biomass facilities provide ash for use by local farmers, reducing their purchases of lime. I understand there is regularly more demand for the ash produced by these biomass plants than there is supply.

With biomass energy production, nothing is wasted. Biomass turns waste products—the byproducts of timber, paper or farming operations—into needed energy, wasting nothing. Even the ash is returned to the earth to grow organic matter yielding both crops and waste to generate still more electricity.

We in Congress often discuss ways to help rural America. This proposal offers an opportunity to do so in a manner that not only benefits the economy of small towns in rural America but also in a way that generates considerable environmental benefits.

This measure makes both economic and environmental sense. I urge my colleagues to join Senator BOXER and me in supporting this important legislation and working for its passage.

By Mr. BOND:

S. 189. A bill to amend the Internal Revenue Code of 1986 to provide tax relief for small businesses, and for other purposes; to the Committee on Finance.

Mr. BOND. Mr. President, I rise because I have just come from a very interesting and informative hearing in the Budget Committee. Federal Reserve Chairman Alan Greenspan came in today to talk about what he has seen as the tremendous productivity growth in this economy. The productivity growth essentially has come about because of the investment in information technology which has allowed our country to produce more in less time and to increase the output of the many sources of goods and services in this country. It has brought with it, as Chairman Greenspan noted, a significant increase in revenues to the Federal Government, which are allowing us to pay down even more rapidly than previously thought the debt now held by the public.

Last year, Chairman Greenspan was adamant. He said the best thing we could do was to pay down the debt. He said, ''I have absolutely zero concern that we are going to pay the debt down too fast.'' Remarkably, today he has said that there is a real danger: We are potentially paying down the debt too quickly. He said if we get to the point where we have paid down the debt and the Federal Government is starting to accumulate private assets—in other words, having to put its surpluses into investments in the country—we could have a serious political problem. He therefore said that, in addition to continuing debt reduction, it is time to take ''surplus-lowering policy initiatives.''

Now sometimes the Chairman doesn't speak in the clearest language, and we questioned him as to what he meant. He indicated that a reduction in taxes beginning now, prior to the time we get to the point where there is no debt held by the public, is a good idea. He said, from an economist's standpoint, the most effective way to generate growth in the economy is to reduce marginal rates.

Well, this was very informative and useful testimony. I urge my colleagues to read it. He also warned that we are in serious trouble if we follow the path we have followed in this Congress and in the last several years of spending explosions, going above the budget and continuing to spend more. He said that spending too much can be a real danger. There is much less danger of cutting taxes too much because there are limits on how much taxes can be cut.

Mr. President, I introduce the Small Business Works Act of 2001. This legislation is built on one inescapable fact—small business ''works'' in this country. The men and women who venture into small businesses take incredible risks. They work countless hours, often seven days a week, just to see their businesses break even. They risk their life savings and often capital put up by family and friends. And they forego valuable time with their families all for the promise of working for themselves and creating prosperous businesses in their communities.

Our country also reaps the benefits of successful small enterprises. According to the Small Business Administration, small businesses represent more than 99 percent of all employers, employ 53 percent of the private work force, and create about 75 percent of the new jobs in this country. In addition, these small firms contribute 47 percent of all sales in this country, and they are responsible for 51 percent of the private gross domestic product. With these kinds of results, it is quite clear that small business works for America.

Despite their success in recent years, one thing clearly does not work for small business—the Internal Revenue Code. Instead of collecting the lowest amount of taxes necessary in the least burdensome manner, the current tax law represents a morass of rules, regulations, forms, and, of course, penalties, with which the self-employed must contend. Just to put this into perspective, by some estimates, small business owners spend more than 5 percent of their revenues just to comply with the tax laws. In fact, a small business owner from Kansas City testified before the Senate Committee on Small Business that his business routinely spends more than 16 percent of the company's net income just to keep the records and file the appropriate tax forms. And that's even before he writes the tax check.

These revenues are taken away from the business and spent on accountants, bookkeepers, and lawyers to sort out all the rules and filing requirements. In addition, small business owners must dedicate valuable time and energy on day-to-day recordkeeping and other compliance requirements, all of which keep them from doing what they do best—running their business.

And then there are the taxes themselves. As the chairman of the Committee on Small Business, I have heard from small business owners in Missouri and across this country that they are more than willing to pay their fair share of taxes. What they object to, however, is paying high tax bills and vast amounts for professional tax assistance only to end up the victim of an unfair tax code.

Mr. President, the legislation I introduce today continues my long-standing commitment to helping small businesses obtain much needed tax relief and common-sense simplifications of our tax laws. For their unending contribution to the prosperity of this country, they deserve no less.

The bill is designed to complement the broad-based tax stimulus package that President Bush has proposed. With an economy that appears to be slowing, small businesses are likely to be among the first affected. We need to ensure that they benefit from any tax stimulus we enact this year to secure their continued vitality in the future.

The Small Business Works Act also draws from the priorities of the nation's small business organizations including the National Federation of Independent Business, the Small Business Legislative Council, and many others. While there are too many organizations to name them all individually, I am grateful for their ideas, their insights, and their support, without which this bill would not have been possible.

This legislation also includes recommendations from the National Women's Small Business Summit, which I chaired in Kansas City, Missouri, last June. That summit brought together hundreds of women business owners who focused on specific areas of concern to their businesses, one of which was taxes. As the Summit's final report concludes, ''the Congress and the Executive Branch have a new mandate—listen to what women small-business owners have said and answer their call to action.'' During the Summit, I listened carefully to the views and recommendations of the participants, and with this legislation I am taking steps to answer their needs.

Lastly, this bill incorporates a number of the recommendations that the Internal Revenue Service (IRS) National Taxpayer Advocate set out in

his Annual Report to Congress for 2001. The Taxpayer Advocate has become an invaluable resource for identifying problems facing small business taxpayers and offering legislative proposals to address them.

Mr. President, the Small Business Works Act recognizes the incredible contribution that entrepreneurs, farmers and ranchers, and home-based business owners continually make to our economy despite the financial and paperwork headaches they face at every turn. To ease those burdens, the legislation provides tax relief for the self-employed and small firms, includes broad ranging tax simplifications for small enterprises, and accords small businesses greater protection as they strive to comply with our increasingly complex tax code.

When it comes to paying taxes, small business really works for the government. According to recent IRS data, small business owners pay approximately 40 percent of the nearly $2 trillion that the Federal government collects each year. With the growing budget surpluses, small businesses, like American families, are clearly paying more than the government needs to carry out its programs and obligations. So when we talk about a tax cut, small enterprises cannot be left behind. The Small Business Works Act embraces that fact by reducing the tax burden on small firms in several ways.

First, the bill includes the legislation that I introduced earlier this week to provide 100 percent deductibility of health insurance for the self-employed beginning this year. This was among the top priorities named by the National Women's Small Business Summit last summer, and it has been identified by the IRS National Taxpayer Advocate as a legislative recommendation for small business taxpayers.

With the self-employed able to deduct only 60 percent of their health-insurance costs today, and only 70 percent next year, it comes as no surprise that 24.2 percent of the self-employed still do not have health insurance. In fact, 4.8 million Americans live in families headed by a self-employed individual and have no health insurance. A full deduction will make health insurance more affordable to the self-employed and help them and their families get the health-insurance coverage that they need and deserve today—not years in the future.

Full deductibility also levels the playing field for the self-employed, who for too long have only had partial deductibility while their large corporate competitors have been able to deduct all of their insurance costs. Full deductibility against income taxes, however, is only part of the battle. My bill also corrects an additional peculiarity of the tax code, which prevents the self-employed from deducting their health-insurance premiums against their self-employment taxes. As the Taxpayer Advocate noted in his 2001 Report to Congress, ''[a]lthough self-employed individuals can reduce their taxable income by the cost of their health insurance, they still must pay self-employment taxes on this amount.'' In contrast, the Taxpayer Advocate continues, ''Wage earners who participate in pre-tax plans do not pay Social Security tax on their health insurance payments.'' My bill eliminates this narrow disparity in the law and allows the self-employed to exclude their health-insurance premiums from their self-employment tax.

As a result, the self-employed will truly be on an equal footing with owners and employees of corporations whose health-insurance benefits are not subject to income or employment taxes. It is a simple matter of fairness.

Second, the Small Business Works Act addresses the increasingly onerous consequences of the individual and corporate Alternative Minimum Tax (AMT). For the sole proprietors, partners, and S corporation shareholders, the individual AMT increases their tax liability by, among other things, reducing depreciation and depletion deductions, limiting net operating loss treatment, eliminating the deductibility of state and local taxes, and curtailing the expensing of research and experimentation costs. In addition, because of its complexity, this tax forces small business owners to waste precious funds on tax professionals to determine whether the AMT even applies. For these reasons, the bill includes the recommendation of the Taxpayer Advocate to repeal the individual AMT. This will be accomplished by eliminating 20 percent of the tax each year until it is completely repealed in 2006.

For small corporations, the AMT story is much the same—high compliance costs and additional taxes draining away scarce capital from the business. In fact, the Committee on Small Business heard at a hearing in the last Congress that the corporate AMT resulted in a $95,000 tax bill for one small business in Kansas City, all because the company purchased life insurance on the father, who was the primary owner of the business, to prevent the estate tax from closing the company down. That type of nonsense must come to an end here and now.

Accordingly, for small corporate taxpayers, the bill increases the current exemption from the corporate AMT. As a result, a small corporation will initially qualify for the exemption if its average gross receipts are $7.5 million or less (up from the current $5 million) during its first three taxable years. Thereafter, a small corporation will continue to qualify for the AMT exemption for as long as its average gross receipts for the prior three-year period do not exceed $10 million (up from the current $7.5 million).

Third, the Small Business Works Act, repeals the unemployment surtax. Since 1976, small businesses have had to bear the burden of a 0.2 percent surtax on the unemployment taxes they pay for their employees. This surtax was enacted to repay loans from the Federal unemployment fund made during the 1974 recession. Those loans were fully repaid in 1987, and yet the surtax continues to be extended, adding to the tax burden facing small employers. With the Federal surplus proving that small businesses are paying too much, this tax clearly should go.

Fourth, the Small Business Works Act incorporates a central piece of President Bush's tax plan to help businesses dedicated to developing new products and technology; it permanently extends the research and experimentation tax credit. Over the years this credit has stimulated research and development in this country and has contributed to the leadership of American businesses in the technological revolution. Unfortunately, this credit has also had a checkered history of expiration and reauthorization, which is simply untenable for businesses trying to plan for long-term research programs. It is time to end the on-again/off-again nature of this credit and provide businesses the certainty of knowing it will be available for the future.

Finally, the bill responds to the recommendation from the National Women's Small Business Summit to enhance the business-meals deduction. Unlike their large competitors, small enterprises often sell their products and services by word of mouth and close many business transactions on the road or in a local diner. In many ways the business breakfast with a potential customer is akin to formal advertising that larger businesses purchase in newspapers or on radio or television. While the newspaper ad is fully deductible, however, the business meal is only 50 percent deductible for the small business owner.

In addition, individuals who are subject to the Federal hours-of-service limitations of the Department of Transportation (such as truck drivers) are currently able to deduct 60 percent of their business meals and are on schedule to deduct up to 80 percent in coming years. As a result, small business owners have a significant lack of parity with individuals subject to hours-of-service limitations. Accordingly, the Small Business Works Act increases the limitation on the deductibility of business meals from the current 50 percent to 80 percent beginning in 2001.

As chairman of the Committee on Small Business, I spent considerable time in the last Congress examining the paperwork and filing burdens on small enterprises. According to research completed by the General Accounting Office at my request, there are more than 200 forms and schedules that a small business owner could have to file. That's a daunting universe of forms, which boils down to more than 8,000 lines, boxes, and data requirements. These forms are also accompanied by more than 700 pages of instructions—not including the countless pages of the tax code, regulations, rulings, and other IRS guidance.

Since entrepreneurs usually open their own businesses to work for themselves, not to waste valuable time and resources on government filing and recordkeeping requirements, the Small Business Works Act includes several provisions to simplify the tax code and let small business owners get on with their work.

First, in continuation of my effort in the last Congress, the bill includes my Small Business Tax Accounting Simplification Act, with some improvements. This provision allows a small business to use the cash method of accounting, rather than the more onerous accrual method, if the business' average annual gross receipts are less than $5 million. This proposal has been strongly endorsed by small business associations, including the National Federation of Independent Business and the Associated Builders and Contractors, and most recently by the Taxpayer Advocate stressing the need for simplifying the tax accounting rules.

More critically, the bill allows businesses that require merchandise in the performance of their services to use the cash method of accounting for all purposes. This provision responds to the pleas for help from small service providers, such as painters and contractors, who have recently become the focus of the IRS' attention, to the tune of thousands of dollars in taxes and penalties, not to mention accounting fees. And for what? A difference in timing, when the small business will ultimately pay the same amount of taxes? This change in the tax code is long overdue and will dramatically simplify the tax rules for countless small businesses.

At the National Women's Small Business Summit last summer, the participants raised another area of complexity for America's entrepreneurs—depreciation. The Small Business Works Act addresses this issue, in large part, by increasing the amount of equipment that small firms can expense each year to $50,000 and thereby avoid the complex depreciation rules. This bill also adjusts the phase-out limitation on expensing to permit more small businesses to purchase basic equipment without losing the benefit of immediate expensing. This limitation has not been increased since 1986, and as a result it is sorely out of step with the cost of new technology, which has risen dramatically over the past decade.

In addition, the bill responds to another recommendation of the Taxpayer Advocate by permitting computer software to be expensed. For computers and software purchased over the new $50,000 expensing limit, the bill modifies the present law to allow this technology to be depreciated over two years. Currently, computer equipment is generally depreciated over a five-year period and software is usually depreciated over three years. Any small business owner will tell you that a computer is largely obsolete well before three years of use, let alone five years. And computer software becomes outdated even faster. As a result, small business owners are left with thousands of dollars of depreciation on their books well after the equipment or software is obsolete. The bill makes the tax code in this area more consistent with the technological reality of the business world.

The Small Business Works Act also amends the limitations on the amount of depreciation that business owners may claim for vehicles used for business purposes. Under current law, a business loses a portion of its depreciation deduction if the vehicle placed in service in 2000 costs more than $14,400. Although these limitations have been subject to inflation adjustments, they have not kept pace with the actual cost of new cars and vans in most cases. For many small businesses, the use of a car or van is an essential asset for transporting personnel to sales and service appointments and for delivering their products. Accordingly, the bill adjusts the thresholds so that a business will not lose any of its depreciation deduction for vehicles costing less than $25,000, which will continue to be indexed for inflation.

Mr. President, another source of complexity for many small business owners are the estimated tax rules and the differing thresholds depending on the owner's income level. In fact, this issue was the number three legislative recommendation of the Taxpayer Advocate this year. The Small Business Works Act restores the simple two-option rule to avoid the interest penalty for underpayment of estimated taxes, which has been repeatedly altered in recent years primarily to raise revenues. To end that headache for the self-employed, the bill allows an individual to satisfy the requirements of the code if his estimated taxes are equal to 90 percent of the current year's tax bill or 100% of last year's tax bill—a simple and straightforward rule so small business owners can stop wasting time on tax preparation and get back to work.

The Small Business Works Act also addresses a complexity issue raised by the IRS National Taxpayer Advocate concerning small businesses jointly owned by a husband and wife. As noted by the Advocate in his 2001 Report to Congress: ''A married couple operating a small business must comply with the complex partnership reporting requirements. Even though the married couple files a joint tax return, the law requires them to treat the business as a partnership rather than a sole proprietorship. . . . [the] IRS estimates it takes over 200 hours longer to complete a partnership return than a Sole Proprietorship Schedule C.'' In light of this situation, the bill amends the tax code to permit married couples who jointly own a small business to opt out of the partnership rules and file as a sole proprietorship.

Mr. President, in the 105th Congress, we took bold steps to restructure the IRS and improve the quality of service that taxpayers receive. Since the IRS Restructuring and Reform Act was enacted in 1998, the IRS made great strides to redirect the agency and balance its dual mission of collecting tax revenues and serving taxpayers in a fair and respectful manner.

With the growing complexity of our tax code, however, opportunities abound for small businesses to make honest mistakes. The IRS Restructuring and Reform Act provided important protections for all taxpayers, but work remains to ensure that small businesses are treated justly under the tax laws. The Small Business Works Act addresses several issues that small businesses continue to report as major problems.

A top concern is the excessive nature of penalties and interest imposed on taxpayers who make mistakes. Far too often, a minor tax bill grows into an unmanageable liability because of the interest on the tax owed, the penalties for negligence and late payment, and the interest on the penalties. Frequently, these penalties can prevent a small business owner from settling his account and getting back into good standing.

Penalties were included in the tax code to encourage taxpayers to comply with our voluntary assessment system, and interest was intended to compensate the government for the lost use of tax dollars. But the multiplicity of penalties and hidden punishments disguised as interest on those penalties seriously undermines Americans' confidence that our system is fair.

The Small Business Works Act stops the runaway freight train of excessive penalties and interest in two ways. First, the bill eliminates the failure-to-pay penalty, which is part of the multiple penalties often applied to the same error. Penalties should punish bad behavior, not honest errors that even well-intentioned people are bound to make now and then. Second, the bill stops the practice of charging interest on penalties. Instead, interest will only be applied to the taxes due, just like interest is charged on a credit card for unpaid balances. Both of these changes implement recommendations of the Taxpayer Advocate. Again, it's simply a matter of fairness.

The bill also addresses the issue of electronic filing of tax returns. In the 1998 IRS Restructuring and Reform Act, we set a goal for the IRS to make electronic filing the most practical and preferred method of filing so that 80 percent of taxpayers would choose to file electronically by 2007. While I continue to support that goal, I am concerned that the temptation for ensuring that the goal is reached will lead to mandatory electronic filing. At a time when small firms are already faced with daunting government mandates just in completing their tax returns, the last thing they need is a new mandate for filing them. To prevent that

result, my bill makes clear that expanded electronic filing of tax and information returns will be a voluntary option for small businesses, not another government mandate.

The taxpayer protections included in the bill are intended to strike a balance for small business taxpayers. On the one hand, the bill eases the excessive punishment imposed for honest errors and reduces the burdens faced by taxpayers subject to an audit by the IRS. On the other, it preserves the agency's authority to enforce the tax laws and prevent individuals from cheating the tax system, which in the end increases the tax burden on all Americans.

Mr. President, the legislation I introduce today is a commonsense package of tax relief, simplification, and protections for America's small businesses who work so hard. As we strive in the coming weeks to enact tax-relief legislation, I urge my colleagues to remember that small business works in America, the jobs they provide in our local communities are too important, and they simply cannot be left behind.

I ask unanimous consent to have printed in the RECORD following the text of my statement a description of the bill's provisions, and letters I have received from small business organizations supporting the Small Business Works Act.

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

SELF BUSINESS WORKS ACT OF 2001

TITLE I—SMALL BUSINESS TAX RELIEF

Self-Employed Health Insurance Deductibility

The bill amends section 162(*l*)(1) of the Internal Revenue Code to increase the deduction for health-insurance costs for self-employed individuals to 100 percent beginning on January 1, 2001. Currently the self-employed can only deduct 60 percent of these costs. The deduction is not scheduled to reach 100 percent until 2003, under the provisions signed into law in October 1998. The bill is designed to place self-employed individuals on an equal footing with large businesses, which can currently deduct 100 percent of the health-insurance costs for all of their employees.

In addition, the bill corrects a disparity under current law that bars a self-employed individual from deducting any of his or her health-insurance costs if the individual is eligible to participate in another health-insurance plan. This provision affects self-employed individuals who are eligible for, but do not participate in, a health-insurance plan offered through a second job or through a spouse's employer. That insurance plan may not be adequate for the self-employed business owner, and this provision prevents the self-employed from deducting the costs of insurance policies that do meet the specific needs of their families. In addition, this provision provides a significant disincentive for self-employed business owners to provide group health insurance for their employees. The bill ends this disparity by clarifying that a self-employed person loses the deduction only if he or she actually participates in another health-insurance plan.

The bill also levels the playing field by permitting self-employed individuals to deduct the cost of their health insurance against their self-employment taxes. This change will put the self-employed on an equal footing with owners and employees of corporations whose health-insurance benefits are not subject to employment taxes.

Alternative Minimum Tax Relief

The bill repeals the individual Alternative Minimum Tax (AMT) by 2006. For individual taxpayers, the individual AMT has become an increasingly burdensome tax. For the sole proprietors, partners, and S corporation shareholders, the individual AMT increases their tax liability by, among other things, limiting depreciation and depletion deductions, net operating loss treatment, the deductibility of state and local taxes, and expensing of research and experimentation costs. In addition, because of its complexity, this tax forces small business owners to waste precious funds on tax professionals to determine whether the AMT even applies.

The bill addresses these issues by eliminating 20 percent of the individual AMT each year until complete repeal is achieved in 2006. During the phase-out period, the bill extends the current exclusion of personal tax credits from the AMT, and it coordinates the farm income-averaging rules with the AMT to ensure that farmers and ranchers do not lose the benefits of income averaging.

For small corporate taxpayers, the bill increases the current exemption from the corporate AMT, under section 55(e) of the Internal Revenue Code. Under the bill, a small corporation will initially qualify for the exemption if its average gross receipts are $7.5 million or less (up from the current $5 million) during its first three taxable years. Thereafter, a small corporation will continue to qualify for the AMT exemption for so long as its average gross receipts for the prior three-year period do not exceed $10 million (up from the current $7.5 million). The increased limits for the small-corporation exemption from the corporate AMT will be effective for taxable years beginning after December 31, 2000.

Repeal of Federal Unemployment Surtax

In 1976, a surtax of 0.2 percent was added to the Federal Unemployment Tax to repay loans from the Federal unemployment fund made during the 1974 recession. Those loans were fully repaid in 1987. Accordingly, the bill repeals the 0.2 percent surtax beginning in taxable year 2001.

Extend Research and Experimentation Tax Credit Permanently

The bill permanently extends the research and experimentation (R&E) tax credit, which has been a valuable resource for businesses developing new products. Under current law, the R&E tax credit is set to expire on June 30, 2004.

Increased Deduction for Business Meal Expenses

The bill increases the limitation on the deductibility of business meals from the current 50 percent to 80 percent beginning in 2001. Unlike their large competitors, small enterprises often sell their products and services by word of mouth and close many business transactions on the road or in a local diner. In addition, individuals who are subject to the Federal hours-of-service limitations of the Department of Transportation (such as truck drivers) are currently able to deduct 60 percent of their business meals and are on schedule to deduct up to 80 percent in coming years. Accordingly, the bill corrects this significant lack of parity for small-business owners by putting them on par with individuals subject to hours-of-service limitations and their large competitors.

TITLE II—SMALL BUSINESS TAX SIMPLIFICATION

Clarification of Cash Accounting Rules for Small Businesses

The bill amends section 446 of the Internal Revenue Code to provide a clear threshold for small businesses to use the cash receipts and disbursements method of accounting, instead of accrual accounting. To qualify, the business must have $5 million or less in average annual gross receipts based on the preceding three years. Thus, even if the production, purchase, or sale of merchandise is an income-producing factor in the taxpayer's business, the taxpayer will not be required to use an accrual method of accounting if the taxpayer meets the average annual gross receipts test.

In addition, the bill provides that a taxpayer meeting the average annual gross receipts test is not required to account for inventories under section 471. The taxpayer will be required to treat such inventory in the same manner as materials or supplies that are not incidental. Accordingly, the taxpayer may deduct the expenses for such inventory that are actually consumed and used in the operation of the business during that particular taxable year.

The bill indexes the $5 million average annual gross receipts threshold for inflation. The cash-accounting safe harbor will be effective for taxable years beginning after December 31, 2000.

Increase in Expense Treatment for Small Businesses

The bill amends section 179 of the Internal Revenue Code to increase the amount of equipment purchases that small businesses may expense each year from the current $24,000 to $50,000. This change will eliminate the burdensome recordkeeping involved in depreciating such equipment and free up capital for small businesses to grow and create jobs.

The bill also increases the phase-out limitation for equipment expensing from the current $200,000 to $400,000, thereby expanding the type of equipment that can qualify for expensing treatment. This limitation along with the annual expensing amount will be indexed for inflation under the bill.

Following the recommendation of the National Taxpayer Advocate, the bill also amends section 179 to permit expensing in the year that the property is purchased or the year that the property is placed in service, whichever is earlier. This will eliminate the difficulty that many small firms have encountered when investing in new equipment in one tax year (e.g., 2000) that cannot be placed in service until the following year (e.g., 2001). The bill also expands section 179 to permit the expensing of computer software up to the new $50,000 limit.

The equipment-expensing provisions will be effective for taxable years beginning after December 31, 2000.

Modification of Depreciation Rules

The bill modifies the outdated depreciation rules to permit taxpayers to depreciate computer equipment and software over a two-year period. Under present law, computer equipment is generally depreciated over a five-year period and software is usually depreciated over three years. With the rapid advancements in technology, these depreciation periods are sorely out of date and can result in small businesses having to exhaust their depreciation deductions well after the equipment or software is obsolete. The bill makes the tax code in this area more consistent with the technological reality of the business world.

The bill also amends section 280F of the Internal Revenue Code, which limits the amount of depreciation that a business may claim with respect to a vehicle used for business purposes. Under the current thresholds, a business loses a portion of its depreciation deduction if the vehicle placed in service in 2000 costs more than $14,400. Although these limitations have been subject to inflation

adjustments, they have not kept pace with the actual cost of new cars and vans in most cases. For many small businesses, the use of a car or van is an essential asset for transporting personnel to sales and service appointments and for delivering their products. Accordingly, the bill adjusts the thresholds so that a business will not lose any of its depreciation deduction for automobiles costing less than $25,000, which will continue to be indexed for inflation.

Simplification of Estimated Tax Rules

The bill simplifies the current rules for calculating the level of estimated taxes necessary to avoid the interest penalty for underpayment of estimated taxes. Currently, small business owners can avoid the interest penalty if they pay estimated taxes equal to at least 90 percent of their tax liability for the current year. Alternatively, for taxable year 2001, small business owners who earned more than $150,000 in taxable year 2000 can avoid the interest penalty if they pay estimated taxes equal to 112 percent of their 2000 tax liability. For taxable years 2002 and beyond, the threshold will be 110 percent. In contrast, taxpayers earning $150,000 or less, can avoid the penalty by paying estimated taxes equal to 100 percent of their prior year's tax liability.

The bill simplifies the estimated-tax rules by providing a consistent test for avoiding the interest penalty: taxpayers must deposit estimated taxes equal to 90 percent of the current year's or 100 percent of the prior year's tax liability. This change will eliminate complex calculations currently required of small business owners and ease strains on the business' cashflow. These changes will be effective for tax years beginning after the date of enactment.

Exemption from Partnership Rules for Sole Proprietorships Jointly Owned by Spouses

The Internal Revenue Service (IRS) National Taxpayer Advocate's Annual Report to Congress for 2001 identified a problem facing married couples operating a small business. Although these couples file a joint tax return, they are currently required to comply with the onerous partnership rules instead of being permitted to treat the business as a sole proprietorship. According to IRS estimates, the additional burden of the partnership rules can add more than 200 hours to the time required to prepare the business' tax return than would be necessary if it were treated as a sole proprietorship.

The bill amends section 761 of the Internal Revenue Code to permit married couples who file joint tax returns to opt out of the partnership rules and treat their jointly owned business as a sole proprietorship. It also amends the self-employment tax rules to allow such married couples to receive Social Security credits on an individual basis, which they currently receive when filing a partnership return.

TITLE III—SMALL BUSINESS TAXPAYER PROTECTIONS

Taxpayer's right to have an IRS examination take place at another site

The bill provides that the IRS must accept a taxpayer's request that an audit be moved away from his or her home or business premises if the off-site location (e.g., an accountant's office) is accessible to the auditor and the taxpayer's books and records are available at such a location. This provision will enable the IRS to conduct an audit but without the fear and disruption resulting from the auditor being present in a family home and among a business' employees and customers for days or weeks.

Clarification that Electronic Filing is a Goal, not a Mandate

The bill amends the IRS Restructuring and Reform Act of 1998 (Public Law 105–206) to clarify that the IRS should set as a goal, but not a mandate, that paperless filing should be the preferred and most convenient means of filing tax and information returns in 80 percent of cases by the year 2007. Concerns have been raised that in order to reach this goal, the IRS may have to require certain taxpayers to file electronically. The bill makes clear that electronic filing should be a voluntary option for taxpayers, not a new government mandate.

Taxpayer's election with respect to recovery of costs and certain fees

Under the Internal Revenue Code, a taxpayer may recover costs and fees, including attorney's fees, against the IRS if he or she prevails and the IRS' litigation position was not substantially justified. The Equal Access to Justice Act (EAJA) permits a small business to recover such costs when an unreasonable agency demand for fines or civil penalties is not sustained in court or in an administrative proceeding. In addition, a small business may also recover such costs and fees under the EAJA when it is the prevailing party and the agency enforcement action is not substantially justified. Currently, the EAJA prohibits a taxpayer seeking to recover costs and fees in an IRS enforcement action from doing so under the EAJA if the fees and costs can be recovered under the Internal Revenue Code.

The bill permits taxpayers to elect whether to pursue recovery of attorney's fees and expenses under the EAJA or the Internal Revenue Code.

Repeal of the failure-to-pay penalty

The failure-to-pay penalty was originally enacted in the 1960s to compensate for the low rate of interest applied to an individual's tax liability, and for the fact that such interest was not compounded. Today, with interest compounded daily and adjusted for changes in the interest rate, this penalty is no longer needed and serves only as another hidden, second penalty. In addition, this penalty is often applied on top of accuracy-related penalties, resulting in total punishment of as much as 45 percent in non-criminal cases. To simplify the tax rules and reduce the multiplicity of punishment on taxpayers, the bill repeals the failure-to-pay penalty.

Limit Compounded Interest to Underlying Tax

Under current law, when a taxpayer fails to pay the correct amount of taxes, interest is applied and compounded not only on the underlying tax liability, but also on any penalties assessed. As a result, compound interest becomes an additional penalty. In many cases the interest on penalties can substantially increase the total amount of tax due and jeopardize the small business taxpayer's ability to pay its tax debt. In addition, calculating the interest on penalties adds an additional layer of complexity and compliance costs for small businesses. The bill alleviates this situation by limiting the application of interest to only the underlying tax assessment.

SMALL BUSINESS
LEGISLATIVE COUNCIL,
Washington, DC, January 22, 2001.

Hon. KIT BOND,
Chairman, Committee on Small Business, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: First, let me take the opportunity on behalf of SBLC, to thank you for your tireless efforts on behalf of small business. I have no doubt that in future Congresses we will be holding up your stewardship of the Small Business Committee as the model for future chairs.

My primary reason in writing is to offer our unqualified support for your initiative to bring fairness and simplification to the current tax system. As you know, perhaps better than anyone in Congress, the current tax code remains a minefield of problems for small business. Your legislation is a comprehensive blueprint for how to sweep it clean.

While we endorse all of your initiatives, I do want to take the opportunity to single out four items.

We are absolutely convinced settling the issue of whether small businesses can use cash accounting is not only a matter of fairness, but that it will also significantly simplify small business compliance. We have had a hard time understanding why the IRS has been so intent on chasing the opportunity to collect a few tax dollars just a little sooner. Using cash accounting is not about tax avoidance. The costs to small business productivity must surely outweigh the time value of revenue to the government.

SBLC was one of the original champions of the concept of direct expensing. We wholeheartedly endorse your efforts to ''modernize'' the concept. The amount needs to be increased. The other important reason to address cost recovery is that our depreciation system is no longer in sync with the pace of technology obsolescence.

One of the ticking time bombs of the tax code is the personal Alternative Minimum Tax (AMT). We believe in the near future it may do more harm to small business than any other provision of the tax code. It swallows up any profits that can be reinvested in the business.

Finally, Section 280F of the tax code and regulations thereunder, reflect a different time and different philosophy with respect to business vehicles. It is time to move the clock ahead two decades and simplify the process of dealing with this provision.

We look forward, as always, to working with you on behalf of small business.

As you know, the SBLC is a permanent, independent coalition of 80 trade and professional associations that share a common commitment to the future of small business. Our members represent the interests of small businesses in such diverse economic sectors as manufacturing, retailing, distribution, professional and technical services, construction, transportation, tourism and agriculture. Our policies are developed through a consensus among our membership. Individual associations may express their own views. For your information, a list of our members is enclosed.

Sincerely,

JOHN S. SATAGAJ,
President and General Counsel.

MEMBERS OF THE SMALL BUSINESS LEGISLATIVE COUNCIL

ACIL
Air Conditioning Contractors of America
Alliance of Independent Store Owners and Professionals
Alliance of Affordable Services
American Association of Equine Practitioners
American Bus Association
American Consulting Engineers Council
American Machine Tool Distributors Association
American Moving and Storage Association
American Nursery and Landscape Association
American Road & Transportation Builders Association
American Society of Interior Designers
American Society of Travel Agents, Inc.
American Subcontractors Association
Associated Landscape Contractors of America
Association of Small Business Development Centers

Association of Sales and Marketing Companies
Automotive Recyclers Association
Bowling Proprietors Association of America
Building Service Contractors Association International
Business Advertising Council
CBA
Council of Fleet Specialists
Council of Growing Companies
Cremation Association of North America
Direct Selling Association
Electronics Representatives Association
Health Industry Representatives Association
Helicopter Association International
Independent Bankers Association of America
Independent Medical Distributors Association
International Association of Refrigerated Warehouses
International Franchise Association
Machinery Dealers National Association
Mail Advertising Service Association
Manufacturers Agents for the Food Service Industry
Manufacturers Agents National Association
Manufacturers Representatives of America, Inc.
National Association for the Self-Employed
National Association of Plumbing-Heating-Cooling Contractors
National Association of Realtors
National Association of RV Parks and Campgrounds
National Association of Small Business Investment Companies
National Association of the Remodeling Industry
National Community Pharmacists Association
National Electrical Contractors Association
National Electrical Manufacturers Representatives Association
National Lumber & Building Material Dealers Association
National Ornamental & Miscellaneous Metals Association
National Paperbox Association
National Retail Hardware Association
National Society of Accountants
National Tooling and Machining Association
National Wood Flooring Association
Organization for the Promotion and Advancement of Small Telephone Companies
Painting and Decorating Contractors of America
Petroleum Marketers Association of America
Printing Industries of America, Inc.
Professional Lawn Care Association of America
Promotional Products Association International
The Retailer's Bakery Association
Saturation Mailers Coalition
Small Business Council of America, Inc.
Small Business Exporters Association
Small Business Exporters Association
SMC Business Councils
Society of American Florists
Tire Association of North America
Turfgrass Producers International
United Motorcoach Association
Washington Area New Automotive Dealers Association

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,
Washington, DC, January 24, 2001.

Hon. KIT BOND,
Chairman, Senate Small Business Committee, Washington, DC.

DEAR CHAIRMAN BOND: On behalf of the 600,000 members of the National Federation of Independent Business (NFIB), I want to express our strong support for the ''Small Business Works Act of 2001'' which would provide badly needed tax relief to America's small business. NFIB urges the Senate to quickly support its adoption.

While economic conditions for small business remain relatively strong, economic activity has cooled over the past few months. According to NFIB's monthly Small Business Economic Trends (SBET) index, confidence in the economy is approximately half as strong as it was a year ago. Over the coming months, it appears likely that the problem of the slowing economy will only continue.

Small businesses are forced by Washington to spend an overwhelming amount of time, money, and energy complying with the tax and regulatory burdens. With the economy showing signs of slowing, tax relief will significantly help spur immediate economic recovery for America's small businesses.

Your bill goes a long way towards providing America's small business owners valuable tax relief.

Cash vs. Accrual Accounting—Clarifying the IRS code to state clearly that small business owners with gross revenues below $5 million are eligible to use cash accounting methods would save small business owners from spending valuable resources on high-priced tax accountants and lawyers.

Accelerate 100% Self-Employed Health Insurance Deduction—Currently, self-employed workers can only deduct 60% of their health-insurance costs from their taxable income. Raising that threshold to 100% in 2001 would cut health-care costs for the typical small-business owner by hundreds of dollars per year.

Increase Section 179 Expensing—A majority of NFIB members exceed the current small-business expensing limits in only three months. The limit for 2001 is only $24,000. Raising the threshold to $50,000 and indexing it with inflation will allow additional investments in the business to be expensed thus helping small businesses expand and create new jobs. This provision lowers the cost of capital for tangible property and eliminates depreciation record-keeping requirements. Updating our tax code to reflect the reality of today's technology-based workplace is critical to the continued success of our economy and to the daily advancement of small business in America. Allowing small business to depreciate software assets while they are still useful and efficient technologies is critical to future technological development in the job producing engines of our economy. This change would provide small business owners the opportunity to compete in today's high technology markets.

Increase Deduction for Business Meals—For many self-employed and small business owners, discussing business over lunch is an efficient use of time and an absolute necessity when courting new clients. Increasing the deductibility reduces a large and disproportionate tax on small-business owners who rely on mealtime to conduct business.

Federal Unemployment Insurance Surtax Repeal—The .2% surtax was adopted in 1976 to repay loans to the federal unemployment fund during the 1974 recession. This debt was fully repaid in 1987. This so-called temporary surtax has long outlived its original purpose and is now used to pay for government programs totally unrelated to the unemployment compensation system.

AMT Relief and Repeal—According to the Joint Committee on Taxation, fewer than 1 in 150 taxpayers is subjected to the AMT today. By 2007, however, that number if expected to grow to 1 in 14, with the largest increase coming from taxpayers earning between $50,000 and $100,000. The individual AMT is a remarkably complex and obtuse provision in a tax code not known for its clarity. It literally requires taxpayers to calculate their taxes twice, and then pay the larger amount. While originally designed to ensure that wealthy Americans pay a reasonable level of their income in taxes, the AMT has the side effect of hitting taxpayers—increasingly middle-class taxpayers—when they can least afford the bill. The AMT literally kicks taxpayers when they are down. NFIB supports abolishing the individual Alternative Minimum Tax. NFIB also supports your efforts to increase the exemption for small businesses from the heavily burdensome corporate AMT.

Mr. Chairman, we applaud your proactive efforts to reduce the tax burden on small business. We thank you for your continued support of small businesses, and we look forward to working with you to see the ''Small Business Works Act of 2001'' enacted into law.

Sincerely,

DAN DANNER,
Senior Vice President, Federal Public Policy.

By Mr. FEINGOLD:

S. 191. A bill to abolish the death penalty under Federal Law; to the Committee on the Judiciary.

Mr. FEINGOLD. Mr. President, I rise today to introduce the Federal Death Penalty Abolition Act of 2001. This bill will abolish the death penalty at the Federal level. It will put an immediate halt to executions and forbid the imposition of the death penalty as a sentence for violations of Federal law.

The most recent Gallup poll shows that, while a majority of Americans continue to support capital punishment, this support has reached a nearly 20-year low. This diminished support comes amid rising concern that the system by which we impose the sentence of death is seriously flawed. In the last year or so since I first introduced this bill, the American people have learned about the risk of executing innocent people and other fairness and reliability concerns with the administration of the death penalty. I am confident that in the weeks and months to come, the American people will continue to learn and continue to question the fairness of our death penalty system.

In recent years, this Chamber has echoed with debate on violence in America. We've heard about violence in our schools and neighborhoods. Some say it's because of the availability of guns to minors. Some say Hollywood has contributed to a culture of violence. Others argue that the roots of the problem are far deeper and more complex. Whatever the causes, a culture of violence has certainly infected our nation. As schoolhouse killings have shown, our children are now reached by that culture of violence, not merely as casual observers, but as participants and victims.

But, I'm not so sure that we in government don't contribute to this casual attitude we sometimes see toward killing and death. With each new death penalty statute enacted and each execution carried out, our executive, judicial and legislative branches, at both the state and federal level, add to a culture of violence and killing. With each person executed, we're teaching

our children that the way to settle scores is through violence, even to the point of taking a human life. Sadly, total executions in the last two years—98 in 1999 and 85 in 2000—mark the highest number of total annual executions since the death penalty was reinstated in 1976.

At the same time, I am pleased that the public debate on the death penalty, which was an intense national debate not very long ago, appears to have been revived. In the wake of recent controversies involving DNA technology and the discovery of condemned innocents, we are once again having a national debate on this important issue of justice. Those who favor the death penalty should be pressed to explain why fallible human beings should presume to use the power of the state to extinguished the life of a fellow human being on our collective behalf. Those who oppose the death penalty should demand that explanation adamantly, and at every turn. But only a zealous few try.

Our Nation is a great Nation. We have the strongest democracy in the world. We have expended blood and treasure to protect so many fundamental human rights at home and abroad and not always for only our own interests. But we can do better. We should do better. Courtesy of the Internet and CNN International, the world observes, perplexed and sometimes horrified, the violence in our nation. Across the globe, with every American who is executed, the entire world watches and asks how can the Americans, the champions of human rights, compromise their own professed beliefs in this way.

Religious groups and leaders express their revulsion at the continued practice of capital punishment. Pope John Paul II frequently appeals to American governors when a death row inmate is about to die. I am pleased that in one case in January 1999, involving an inmate on death row in Missouri, the late Missouri Governor Mel Carnahan heeded the good advice of the pontiff and commuted the killer's sentence to life without parole. That case generated a lot of press—but only as a political issue, rather than a moral question or a human rights challenge.

But the Pope is not standing alone against the death penalty. He is joined by the chorus of voices of various people of faith who abhor the death penalty. Religious groups from the National Conference of Catholic Bishops, the United Methodist Church, the Presbyterian Church, the Evangelical Lutheran Church in America, the Mennonites, the Central Conference of American Rabbis, and so many more people of faith have proclaimed their opposition to capital punishment. And, I might add, even conservative Pat Robertson protested the execution in 1998 of Karla Faye Tucker, a born-again Christian on Texas death row. Mr. President, I would like to see the commutation of sentences to life without parole for all death row inmates—whether they are Christians, Muslims, Jews, Buddhists, or some other faith, or no faith at all.

The United States' imposition of capital punishment is abhorrent not only to people of faith. Our use of the death penalty also stands in stark contrast to the majority of nations that have abolished the death penalty in law or practice. Even South Africa and Russia—nations that for years were violators of basic human rights and liberties—have abolished the death penalty or are moving toward abolition of the death penalty, respectively. The United Nations Commission on Human Rights has called for a worldwide moratorium on the use of the death penalty. The European Union denies membership in the alliance to those nations that use the death penalty. In fact, it passed a resolution calling for the immediate and unconditional global abolition of the death penalty, and it specifically called on all states within the United States to abolish the death penalty. This is significant because it reflects the unanimous view of the nations with which the United States enjoys its closet relationships—nations that so often follow our lead.

What is even more troubling in the international context is that the United States is now one of only six countries that imposes the death penalty for crimes committed by children. I'll repeat that because it is remarkable. We are one of only six nations on this earth that puts to death people who were under 18 years of age when they committed their crimes. The others are Iran, Pakistan, Nigeria, Saudi Arabia and Yemen. These are countries that are often criticized for human rights abuses. When will we rectify this clear human rights violation—the execution of people who were not even adults when they committed the crimes for which they were sentenced to die?

Let's look at the numbers. Since 1990, the United States has executed 14 child offenders. That's more than all of the five aforementioned nations combined. In 2000, the rest of the world watched as the United States not only executed four juvenile offenders, but was the only nation to engage in such an egregious practice at all. Even China—the country that many members of Congress, including myself, have criticized for its human rights abuses—apparently has the decency not to execute its children. This is embarrassing. Is this the kind of company we want to keep? Is this the kind of world leader we want to be? But these are the facts, from the last decade of the 20th century to the present. No one, Mr. President, no one can reasonably argue that based on this data, executing child offenders is a normal or acceptable practice in the world community. And I don't think we should be proud of the fact that the United States is the world leader in the execution of child offenders.

Is the death penalty a deterrent for our children's conduct, as well as that of adult Americans? The numbers prove that those who believe that capital punishment is an effective deterrent are sadly, sadly mistaken. The Federal Government and most States in the U.S. have a death penalty, while our European counterparts do not. Following the logic of death penalty supporters who believe it is a deterrent, you would think that our European allies, who don't use the death penalty, would have a higher murder rate than the United States. Yet, they don't and it's not even close. In fact, the murder rate in the U.S. is six times higher than the murder rate in Britain, seven times higher than in France, and five times higher than in Sweden.

But we don't even need to look across the Atlantic to see that capital punishment has no deterrent effect on crime. The geographical disparities within the United States lead to the same conclusion. Let's compare Wisconsin and Texas. I'm proud of the fact that in 1853, my home state of Wisconsin became the first state in the nation to abolish the death penalty completely. Wisconsin has been death penalty-free for nearly 150 years. In contrast, Texas is the most prodigious user of the death penalty, having executed 241 people since 1976. Let's look at the murder rate in Wisconsin and Texas. During the period 1995 to 1998, Texas has had a murder rate that is nearly double the murder rate in Wisconsin. The same trend can also be detected on a regional scale. The Southern region of the United States has a higher murder rate than any other region. Yet, executions taking place in that region constituted almost 90 percent of executions in the nation as a whole. These and countless other data continue to call into question the argument that the death penalty is a deterrent to murder.

In fact, according to a 1995 Hart Research poll, the majority of our nation's police chiefs do not believe the death penalty is a particularly effective law enforcement tool. When asked to rank the various factors in reducing crime, police chiefs rank the death penalty last. Rather, the police chiefs—the people who deal with hardened criminals day in and day out—cite reducing drug abuse as the primary factor in reducing crime, along with a better economy and jobs, simplifying court rules, longer prison sentences, more police officers, and reducing guns. It looks like most police chiefs recognize what our European allies and a few states like Wisconsin have known all along; the death penalty is not an effective deterrent.

Let me be clear. I believe murderers and other violent offenders should be severely punished. I'm not seeking to open the prison doors and let murderers come rushing out into our communities. I don't want to free them. The question is: should the death penalty be a means of punishment in our

society? One of the most frequent refrains from death penalty supporters is the claim that the majority of Americans support the death penalty. But Mr. President, an August 2000 Gallup poll shows that while 67 percent of Americans support the death penalty, only 28 percent do so without reservations. In contrast, 37 percent support the death penalty with reservations and 26 percent of Americans do not support the death penalty at all.

Furthermore, surveys show that when sentencing alternatives are offered, support for the death penalty drops to below 50 percent. And a plurality of Americans prefer life without parole plus restitution for the victim's family to the death penalty. According to a 1993 national poll, 44 percent of Americans supported the alternative of life without parole plus restitution. Only 41 percent preferred the death penalty and 15 percent were unsure. This is remarkable. Sure, if you ask Americans the simple, isolated question of whether they support the death penalty, a majority of Americans will agree. But if you ask them whether they support the death penalty or a realistic, practical alternative sentence like life without parole plus restitution, support for the death penalty falls dramatically to below 50 percent. More Americans support the alternative sentence than the death penalty.

The fact that our society relies on killing as punishment is disturbing enough. Even more disturbing, however, is the fact that the States' and federal use of the death penalty is often not consistent with principles of due process, fairness and justice. These principles are the foundation of our criminal justice system and, in a broader sense, the stability of our nation. It is clearer than ever before that we have put innocent people on death row. In addition, statistics show that those States that have the death penalty are more likely to put people to death for killing white victims than for killing black victims.

Are we certain that innocent persons are not being executed? Obviously not. Are we certain that racial bias is not infecting the criminal justice system and the administration of the death penalty? I doubt it.

It simply cannot be disputed that we are sending innocent people to death. Since the modern death penalty was reinstated in the 1970s, we have released 93 men and women in 22 states from death row. Why? Because they were innocent. Ninety-three men and women sitting on death row, awaiting a firing squad, lethal injection or electrocution, but later found innocent. That's one death row inmate found innocent for every seven executed. One in seven! That's a pretty poor performance for American justice. A wrongful conviction means that the real killer may have gotten away. What an injustice that the victims' loved ones cannot rest because the killer is still not caught. What an injustice that an innocent man or woman has to spend even one day in jail. What a staggering injustice that innocent people are sentenced to death for crimes they did not commit. What a disgrace when we carry out those sentences, actually taking the lives of innocent people in the name of justice.

I call my colleagues' attention to the recent example of an Illinois death row inmate, Anthony Porter, who was freed in 1999 after 16 years of his life were wasted awaiting execution for a crime he did not commit. Mr. Porter came within two days of execution when his life was spared only because of questions regarding his mental competency. Mr. Porter owes his freedom, as some previous Illinois death row inmates do, to investigation by Northwestern University journalism students. They persuaded the true killer to confess on videotape. A statement by the true killer's estranged wife that Chicago police pressured her into testifying against Porter further represents the level of unreliability and failures in the administration of the death penalty surrounding this case. College students were able to successfully spare the lives of innocent men. Men were freed from death row not because of technicalities, but because they were truly innocent. Mr. President, it is clear that our criminal justice system is sometimes far from just and sometimes just plain wrong.

One is left with the inescapable conclusion that even if it is not absolutely certain, it is very possible that innocent people have been executed. Why? We can all agree that it is profoundly wrong to convict and condemn innocent people to death. But sadly, that's what's happening. With the greater accuracy and sophistication of DNA testing available today compared to even a couple of years ago, states like Illinois are finding that people sitting on death row did not commit the crimes to which earlier, less accurate DNA tests appeared to link them. This DNA technology should be further reviewed and compared to other tests. We should make sure that the most sophisticated, modern DNA tests are made available to those on death row.

Some argue that the discovery of the innocence of a death row inmate proves that the system works. This is absurd. How can you say the criminal justice system works when a group of students—not lawyers or investigators but students with no special powers, who were very much outside the system—discover that a man about to be executed was, in fact, innocent? A recent NBC News/Wall Street Journal Poll shows that 63 percent of Americans favor suspending capital punishment until fairness questions can be adequately studied. Americans recognize the failures of our justice system and are demanding answers.

A primary reason why our justice system has sometimes been less than just is a series of U.S. Supreme Court decisions that seem to fail to grasp the significance and responsibility of their task when a human life is at stake. The Supreme Court has been narrowly focused on procedural technicalities, ignoring the fact that the death penalty is a unique punishment that cannot be undone to correct mistakes. In Jones v. United States, which involved an inmate on death row in Texas and the interpretation of the 1994 Federal Death Penalty Act, the judge refused to tell the jury that if they deadlocked on the sentence, the law required the judge to impose a sentence of life without possibility of parole. As a result, some jurors were under the grave misunderstanding that lack of unanimity would mean the judge could give a sentence where the defendant might one day go free. The jurors therefore returned a sentence of death. The Supreme Court upheld the lower court's imposition of the death penalty. And one more person will lose a life, when a simple correction of a misunderstanding could have resulted in a severe, yet morally correct, sentence of life without parole.

As legal scholar Ronald Dworkin recently observed, ''[t]he Supreme Court has become impatient, and super due process has turned into due process-lite. Its impatience is understandable, but is also unacceptable.'' Mr. President, America's impatience with the protracted appeals of death row inmates is understandable. But this impatience is unacceptable. The ruse to judgment is unacceptable. And the rush to execute men, women and children who might well be innocent is horrifying.

The discovery of the innocence of death row inmates and misguided Supreme Court decisions disallowing potentially dispositive and/or exculpatory evidence, however, aren't the only reasons we need to abolish the death penalty. Another reason we need to abolish the death penalty is the continuing evidence of racial bias in our criminal justice system. Our nation is facing a crucial test. A test of moral and political will. We have come a long way through this nation's history, and especially in this century, to dismantle state-sponsored and societal racism. Brown v. Board of Education, ensuring the right to equal educational opportunities for whites and blacks, was decided almost half a century ago. Unfortunately, however, we are still living with vestiges of institutional racism. In some cases, racism can be found at every stage of a capital trial—in the selection of jurors, during the presentation of evidence, when the prosecutor contrasts the race of the victim and defendant to appeal to the prejudice of the jury, and sometimes during jury deliberations.

After the 1976 Supreme Court Gregg decision upholding the use of the death penalty, the death penalty was first enacted as a sentence at the federal level with passage of the Drug Kingpin Statute in 1988. Since that time, numerous additional Federal crimes have become

death penalty-eligible, bringing the total to about 60 federal crimes today. At the federal level, 20 people currently sit on death row. Another seven men sit on the military's death row. Of those 2 defendants on the federal government's death row, 14 are black and only 4 are white. One defendant is Hispanic and another Asian. That means 16 of the 20 people on federal death row are members of a racial or ethnic minority. That's 80 percent. And the numbers are worse on the military's death row. Six of the seven, or 86 percent, on military death row are minorities.

Some of my colleagues may remember the debates of the late 1980's and early 1990's, when Congress considered the Racial Justice Act and other attempts to eradicate racial bias in the administration of capital punishment. A noted study evaluating the role of race in death penalty cases was frequently discussed. This was the study by David Baldus, a professor at the University of Iowa College of Law. The Baldus study found that defendants who kill white victims are more than four times more likely to be sent to death row than defendants who kill black victims. An argument against the Baldus study was made by some opponents of the Racial Justice Act. They argued that we just needed to ''level up'' the playing field. In other words, send all the defendants who killed black victims to death row, too. They argued that legislative remedies were not needed, just tell prosecutors and judges to go after perpetrators of black homicide as strong as against perpetrators of white homicide. I believe such arguments displayed a shocking insensitivity to racial bias in our criminal justice system.

Problems with bias and arbitrariness have not escaped the federal death penalty system. In September 2000, the Department of Justice released a report on the federal death penalty system. That report that whether one will live or die in the federal system appears to be related to the color of one's skin or the federal district in which the prosecution takes place. I think we can all agree that the report is deeply disturbing. There is a glaring lack of uniformity in the application of the federal death penalty. Why do these disparities exist? How can they be addressed? The Justice Department report doesn't have answers to these and other questions. I am pleased that Attorney General Janet Reno initiated additional, internal reviews, and it is my fervent hope that the next Attorney General will follow through on this important further study and analysis.

One thing is clear: no matter how hard we try, we cannot overcome the inevitable fallibility of being human. That fallibility means that we will be unable to apply the death penalty in a fair and just manner. The risk that we will condemn innocent people to death will always lurk. Mr. President, let's restore some certainty, fairness, and justice to our criminal justice system. Let's have the courage to recognize human fallibility.

The American Bar Association has also raised fairness and due process concerns. In 1997, the American Bar Association became the first organization to call for a moratorium on the death penalty. Several states are finally beginning to recognize the great injustice when the ultimate punishment is carried out in a biased and unfair way. In January 2000, Governor George Ryan became the first chief executive to place a moratorium on executions. Moratorium bills have been considered by the legislatures of at least ten states over the last two years.

I am glad to see that some states are finally taking steps to correct the practice of legalized killing that was again unleashed by the Supreme Court's Gregg decision in 1976. The first post-Gregg execution took place in 1977 in Utah, when Gary Gilmore did not challenge and instead aggressively sought his execution by a firing squad. The first post-Gregg involuntary execution took place on May 25, 1979. I vividly remember that day. I had just finished my last law school exam that morning. Later that day, I recall turning on the television and watching the news report that Florida had just executed John Spenkelink. I was overcome with a sickening feeling. Here I was, fresh out of law school and firm in my belief that our legal system was advancing through the latter quarter of the twentieth century. Instead, to my great dismay, I was witnessing a throwback to the electric chair, the gallows, and the routine executions of our Nation's earlier history.

I haven't forgotten that experience or what I thought and felt on that day. At the beginning of 2001, at the end of a remarkable century and millennium of progress and at the beginning of a new century and millennium with hopes for even greater progress, I cannot help but believe that our progress has been tarnished by our Nation's not only continuing, but increasing use of the death penalty. As of today, the United States has executed 690 people since the reinstatement of the death penalty in 1976. This is astounding and it is embarrassing. We are a Nation that prides itself on the fundamental principles of justice, liberty, equality and due process. We are a Nation that scrutinizes the human rights records of other nations. We are one of the first nations to speak out against torture and killings by foreign governments. It is time for us to look in the mirror.

Two former Supreme Court justices did just that. Justice Harry Blackmun penned the following eloquent dissent in 1994:

> From this day forward, I no longer shall tinker with the machinery of death. For more than 20 years I have endeavored—indeed, I have struggled—along with a majority of this Court, to develop procedural and substantive rules that would lend more than the mere appearance of fairness to the death penalty endeavor. Rather than continue to coddle the Court's delusion that the desired level of fairness has been achieved and the need for regulation eviscerated, I feel morally and intellectually obligated simply to concede that the death penalty experiment has failed. It is virtually self-evident to me now that no combination of procedural rules or substantive regulations ever can save the death penalty from its inherent constitutional deficiencies. The basic question—does the system accurately and consistently determine which defendants ''deserve'' to die?—cannot be answered in the affirmative. . . . The problem is that the inevitability of factual, legal, and moral error gives us a system that we know must wrongly kill some defendants, a system that fails to deliver the fair, consistent, and reliable sentences of death required by the Constitution.

Justice Lewis Powell also had a similar change of mind. Justice Powell dissented from the Furman decision in 1972, which struck down the death penalty as a form of cruel and unusual punishment. He also wrote the decision in McCleskey v. Kemp in 1987, which denied a challenge to the death penalty on the grounds that it was applied in a discriminatory manner against African Americans. In 1991, however, Justice Powell told his biographer that he had decided that capital punishment should be abolished.

After sitting on our Nation's highest court for over 20 years, Justices Blackmun and Powell came to understand the randomness and unfairness of the death penalty. Mr. President, it is time for our Nation to follow the lead of these two distinguished jurists and revisit its support for this form of punishment.

At the beginning of 2001, as we enter a new millennium, our society is still far from fully just. The continued use of the death demenas us. The penalty is at odds with our best traditions. It is wrong and it is immoral. The adage ''two wrongs do not make a right,'' could not be more appropriate here. Our Nation has long ago done away with other barbaric punishments like whipping and cutting off the ears of suspected criminals. Just as our nation did away with these punishments as contrary to our humanity and ideals, it is time to abolish the death penalty as we enter the next century. And it's not just a matter of morality. The continued viability of our justice system as a truly just system requires that we do so. And in the world's eyes, the ability of our nation to say truthfully that we are the leader and defender of freedom, liberty and equality demands that we do so.

I close with the following remarks from Aundre Herron, an attorney who was recently honored in California for her outstanding service in defense of those charged with capital crimes:

> . . . [T]he death penalty is America's dark underbelly—the worst of America—the part we seek desperately to hide from public view. . . . It is here—in the worst of America—that the death penalty finds its truest and most sinister meaning—the death penalty is where all the contradictions converge. It is this country's way of destroying the evidence of its failures, its hypocrisy, its shame. It is the last relic of America's worst

legacies—slavery, segregation, lynching, racism, classism and violence.

Abolishing the death penalty will not be an easy task. It will take patience, persistence and courage. As we head to a new millennium, let us leave this archaic practice behind.

I ask my colleagues to join me in taking the first step in abolishing the death penalty in our great nation. I also call on each state that authorizes the use of the death penalty to cease this practice. Let us step away from the culture of violence and restore fairness and integrity to our criminal justice system.

I ask that the text of the bill be printed in the RECORD following my remarks.

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

S. 191

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Federal Death Penalty Abolition Act of 2001''.

SEC. 2. REPEAL OF FEDERAL LAWS PROVIDING FOR THE DEATH PENALTY.

(a) HOMICIDE-RELATED OFFENSES.—

(1) MURDER RELATED TO THE SMUGGLING OF ALIENS.—Section 274(a)(1)(B)(iv) of the Immigration and Nationality Act (8 U.S.C. 1324(a)(1)(B)(iv)) is amended by striking ''punished by death or''.

(2) DESTRUCTION OF AIRCRAFT, MOTOR VEHICLES, OR RELATED FACILITIES RESULTING IN DEATH.—Section 34 of title 18, United States Code, is amended by striking ''to the death penalty or''.

(3) MURDER COMMITTED DURING A DRUG-RELATED DRIVE-BY SHOOTING.—Section 36(b)(2)(A) of title 18, United States Code, is amended by striking ''death or''.

(4) MURDER COMMITTED AT AN AIRPORT SERVING INTERNATIONAL CIVIL AVIATION.—Section 37(a) of title 18, United States Code, is amended, in the matter following paragraph (2), by striking ''punished by death or''.

(5) CIVIL RIGHTS OFFENSES RESULTING IN DEATH.—Chapter 13 of title 18, United States Code, is amended—

(A) in section 241, by striking '', or may be sentenced to death'';

(B) in section 242, by striking '', or may be sentenced to death'';

(C) in section 245(b), by striking '', or may be sentenced to death''; and

(D) in section 247(d)(1), by striking '', or may be sentenced to death''.

(6) MURDER OF A MEMBER OF CONGRESS, AN IMPORTANT EXECUTIVE OFFICIAL, OR A SUPREME COURT JUSTICE.—Section 351 of title 18, United States Code, is amended—

(A) in subsection (b)(2), by striking ''death or''; and

(B) in subsection (d)(2), by striking ''death or''.

(7) DEATH RESULTING FROM OFFENSES INVOLVING TRANSPORTATION OF EXPLOSIVES, DESTRUCTION OF GOVERNMENT PROPERTY, OR DESTRUCTION OF PROPERTY RELATED TO FOREIGN OR INTERSTATE COMMERCE.—Section 844 of title 18, United States Code, is amended—

(A) in subsection (d), by striking ''or to the death penalty'';

(B) in subsection (f)(3), by striking ''subject to the death penalty, or'';

(C) in subsection (i), by striking ''or to the death penalty''; and

(D) in subsection (n), by striking ''(other than the penalty of death)''.

(8) MURDER COMMITTED BY USE OF A FIREARM DURING COMMISSION OF A CRIME OF VIOLENCE OR A DRUG TRAFFICKING CRIME.—Section 924(j)(1) of title 18, United States Code, is amended by striking ''by death or''.

(9) GENOCIDE.—Section 1091(b)(1) of title 18, United States Code, is amended by striking ''death or''.

(10) FIRST DEGREE MURDER.—Section 1111(b) of title 18, United States Code, is amended by striking ''by death or''.

(11) MURDER BY A FEDERAL PRISONER.—Section 1118 of title 18, United States Code, is amended—

(A) in subsection (a), by striking ''by death or''; and

(B) in subsection (b), in the third undesignated paragraph—

(i) by inserting ''or'' before ''an indeterminate''; and

(ii) by striking '', or an unexecuted sentence of death''.

(12) MURDER OF A STATE OR LOCAL LAW ENFORCEMENT OFFICIAL OR OTHER PERSON AIDING IN A FEDERAL INVESTIGATION; MURDER OF A STATE CORRECTIONAL OFFICER.—Section 1121 of title 18, United States Code, is amended—

(A) in subsection (a), by striking ''by sentence of death or''; and

(B) in subsection (b)(1), by striking ''or death''.

(13) MURDER DURING A KIDNAPING.—Section 1201(a) of title 18, United States Code, is amended by striking ''death or''.

(14) MURDER DURING A HOSTAGE-TAKING.—Section 1203(a) of title 18, United States Code, is amended by striking ''death or''.

(15) MURDER WITH THE INTENT OF PREVENTING TESTIMONY BY A WITNESS, VICTIM, OR INFORMANT.—Section 1512(a)(2)(A) of title 18, United States Code, is amended by striking ''the death penalty or''.

(16) MAILING OF INJURIOUS ARTICLES WITH INTENT TO KILL OR RESULTING IN DEATH.—Section 1716(i) of title 18, United States Code, is amended by striking ''to the death penalty or''.

(17) ASSASSINATION OR KIDNAPING RESULTING IN THE DEATH OF THE PRESIDENT OR VICE PRESIDENT.—Section 1751 of title 18, United States Code, is amended—

(A) in subsection (b)(2), by striking ''death or''; and

(B) in subsection (d)(2), by striking ''death or''.

(18) MURDER FOR HIRE.—Section 1958(a) of title 18, United States Code, is amended by striking ''death or''.

(19) MURDER INVOLVED IN A RACKETEERING OFFENSE.—Section 1959(a)(1) of title 18, United States Code, is amended by striking ''death or''.

(20) WILLFUL WRECKING OF A TRAIN RESULTING IN DEATH.—Section 1992(b) of title 18, United States Code, is amended by striking ''to the death penalty or''.

(21) BANK ROBBERY-RELATED MURDER OR KIDNAPING.—Section 2113(e) of title 18, United States Code, is amended by striking ''death or''.

(22) MURDER RELATED TO A CARJACKING.—Section 2119(3) of title 18, United States Code, is amended by striking '', or sentenced to death''.

(23) MURDER RELATED TO AGGRAVATED CHILD SEXUAL ABUSE.—Section 2241(c) of title 18, United States Code, is amended by striking ''unless the death penalty is imposed,''.

(24) MURDER RELATED TO SEXUAL ABUSE.—Section 2245 of title 18, United States Code, is amended by striking ''punished by death or''.

(25) MURDER RELATED TO SEXUAL EXPLOITATION OF CHILDREN.—Section 2251(d) of title 18, United States Code, is amended by striking ''punished by death or''.

(26) MURDER COMMITTED DURING AN OFFENSE AGAINST MARITIME NAVIGATION.—Section 2280(a)(1) of title 18, United States Code, is amended by striking ''punished by death or''.

(27) MURDER COMMITTED DURING AN OFFENSE AGAINST A MARITIME FIXED PLATFORM.—Section 2281(a)(1) of title 18, United States Code, is amended by striking ''punished by death or''.

(28) TERRORIST MURDER OF A UNITED STATES NATIONAL IN ANOTHER COUNTRY.—Section 2332(a)(1) of title 18, United States Code, is amended by striking ''death or''.

(29) MURDER BY THE USE OF A WEAPON OF MASS DESTRUCTION.—Section 2332a of title 18, United States Code, is amended—

(A) in subsection (a), by striking ''punished by death or''; and

(B) in subsection (b), by striking ''by death, or''.

(30) MURDER BY ACT OF TERRORISM TRANSCENDING NATIONAL BOUNDARIES.—Section 2332b(c)(1)(A) of title 18, United States Code, is amended by striking ''by death, or''.

(31) MURDER INVOLVING TORTURE.—Section 2340A(a) of title 18, United States Code, is amended by striking ''punished by death or''.

(32) MURDER RELATED TO A CONTINUING CRIMINAL ENTERPRISE OR RELATED MURDER OF A FEDERAL, STATE, OR LOCAL LAW ENFORCEMENT OFFICER.—Section 408 of the Controlled Substances Act (21 U.S.C. 848) is amended—

(A) in each of subparagraphs (A) and (B) of subsection (e)(1), by striking '', or may be sentenced to death'';

(B) by striking subsections (g) and (h) and inserting the following:

''(g) [Reserved.]

''(h) [Reserved.]'';

(C) in subsection (j), by striking '' and as to appropriateness in that case of imposing a sentence of death'';

(D) in subsection (k), by striking '', other than death,'' and all that follows before the period at the end and inserting ''authorized by law''; and

(E) by striking subsections (l) and (m) and inserting the following:

''(l) [Reserved.]

''(m) [Reserved.]''.

(33) DEATH RESULTING FROM AIRCRAFT HIJACKING.—Section 46502 of title 49, United States Code, is amended—

(A) in subsection (a)(2), by striking ''put to death or''; and

(B) in subsection (b)(1)(B), by striking ''put to death or''.

(b) NON-HOMICIDE RELATED OFFENSES.—

(1) ESPIONAGE.—Section 794(a) of title 18, United States Code, is amended by striking ''punished by death or'' and all that follows before the period and inserting ''imprisoned for any term of years or for life''.

(2) TREASON.—Section 2381 of title 18, United States Code, is amended by striking ''shall suffer death, or''.

(c) REPEAL OF CRIMINAL PROCEDURES RELATING TO IMPOSITION OF DEATH SENTENCE.—

(1) IN GENERAL.—Chapter 228 of title 18, United States Code, is repealed.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part II of title 18, United States Code, is amended by striking the item relating to chapter 228.

SEC. 3. PROHIBITION ON IMPOSITION OF DEATH SENTENCE.

(a) IN GENERAL.—Notwithstanding any other provision of law, no person may be sentenced to death or put to death on or after the date of enactment of this Act for any violation of Federal law .

(b) PERSONS SENTENCED BEFORE DATE OF ENACTMENT.—Notwithstanding any other provision of law, any person sentenced to death before the date of enactment of this Act for any violation of Federal law shall serve a sentence of life imprisonment without the possibility of parole.

By Mr. FEINGOLD (for himself and Mr. LEAHY):

S. 192. A bill to amend title 9, United States Code, with respect to consumer credit transactions; to the Committee on the Judiciary.

Mr. FEINGOLD. Mr. President, I rise today to introduce the Consumer Credit Fair Dispute Resolution Act of 2001, a bill that will protect and preserve American consumers' right to take their disputes with creditors to court. I first introduced this legislation last year, both as a bill and as an amendment to the bankruptcy reform bill. I am pleased that my distinguished colleague from Vermont, the ranking member of the Judiciary Committee, Senator LEAHY, has joined me again as an original cosponsor of this important legislation.

Credit card companies and consumer credit lenders are increasingly requiring their customers to use binding arbitration when a dispute arises. Consumers are barred by contract from taking a dispute to court, even small claims court. While arbitration can be an efficient tool to settle claims, it is credible and effective only when consumers enter into it knowingly, intelligently and voluntarily. Unfortunately, that's not happening in the credit card and consumer credit lending arenas.

One of the most fundamental principles of our justice system is the constitutional right to take a dispute to court. Indeed, all Americans have the right in civil and criminal cases to a trial by jury. The right to a jury trial in civil cases in Federal court is contained in the Seventh Amendment to the Constitution. Many States provide a similar right to a jury trial in civil matters filed in state court.

Some argue that Americans are overusing the courts. Court dockets across the country are congested with civil cases. In part as a response to these concerns, various ways to resolve disputes, short of going to court, have been developed. Alternatives to court litigation are collectively known as alternative dispute resolution, or ADR. ADR includes mediation and arbitration. Mediation and arbitration are often efficient ways to resolve disputes because the parties can have their case heard well before they would have received a trial date in court.

Arbitration, like a court proceeding, involves a third party—an arbitrator or arbitration panel. The arbitrator issues a decision after reviewing the arguments by all parties. Arbitration uses rules of evidence and procedure, although it may use rules that are simpler or more flexible than the evidentiary and procedural rules that the parties would follow in a court proceeding.

Arbitration can be either binding or non-binding. Non-binding arbitration means that the decision issued by the arbitrator or arbitration panel takes effect only if the parties agree to it after they know what the decision is. In binding arbitration, parties agree in advance to accept and abide by the decision, whatever it is.

Some contracts contain clauses that require arbitration to be used to resolve disputes that arise after the contract is signed. This is called ''mandatory arbitration.'' This means that if there is a dispute, the complaining party cannot file suit in court and instead is required to pursue arbitration. ''Mandatory, binding arbitration'' therefore means that under the contract, the parties must use arbitration to resolve a future disagreement and the decision of the arbitrator or arbitration panel is final. The parties have no ability to seek relief in court or through mediation. In fact, if they are not satisfied with the arbitration outcome, they are probably stuck with the decision.

Under mandatory, binding arbitration, even if a party believes that the arbitrator did not consider all the facts or follow the law, the party cannot file a suit in court. The only basis for challenging a binding arbitration decision is fairly narrow: if there is reason to believe that the arbitrator committed actual fraud, or was partial, corrupt or guilty of misconduct, or exceeded his or her powers. In contrast, if a dispute is resolved by a court, the parties can have broader grounds upon which to pursue an appeal of the lower court's decision.

Because mandatory, binding arbitration is so conclusive, it is a credible means of dispute resolution only when all parties understand the full ramifications of agreeing to it. But that's not what's happening in a variety of contexts—from motor vehicle franchise agreements, to employment agreements, to credit card agreements. I'm proud to have sponsored legislation addressing employment agreements and motor vehicle franchise agreements. Many of my colleagues have joined as cosponsor of one or both bills. And just last spring, my distinguished colleague from Iowa, Senator GRASSLEY, chaired a hearing in the Judiciary Subcommittee on Administrative Oversight and the Courts on contractual mandatory, binding arbitration. That hearing included a discussion of mandatory arbitration in the consumer credit agreement context.

There is a growing, menacing trend of credit card companies and consumer credit lenders inserting mandatory, binding arbitration clauses in agreements with consumers. Companies like First USA Bank, American Express, and Green Tree Discount Company unilaterally insert mandatory, binding arbitration clauses in their agreements with consumers, often without the consumer's knowledge or consent.

The most common way credit card companies have done this is through the use of a ''bill stuffer.'' Bill stuffers are the advertisements and other materials that credit card companies insert into envelopes with the customers' monthly statements. Some credit card issuers like American Express have placed mandatory arbitration clauses in bill stuffers. The arbitration provision is usually buried in fine print in a mailing that includes a bill and various advertising materials. It is often described in a lengthy legal document that most consumers probably don't even skim, much less read carefully.

American Express's mandatory arbitration provision took effect on June 1, 1999. So, if you're an American Express cardholder and you have a dispute with American Express, as of June 1999, you can't take your claim to court, even small claims court. You are bound to use arbitration, and you are bound to the final arbitration decision. In this case, you are also bound to use an arbitration organization selected by American Express, the National Arbitration Forum.

American Express is not the only credit card company imposing mandatory arbitration on its customers. First USA Bank, the largest issuer of Visa cards, with 58 million customers, has been doing the same thing since 1997. First USA also alerted its cardholders with a bill stuffer, containing a condensed set of terms and conditions in fine print. The cardholder, by virtue of continuing to use the First USA card, gave up the right to go to court, even small claims court, to resolve a dispute.

This growing practice extends beyond credit cards into the consumer loan industry. Consumer credit lenders like Green Tree Consumer Discount Company are inserting mandatory, binding arbitration clauses in their loan agreements. The problem is that these loan agreements are usually adhesion contracts, which means that consumers must either sign the agreement as is, or forego a loan. In other words, consumers lack the bargaining power to have the clause removed.

More importantly, when signing on the dotted line of the loan agreement, consumers may not even understand what mandatory arbitration means. In all likelihood, they do not understand that they have just signed away a right to go to court to resolve a dispute with the lender. It might be argued that if consumers are not pleased with being subjected to a mandatory arbitration clause, they can cancel their credit card, or not execute on their loan agreement, and take their business elsewhere. Unfortunately, that's easier said than done. As I mentioned, First USA Bank, the nation's largest Visa card issuer, is part of this questionable practice. In fact, the practice is becoming so pervasive that consumers may soon no longer have an alternative, unless they forego use of a credit card or a consumer loan entirely. Consumers should not be forced to make that choice.

Companies like First USA, American Express and Green Tree argue that they rely on mandatory arbitration to resolve disputes faster and cheaper than in court litigation. The claim may be resolved faster but is it really cheaper? Is it as fair as a court of law? I don't think so. Arbitration organizations often charge exorbitant fees to

the consumer who brings a dispute. These costs can be much higher than bringing the matter to small claims court and paying a court filing fee. Or, the fees could very well be greater than the consumer's claim. So as a result, a consumer's claim is not necessarily resolved more efficiently with arbitration. It is resolved either at greater cost to the consumer or not at all, if the consumer cannot afford the costs, or the costs outweigh the amount in dispute.

In December 2000, in Green Tree Financial Corp. Alabama et. al. v. Randolph, the U.S. Supreme Court found that an arbitration clause that is silent as to the costs and fees of arbitration is enforceable. It, however, left unanswered the question of whether large arbitration costs, which effectively preclude a litigant from vindicating federal statutory rights in the arbitral forum, render the arbitration clause unenforceable.

Another significant problem with mandatory, binding arbitration is that the lender gets to decide in advance who the arbitrator will be. In the case of American Express and First USA, they have chosen the National Arbitration Forum. All credit card disputes with consumers involving American Express or First USA are handled by that entity. There would seem to be a significant danger that this would result in an advantage for the lenders who are ''repeat players.'' After all, if the National Arbitration Forum develops a pattern of reaching decisions that favor cardholders, American Express or First USA may very well decide to take their arbitration business elsewhere. A system where the arbitrator has a financial interest in reaching an outcome that favors the credit card company is not a fair alternative dispute resolution system.

At least one state court has found that mandatory arbitration provisions in credit card bill stuffers are unenforceable. A suit filed in California state court arose out of a mandatory arbitration provision announced in mailings by Bank of America to its credit card and deposit account holders. In 1998, the California Court of Appeals ruled that the mandatory arbitration clauses unilaterally imposed on the Bank's customers were invalid and unenforceable. The California Supreme Court refused to review the decision of the lower court. As a result, credit card companies in California cannot invoke mandatory arbitration in their disputes with customers. In fact, the American Express bill stuffer notes that the mandatory, binding arbitration provision will not apply to California residents until further notice from the company. The California appellate court decision was wise and well-reasoned, but consumers in other states cannot be sure that all courts will reach the same conclusion.

My bill extends the wisdom of the California appellate decision to every credit cardholder and consumer loan borrower. It amends the Federal Arbitration Act to invalidate mandatory, binding arbitration provisions in consumer credit agreements. Now, let me be clear. I believe that arbitration can be a fair and efficient way to settle disputes. I agree we ought to encourage alternative dispute resolution. But I also believe that arbitration is a fair way to settle disputes between consumers and lenders only when it is entered into knowingly and voluntarily by both parties to the dispute after the dispute has arisen. Pre-dispute agreements to take disputes to arbitration cannot be voluntary and knowing in the consumer lending context because the bargaining power of the parties is so unequal. My bill does not prohibit arbitration of consumer credit transactions. It merely prohibits mandatory, binding arbitration provisions in consumer credit agreements.

Credit card companies and consumer credit lenders are increasingly slamming the courthouse doors shut on consumers, often unbeknownst to them. This is grossly unjust. We need to restore fairness to the resolution of consumer credit disputes. I urge my colleagues to support the Consumer Credit Fair Dispute Resolution Act.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD following my statement.

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

S. 192

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Consumer Credit Fair Dispute Resolution Act of 2001''.

SEC. 2. CONSUMER CREDIT TRANSACTIONS.

(a) DEFINITIONS.—Section 1 of title 9, United States Code, is amended—

(1) in the section heading, by striking ''**AND 'COMMERCE' DEFINED**'' and inserting ''**, 'COMMERCE', 'CONSUMER CREDIT TRANSACTION', AND 'CONSUMER CREDIT CONTRACT' DEFINED**''; and

(2) by inserting before the period at the end the following: ''; 'consumer credit transaction', as herein defined, means the right granted to a natural person to incur debt and defer its payment, where the credit is intended primarily for personal, family, or household purposes; and 'consumer credit contract', as herein defined, means any contract between the parties to a consumer credit transaction.''.

(b) AGREEMENTS TO ARBITRATE.—Section 2 of title 9, United States Code, is amended—

(1) by striking ''A written'' and inserting ''(a) IN GENERAL.—A written''; and

(2) by adding at the end the following:

''(b) CONSUMER CREDIT CONTRACTS.—

''(1) IN GENERAL.—Notwithstanding the preceding sentence, a written provision in any consumer credit contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of the contract, or the refusal to perform the whole or any part thereof, shall not be valid or enforceable.

''(2) LIMITATION.—Nothing in this section shall prohibit the enforcement of any written agreement to settle by arbitration a controversy arising out of a consumer credit contract, if such written agreement has been entered into by the parties to the consumer credit contract after the controversy has arisen.''.

ADDITIONAL COSPONSORS

S. 22

At the request of Mr. HAGEL, the name of the Senator from Arkansas (Mr. HUTCHINSON) was added as a cosponsor of S. 22, a bill to amend the Federal Election Campaign Act of 1971 to provide meaningful campaign finance reform through requiring better reporting, decreasing the role of soft money, and increasing individual contribution limits, and for other purposes.

S. 27

At the request of Mr. FEINGOLD, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 27, a bill to amend the Federal Election Campaign Act of 1971 to provide bipartisan campaign reform.

S. 35

At the request of Mr. GRAMM, the names of the Senator from Colorado (Mr. ALLARD) and the Senator from Alaska (Mr. STEVENS) were added as cosponsors of S. 35, a bill to provide relief to America's working families and to promote continued economic growth by returning a portion of the tax surplus to those who created it.

S. 37

At the request of Mr. LUGAR, the names of the Senator from Missouri (Mr. BOND), the Senator from Michigan (Mr. LEVIN), and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 37, a bill to amend the Internal Revenue Code of 1986 to provide for a charitable deduction for contributions of food inventory.

S. 39

At the request of Mr. STEVENS, the name of the Senator from Alaska (Mr. MURKOWSKI) was added as a cosponsor of S. 39, a bill to provide a national medal for public safety officers who act with extraordinary valor above and beyond the call of duty, and for other purposes.

S. 60

At the request of Mr. BYRD, the names of the Senator from Kentucky (Mr. MCCONNELL), the Senator from New Mexico (Mr. BINGAMAN), the Senator from Nevada (Mr. REID), the Senator from North Dakota (Mr. DORGAN), and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 60, a bill to authorize the Department of Energy programs to develop and implement an accelerated research and development program for advanced clean coal technologies for use in coal-based electricity generating facilities and to amend the Internal Revenue Code of 1986 to provide financial incentives to encourage the retrofitting, repowering, or replacement of coal-based electricity generating facilities to protect the environment and improve efficiency and encourage the early commercial application of advanced clean coal technologies, so as to allow coal to help

meet the growing need of the United States for the generation of reliable and affordable electricity.

S. 127

At the request of Mr. MCCAIN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 127, a bill to give American companies, American workers, and American ports the opportunity to compete in the United States cruise market.

S. 148

At the request of Mr. CRAIG, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 148, a bill to amend the Internal Revenue Code of 1986 to expand the adoption credit, and for other purposes.

ORDER OF BUSINESS

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I ask unanimous consent to speak as in morning business for up to 15 minutes notwithstanding the previous order.

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

MOVING FROM POLITICS TO POLICY: THE PRESIDENT'S CHALLENGE ON NATIONAL MISSILE DEFENSE

Mr. BIDEN. Mr. President, last weekend the nation inaugurated a new President, President George W. Bush. With the change of power now complete, the President and Congress must now get down to the hard business of governing.

After eight years of Democratic leadership, it is obvious that a Bush Administration will propose policy changes on several fronts. One of the most important and complex issues for President Bush will be how to implement his national missile defense policy in a manner that contributes to our national security, rather than putting it at risk.

For six solid years, Republicans have used national missile defense as a ''big stick''—a stick employed not against America's enemies, but against those who thought we did not need a national missile defense. Republicans repeatedly criticized the Clinton administration for its approach to national missile defense, and in the last two presidential campaigns, the promise of a ''robust'' national missile defense figured prominently in the Republican Party's platform and foreign policy speeches.

Although it is always difficult to get into the minds of the American people, it does appear that, for the most part, the public has ignored this debate. The missile defense issue has commanded the attention of only a tiny minority of the American people. In a recent survey by the Pew Charitable Trust of priorities for the new administration, Americans rated missile defense in eighteenth place among twenty issues.

Whether missile defense was on voters' minds or not, however, George W. Bush is now our President. He and his team are committed to a national missile defense that will be, in the President's words, ''effective,'' ''based on the best available options,'' deployed ''at the earliest possible date'' and ''designed to protect all 50 states and our friends and allies and deployed forces overseas from missile attacks by rogue nations, or accidental launches.''

That mantra will suffice for a campaign, but not for policy. Presidential campaigns bear little relation to actually being President, and campaign slogans are but the shadows of flesh and blood policy somewhat related to it, but lacking in both detail and substance.

In short, the real test of President Bush on national missile defense is just beginning. It is to take those campaign slogans and turn them into coherent policies and strategies.

The challenge for the President and his team is this: to pursue their dream of a ''robust'' national missile defense with:

Full attention to the technological challenges;

Full attention to the potential consequences for arms control;

Full attention to the potential impact on strategic stability; and

Full attention to its possible effect on America's relations with our allies.

As our former colleague and Armed Services Committee chairman Sam Nunn said recently, ''I would hope the new administration would approach this subject as a technology, not a theology.''

Let me outline some of the key questions that I believe the Administration must consider.

A national missile defense policy for the new administration will specify system objectives. Whom shall the system protect, against what level of attack, and with what level of success—or, on the other hand, allowing what rate of failure?

As I noted earlier, then-Governor Bush set his initial objectives last May: ''to protect all 50 states and our friends and allies and deployed forces overseas from missile attacks by rogue nations, or accidental launches.''

That's a very tall order, Mr. President. Can current technology support its achievement any time soon, or at an affordable cost? I have my doubts.

Taken literally, protection ''from . . . accidental launches'' requires an ability to intercept at least a small number of advanced Russian warheads, rather than just simple warheads from the so-called ''rogue states'' of North Korea, Iran or Iraq. And protecting ''our friends and allies and deployed forces overseas'' would require either multiple defenses against ICBM's or else a world-wide system like the space-based laser of Ronald Reagan's ''Star Wars.''

A serious national missile defense policy will give careful attention to possible Russian reactions to our actions. It is not enough to say, as President Bush did during the campaign, that ''I will offer Russia the necessary amendments to the ABM Treaty'' and that, ''if Russia refuses the changes we propose, I will give prompt notice'' of our intent to withdraw from the Treaty.

What will happen if the President does what he proposed during the campaign? Will Russia suspend its compliance with other arms control agreements, such as the START Treaty and the Intermediate Nuclear Forces Treaty? Will future arms reductions occur without agreed means of verification? Indeed, will Russia try to rebuild its nuclear forces, instead of reducing them?

Will Russia ally itself more closely with China or—worse yet—with anti-American ''rogue states'' that seek weapons of mass destruction? Will our allies question America's leadership? Will our allies lose faith in the nuclear non-proliferation regime that we put in place?

A serious national missile defense policy cannot wish away these risks. Rather, it must consider them and include a strategy for dealing with them.

Let us suppose, however, that Russia agrees to work out an accommodation with the United States—which is another possible outcome. What sort of agreement should the President propose?

Is there an agreement that would permit the sort of defense that the President seeks, while still being reliably limited? Would it be verifiable by Russia? How would it safeguard Russia against a U.S. ''breakout'' from its limitations?

How shall a ''robust'' national missile defense be fielded at the same time that Russia and the United States are substantially reducing their nuclear forces, which is another stated goal of the new administration? Missile defense advocates argue that Russia has nothing to fear from a limited defense, because it has so many strategic warheads.

But what happens as those numbers go down? How can mutual deterrence of full-scale war be maintained? How can Russia accept a system that undermines that deterrence?

Does it make sense to establish a combined limit on offensive and defensive systems, as some experts have proposed both here and in Russia? Is it possible, at very low numbers of strategic forces or by adopting sweeping ''de-alerting'' measures as well, to deny either side the ability to mount a disabling first strike? If so, would each side then have to target its remaining missiles on the other side's cities—as China does today—in order to maintain a residual capability to cause unacceptable damage to a country?

How would a U.S.-Russian agreement allowing a ''robust'' national missile defense affect U.S.-Russian strategic stability across the whole range of possible conflicts? If a system were good enough to guard against accidental Russian launches, then it could also

combat such purposeful acts as a so-called ''demonstration'' attack using a small number of warheads. In effect, it would ''raise the bar'' for initiating a strategic nuclear war; that's why it would frustrate ''rogue states'' with very small strategic forces.

Would this extra ''firebreak'' against strategic nuclear war make tactical nuclear weapons more usable? If so, is that a problem? Would it also set a ''floor'' on strategic arms reductions, so that the United States (and Russia) could still deter ''the old-fashioned way'' any third-country attack that would overcome the missile defense?

What about the START II ban on MIRV'ed ICBM's? Would an agreement with Russia require relaxation of that ban?

What would the consequences be of allowing a given number of MIRV's? Would they be small if the number of MIRV's per missile were limited to 2 or 3, or if MIRV's were restricted to mobile launchers? How verifiable would such limitations be, if the MIRV's were on a missile that had both mobile and silo-based variants?

Were all these issues solved, and if a U.S.-Russian agreement were to be reached, how would a U.S. national missile defense affect China's strategic force structure and its relations with the United States? Would a geographically limited national missile defense—such as a boost-phase intercept system deployed only near ''countries of concern''—permit China to maintain its nuclear deterrence at low force levels?

With a numerically limited defense, could we accept China increasing its strategic forces from 18 warheads to 200 or more? Would that prompt an arms race between China and India (and then Pakistan), or even with Russia?

Or would a ''robust'' national missile defense—whether deployed with Russian assent or without it—be so large as to simply strip away China's deterrent capability? If that were the case, what risk would we run of China deciding to attack Taiwan before that date arrived? How would we prepare for that possibility?

These are serious and complex questions that I have not heard debated or sufficiently discussed. That does not mean that they cannot be solved. It does underlie my own feeling, however, that the world may not be ready yet for the missile defense system that President Bush would like to build, even if the technology were available.

If the President seeks substantial world agreement on this course, then the ground must be prepared—not only in Alaska, but in world capitals from London and Paris to Tokyo, and from Moscow to Beijing. If he seriously intends to proceed in the face of world objection, then we—and, whether they like it or not, the rest of the world—must prepare for all the complications that may result.

It would be unfair to expect President Bush and his team to have answered all these questions already. They have argued the case for a ''robust'' national missile defense only as a political issue, not as the carefully crafted policy of a government in power. That is understandable.

But now they are the Executive Branch of government. They are in power. Now theirs is the burden of putting real flesh on the mere bones of a policy that sufficed while they were the opposition.

What shall we say to those who take on that burden? On the one hand, we must wish them well. Nobody doubts the sincerity or morality of a belief in a national missile defense, only its practicality.

On the other hand, we must also say: Do not go blindly crashing into this new venture.

Remember Alexander Pope's line that ''fools rush in, where angels fear to tread.'' Remember also that the system you may wish to build does not yet exist. Neither has its feasibility or cost-effectiveness yet been adequately demonstrated.

The complexity of the issues raised by a national missile defense—and the lack of a proven design for even a limited missile defense, let alone a ''robust'' one—lead me to the following respectful suggestions to the President and his national security team:

(1) fold these issues into the ''Nuclear Posture Review'' mandated by the Congress last year;

(2) instruct our military experts to examine in that review the full range of interrelated offensive and defensive issues;

(3) give them time to analyze those issues fully and thoughtfully; and

(4) delay your decisions regarding missile defense architecture and deployment until that review has been completed and absorbed.

If President Bush and his team proceed with caution and with fully articulated policies and strategies, perhaps they will transform the world. For that is, indeed, their goal, and it is a laudable goal.

If they proceed rashly, however, the world is likely to be an unforgiving master. If they cannot develop a fully articulated policy, then perhaps a ''robust'' national missile defense is really an expression of the desire to be done with worldly cares, and not a truly rational approach to world leadership in the 21st century.

ADJOURNMENT UNTIL MONDAY, JANUARY 29, 2001

Mr. BIDEN. If there be no further business to come before the Senate, I now ask unanimous consent the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 12:38 p.m., adjourned until Monday, January 29, 2001, at 12 noon.