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## Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

### PRAYER

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

God of power and providence, we begin this day of work in the Senate with Your assurance: "I will not leave you nor forsake you. Be strong and of good courage."—Joshua 1:5-6. You have chosen to be our God and elected us to be Your servants. You are the Sovereign Lord of this Nation and have destined us to be a land of righteousness, justice, and freedom. Your glory fills this historic chamber. Today has challenges and decisions that will test our knowledge and experience. We dare not trust in our own understanding. In the quiet of this moment, fill our inner wells with Your Spirit. Our deepest desire is to live today for Your glory and by Your grace.

We praise You that it is Your desire to give good gifts to those who ask You. You give strength and courage when we seek You above anything else. You guide the humble and teach them Your way. We open our minds to receive Your inspiration. Astound us with new insight and fresh ideas we would not conceive without Your blessing.

Help us to maintain unity in the midst of differing solutions to the problems that we must address together. Guide our decisions. When the debate is ended and votes are counted, enable us to press on to the work ahead of us with unity. Through our Lord and Saviour. Amen.

### RECOGNITION OF THE ACTING MAJORITY LEADER

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

### SCHEDULE

Mr. MACK. Mr. President, this morning, the Senate will begin a period for the transaction of morning business until 10:30 a.m. Following morning business, the Senate will resume consideration of the tobacco bill with a Gorton amendment pending regarding attorneys' fees. It is expected that a time agreement will be reached with respect to the Gorton amendment, with a vote occurring on, or in relation to, the amendment this afternoon. Following disposition of the Gorton amendment, it is hoped that further amendments will be offered and debated during today's session. Therefore, rollcall votes are possible throughout today's session as the Senate continues to make progress on the tobacco bill.

As a final reminder to all Members, the official photo of the 105th Congress will be taken today at 2:15 p.m. in the Senate Chamber. All Senators are asked to be in the Chamber and seated at their desks immediately following the weekly party luncheons. I thank my colleagues for their attention.

### RESERVATION OF LEADER TIME

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

### MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business, not to extend beyond the hour of 10:30 a.m., with Senators permitted to speak therein for up to 5 minutes each.

Under the previous order, the distinguished Senator from Florida, Mr. MACK, is recognized to speak for up to 15 minutes.

Mr. MACK. Mr. President, thank you.

### INDIA-CHINA

Mr. MACK. Mr. President, I rise today to express my concern with the handling of United States foreign policy on the eve of President Clinton's second summit with the People's Republic of China. American foreign policy should promote freedom, democracy, respect for human dignity, and the rule of law. It is hard for me to imagine that the President would reward inappropriate actions by the Chinese Communist Party leaders while simultaneously sanctioning the democratic leaders in India.

Over India's 50-year history, U.S. relations have been hot and cold. But we cannot deny the reality that today, India is the largest democracy in the world. India recently held the largest democratic elections in the history of the world. And democracy is more than just a word. We have a common bond with the Indian people based upon a commitment to democracy, freedom, and the rule of law. They are a people who have struggled for freedom from a colonial power in order to gain independence. We share that struggle in our histories.

India has many friends in the United States, and many Americans proudly claim Indian heritage. But our relationship with India has been neglected, and unfortunately, we find ourselves in a difficult bind. Due to India's recent decision to detonate nuclear devices on May 11 and May 13, we have instituted sanctions. I deeply regret the circumstances regarding India's decision to detonate nuclear devices. But the increased instability has been caused by China's proliferation policies, a U.S. foreign policy which favors China over India, and the licensing of technologies by the United States which enhances China's military capabilities.

Let me review some of the facts.

India has broken no international laws or agreements by choosing to test nuclear devices.

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



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India is not a known proliferator of weapons or weapons technology.

India's 50-year history demonstrates peaceful intent exercised within a democratic society.

India has been a nuclear power since it conducted its first nuclear tests in 1974; this status did not change with last month's tests.

Although not at war, India's borders are considered "hot spots" for several reasons.

Since independence in 1947, India and Pakistan have been disputing borders.

Also since independence, India has understood the importance of good relations with China for its own security.

Relations were clouded by China's occupation in 1950 of Tibet, which had been independent until then and served as a stable buffer between the two countries. This occupation brought Chinese expansion to India's border.

India sought renewed cooperative relations on the basis of a policy that recognized Tibet's genuine autonomy under Chinese sovereignty in order to maintain a buffer between India and China.

Relations completely changed, however, following China's military buildup in Tibet beginning in 1956 and 1957. During this period, China began the systematic oppression of Tibetan religion and culture, forcing the mass migration of Tibetans. The Dalai Lama and thousands of Tibetans were given refuge in India in 1959. After forty years, the Tibetan oppression continues, the military occupation of Tibet continues, and nearly 200,000 Tibetans remain in India.

Between 1957 and 1962, India's relations with China were marred by Beijing's huge territorial claims amounting to 50,000 square miles, and its illegal use of force to occupy 15,000 square miles of that claimed area.

Indian attempts to reach a border settlement through negotiations with China failed in 1961, and its attempts to prevent further Chinese encroachment into Indian territory was met by a massive Chinese invasion in 1962.

To this day, China continues to occupy 15,000 square miles of Indian territory in Ladakh and it claims sovereignty over the entire 35,000 square miles of India's Northeastern most province [Arunachal Pradesh]. This source of tension and deep concern has not been removed despite several rounds of Sino-Indian diplomatic negotiations to resolve the border dispute since 1981.

China conducted its first nuclear test in October 1964, within 2 years of the outbreak of the Sino-Indian War. In 1966, China tested its first medium range ballistic missile, and tested again in 1970.

India decided to develop its nuclear weapons program in 1970. It conducted its first tests, declaring its capability to the world, in 1974.

India did not join the Nuclear Non-proliferation Treaty—known as the "NPT"—in 1968 because the treaty

sought to ensure an arms control system that would allow the five powers alone—China, France, the United Kingdom, Russia, and the United States—to possess nuclear weapons. That meant that China, the internally oppressive and undemocratic occupying force on India's border, would be permitted to have nuclear weapons while India, fearful and insecure, would be denied any recourse to such weapons.

India has not signed the Comprehensive Test Ban Treaty because the treaty seeks to prevent India from conducting further tests without limiting China's ability to do the same. Like the NPT, India refuses to join this treaty as a nonnuclear power unless China and the other powers agree to disarm.

Between 1974 and 1998, India experienced sanctions by the United States on nuclear energy, space, computer, and other technologies.

Following India's first nuclear tests in 1974, it did not conduct further tests, until now.

India has not been a proliferator of nuclear weapons and missiles but China, a nuclear power, has proliferated.

Some estimates indicate 90 percent of China's weapons sales go to states which border India. Of particular concern is Chinese proliferation of such weapons and technologies to Pakistan.

Between 1974 and 1998, India has tried to break through the difficulties with China and Pakistan. India had not conducted any further tests, even though China had. India had not illegally proliferated weapons—China had. But India has been denied the same nuclear and technical cooperation which we have accorded to the PRC.

India's commercial electricity needs are among the largest in the world, similar to China's. We have recently signed a nuclear cooperation agreement with the PRC, but maintain restrictions on nuclear power agreements with India.

India's testing in 1974 and in 1998, again, violated no agreements. North Korea expelled international inspectors in 1993, in direct violation of the NPT. We "rewarded" the brutal dictatorship in North Korea with a classic appeasement plan—free fuel oil and \$4 billion worth of the top of the line nuclear reactors in exchange for their promises to do what they didn't do under an internationally binding agreement.

China may be too preoccupied today to directly threaten India, but they need only employ Pakistan as a surrogate belligerent to jeopardize India's security.

Mr. President, the United States is helping the largest single-party authoritarian government in the world suppress the development of the largest democracy in the world. I submit that China's behavior against students on Tiananmen Square, resistance to freedom and democratic reforms, abysmal human rights record, and dangerous and irresponsible proliferation activi-

ties deserve America's scorn more than India's legal actions taken in defense of its own national interests. There is something inherently wrong with sanctioning a democracy legally acting in its perceived national interests while rewarding a single party communist state which threatens regional security in violation of international law.

India watched carefully as the United States has led the world in a policy of engagement with China. From the U.S.-China relationship, India has learned some important lessons. First, look at the rationale the U.S. gives for its policy toward China. We must "engage" with China because it is the most populous country, an enormous potential market, a major trading nation, a member of the permanent five at the United Nations Security Council, and China is a nuclear power with a modernizing military. With these qualifications China has been able to get top priority and attention from U.S. Government and business leaders. In spite of posing a potential threat to the United States and being among the world's worst human rights violators, China gets the perks of enormously favorable trade and investment flows and top level diplomatic treatment, including presidential visits, while India gets sanctioned. This makes no sense—it is strange—and it's just wrong.

The United States largely overlooks India despite its 950 million people, its democratic government, and the largest middle class in the world. Demographers predict that India's population will surpass that of China sometime during the next century. Thus, the only attribute India lacks when compared with its sometimes-aggressive neighbor, in this administration's definition of importance, is acceptance into the "nuclear club." The message sent by the Clinton foreign policy team has encouraged India to conclude the most effective way to ensure its interests are protected from an increasingly powerful Asian superpower, and garner greater diplomatic and commercial attention from the West, is to remind the world of its nuclear deterrent capability.

What lessons are we to learn? First, the United States should be more cautious with our definition of "engagement." By overlooking China's proliferation activities—not imposing sanctions when required by law—we are rewarding the wrong behavior. Second, understanding that India considered its security environment to be precarious enough to risk global condemnation and economic sanctions, the U.S. should take a closer look to assess whether India's fears and actions were justified. And finally, we must base our foreign policies upon the principles of freedom, democracy, respect for human dignity, and the rule of law. We must look to our friends first in this endeavor, and work together to "engage" those who would oppose freedom in the world. India, along with Japan, Korea, the Philippines, and other Asian democracies should form the foundation

from which our engagement in Asia begins. Working with the democracies of the world, we should engage China and bring the 1.2 billion Chinese people into the community of free nations.

A foreign policy devoid of principle has led us to the point where we are rewarding dictators and punishing democracies. The President's visit to China this month represents another opportunity to define the United States' role in the world. The President must clearly articulate which behavior deserves praise, and which does not. He must demonstrate strong leadership on behalf of the American people. We must all understand, the behavior which the United States rewards is likely to be the behavior we will see more of in the future.

Mr. President, I yield the floor.

Mr. BINGAMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. BINGAMAN. Mr. President, I ask, are we in morning business?

The PRESIDING OFFICER. The Senator is correct.

Mr. BINGAMAN. I ask unanimous consent to speak for up to 8 minutes in morning business.

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

#### THE TOBACCO BILL

Mr. BINGAMAN. Mr. President, let me just say a few words about the tobacco bill which we have been on here for a couple, 3 weeks now in the Senate.

In my opinion, this tobacco bill is a historic piece of legislation. And I have complimented personally the Senator from Arizona, Senator MCCAIN, for his leadership in the Commerce Committee and here on the Senate floor in bringing this bill here and pushing for its enactment. I believe very strongly that when historians look back on the 105th Congress and ask, What did the 105th Congress accomplish? if we are able to pass tobacco legislation, significant tobacco legislation, that will be the single item they will point to as a substantial and major accomplishment by this Congress. So the time we are spending on this tobacco bill is time well spent.

I firmly believe that since I have been here in the Senate—and I have been here now nearly 16 years—during that time there has been a dramatic change in public opinion on the issue of smoking and tobacco use in this country, particularly on the issue of young people beginning to smoke.

What I see this legislation as is an effort to bring our public policy into line with our public opinion, because public opinion has changed dramatically. Our public policy has not changed to the same extent, and we need to get on with the business of changing public policy to mirror and reflect what the American people want to see done. That is why the legislation is so important.

We have spent many hours discussing this legislation. We have had several amendments offered and debated, and several adopted. I think all of that is to the good. And I think anyone who has watched the Senate operate for any period of time would have to acknowledge that, although we have spent substantial time on the tobacco bill, so far we have not seen a concerted effort by the leadership to bring this issue to a close, to bring the debate to a close, to get a defined list of amendments that need to be concluded before we can finish the bill and move on to another item.

So, clearly, that is our agenda for this week. I believe very strongly we can finish this bill this week, or certainly if not this week, we can finish it next week. We owe it to the American people to do that.

I know there are others in the Senate who have different opinions on that. We have heard a lot of public statements over the recent weeks and months about how this bill is dead and how the bill is dead on arrival. And I have thought, if I had a dollar for every statement that has been uttered about how this bill is dead, I would be a rich man today. Mark Twain was famous for his statement that the news reports of his demise were exaggerated. And I think that the news reports about this bill being dead are exaggerated as well.

I think there is ample support here in the Senate to pass this bill. There is ample support in this Senate to pass a strong bill, to send it to conference, and I hope that there is support in the House of Representatives to do the same thing. Time will tell whether that turns out to be the case.

So I believe very strongly we need to go ahead and get a cloture motion filed again. I hope Senator MCCAIN, the lead sponsor of the bill, will take that initiative. I think we need to get a defined list of amendments that still need consideration once that cloture motion is completed, and then we need to go ahead and conclude action on the bill.

I believe the best thing we can do for the American people before the Fourth of July break—and the Fourth of July break will begin the Friday after this Friday—the most important thing we can do for the American people is, prior to that date, going ahead and passing this historic legislation and sending it to conference.

I urge the majority leader to use the power of his position, which is substantial, to move the bill forward. I compliment all my colleagues who have voted for cloture in the previous efforts to bring closure to the debate and to get a limited list of amendments for further consideration. But I urge everyone, this week, to vote for cloture. I hope we can get that done. I hope we can pass a bill with a strong bipartisan vote and send it to conference. I think the American people will thank us for that action, and we owe that to them.

Mr. DORGAN. I wonder if the Senator from New Mexico would yield?

Mr. BINGAMAN. I am happy to yield to my colleague from North Dakota.

Mr. DORGAN. Mr. President, the Senator from New Mexico makes a point that I feel strongly about. If we don't finish this product now, if we don't get a tobacco bill completed in the Senate, in my judgment, we probably will never get it done.

We have come a long, long ways. We are, I think, close. I don't think there is any question but if the tobacco bill were voted on by the full Senate, it would pass. I don't think there is much question about that.

There are some in the Senate, however, who are intent on trying to kill the legislation. So we have been tied up here in legislative knots, going through some amendments, but going through a process that has led some to conclude that maybe this bill ought to get pulled, maybe we ought to go to something else.

I ask the Senator from New Mexico, as it was stated this weekend by the majority leader that perhaps we have to move to some other legislation, is it the belief of the Senator from New Mexico that if we don't get this bill completed now, it is likely we will never get this piece of legislation?

Mr. BINGAMAN. Mr. President, I respond to the question by just saying I believe we have this week and we have next week. There is no more important activity we can commit that time to than completing action on this bill. I think the momentum for moving ahead on the bill will be lost if we don't get it done before we break for the Fourth of July recess.

Clearly, the notion of giving up on this and moving to another piece of legislation—I don't know of any other piece of legislation that is so urgent or so important that it would justify going off of this bill. I am not aware of anything on the Senate's schedule that would justify that action.

Mr. DORGAN. Mr. President, if the Senator would yield further, I point out that I, and I think a number of others in this Chamber, would resist strongly an attempt to move to some other piece of legislation. That would require a motion to proceed, which obviously some of us would resist strenuously. We think it is important to finish this bill.

I think that some have missed the point. You go through this process and have a debate. Some have missed the point. The point here is about trying to prevent children from smoking in this country and trying to prevent the tobacco industry from targeting kids with their tobacco products. That is not rocket science. We can do that.

The piece of legislation that is before the Senate is a good piece of legislation which has a series of things in it which are very important—smoking cessation programs, counteradvertising programs, prohibitions against advertising in ways that will target children, getting rid of vending machines in areas where children have access to

cigarettes—a whole series of things that try to make certain that in the future we will not have the tobacco industry able to target kids to addict them to cigarettes.

We know every day 3,000 kids start smoking in this country. We know 1,000 of those 3,000 will die. We know 300,000 to 400,000 people in this country die every year from smoking and smoking-related causes. We also know that smoking cigarettes and the use of tobacco products is legal for adults and will always remain legal. No one is suggesting that it be illegal. But we are saying with this piece of legislation that we ought not have a tobacco industry get its new customers from teenagers.

I read yesterday and the day before a whole series of statements we have now unearthed from the bowels of the tobacco companies which demonstrate that they understood that their customers are teenagers, their future customers come from teenagers. If you don't get them when they are young, you don't get them. The industry's own documents suggest that—that if you don't get them when they are kids, almost never will they reach age 30 and try to evaluate, What am I missing from life? come up with the idea they are missing smoking, and go out and start getting addicted to cigarettes. That almost never happens.

I say to the Senator from New Mexico, and I ask him this question, it seems to me we have kind of lost our way here on this bill as it has been on the floor of the Senate for some weeks now. It seems to me that we have, through amendments, gone zigzagging across the landscape here and forgotten what the central premise of this piece of legislation is; that the central premise, is it not, is to try to make certain that we are not having an industry targeting our kids to smoke, and also providing a whole series of steps—smoking cessation programs, investment in health research, counter-advertising, and a range of other things—to try to make sure that will not happen in the future; is that not the case?

Mr. BINGAMAN. Mr. President, I think that is clearly the case.

I think although there have been some far-reaching amendments added to the bill, the central core of the bill remains the same. It remains an effort to deal with the problem of young people beginning to smoke. And, of course, it is a public health issue.

That is the reason I believe this legislation is historic, because it goes directly at dealing with the major public health issue that is before this country today and that can be dealt with. So, I think it is extremely important we move ahead.

I understand there are particular provisions of the bill and particular provisions of some of the amendments that various Members don't like, but it is almost ironic because you hear people come to the floor and support amend-

ments to the bill and then use the fact that those amendments have been adopted as a reason for claiming that the bill is now so loaded down that we can't support the bill. To my mind, the right course is for us to go ahead and pass the bill, consider remaining amendments, adopt those that have the votes there to adopt, pass the bill in that form, get it to conference, and hopefully the House will do the same.

I believe that the same people who are urging me as a Senator to take action on this important public health issue are urging Congressmen from my State to take action on this important public health issue as well. I hope that if we do the right thing before the Fourth of July break, the House will come back in July and do the right thing by passing a responsible bill and then we will be able to get a conference and get something that we can send to the President before we adjourn this fall. That is what is important. We have a historic opportunity here. I hope very much we will rise to the occasion.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. CONRAD. Mr. President, we started debate on this bill weeks and weeks ago here on the floor of the Senate. We started action on this bill months ago in the Commerce Committee. I think we may have forgotten that we started real action nearly a year ago. It was on June 20 of last year that there was an agreement announced between the attorneys general and the tobacco industry. That was the basis that led Congress to act. We are talking 1 year. On June 20 of 1997, the attorneys general entered into an agreement with the tobacco industry.

Here we are, June 16 of 1998, and we still haven't acted. Now some are saying we shouldn't act. The majority leader said over the weekend that he thought this bill was dead. Well, he has said that about every week. About every week there is an announcement by the majority leader, the bill is dead. He said that when it was still in the Commerce Committee, yet it came out of the Commerce Committee on a 19-1 vote.

Mr. President, I remind my colleagues that this has been going on for a year because that has special importance. We are talking about 3,000 young people who take up the habit every day—3,000. Over a year, that is over a million kids who have taken up the habit of smoking and the use of tobacco products.

And we know that one-third of them will die prematurely as a result. That is, over 300,000 children are going to die prematurely because they have taken up the habit in the one year since the settlement between the attorneys general of the various States and the tobacco industry. They entered into an agreement to fundamentally transform policy toward tobacco in this country. And now the question is, Is Congress

going to act, or are we going to have an enormous leadership failure here in the U.S. Senate? That is the question.

I don't think anybody wants to have that kind of failure on their hands. The fact is, it is very interesting that when people have a chance to vote, things are much different than when they are just talking with the newspapers. We have seen that over and over and over. In the Budget Committee, in the Finance Committee, when people had a chance to vote, they did vote, and the outcome was often much different than what was predicted.

Let's look at the bill before us. We are talking about seeing the price increase \$1.10 a pack over the next 5 years. Why is that important? Well, every single expert that has come and testified, every element of the public health community has said that a significant price increase is important in order to reduce youth smoking. That is not the only part of reducing youth smoking, but it is an important part. Second, we voted on look-back provisions. Look-back provisions are the penalties to be imposed on the industry for the failure to reduce youth smoking in line with the goals provided for in the legislation.

We made a significant change here on the floor of the Senate. Before, most of the fee was going to be charged to the industry on an industry-wide basis. Some of us didn't think that made much sense, because what happens when you do that is you put the good in with the bad. Those companies that have accomplished the goal pay the industry penalty just as those companies who have failed to reach the goal. What sense does that make? That is not fair. Instead, we think most of the fee ought to be placed on the companies which are the ones that failed to meet the goal. They are the ones that ought to be held accountable, the ones that ought to pay, and so that change was made here on the floor.

Third, we dealt with the question of liability. Out of the Commerce Committee, just as in the proposed settlement, there was special protection for this industry—protection never given any other industry in our history. The vast majority of us on the floor of the Senate said, no, that is not right; we should not be giving special protection to this industry. That is not appropriate. So that was changed.

There have been other significant changes on the floor of the Senate. A third of the revenue will now go for tax relief. Some of it is designed to relieve the marriage penalty. In addition, there will be other tax relief as well. So about a third of the revenue now goes for tax relief. Many of us thought it was appropriate to have some of the money go toward tax relief in this package, and now fully a third of it does.

In addition, there are provisions to deal with illegal drugs. That is a matter that is now included in the legislation. Not only are we dealing with tobacco, tobacco products, but also illegal drugs. There are very strong provisions which have now been included in this legislation that relate to that. There is also the question of FDA authority. FDA has been given the authority to regulate this drug as they regulate other drugs in our society.

We still have several matters left to resolve. One is the whole question of agriculture, how tobacco farmers will be treated.

The PRESIDING OFFICER. The time allotted to the Senator has expired.

Mr. CONRAD. How much time is left on our side?

The PRESIDING OFFICER. The Senator from North Dakota, Mr. DORGAN, has 8 minutes remaining.

Mr. CONRAD. Mr. President, I ask unanimous consent for 2 additional minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. CONRAD. I thank the Chair.

We have important matters left to resolve. How are tobacco farmers going to be treated? What are we going to do about the question of attorneys' fees. Obviously, none of us wants to see attorneys unjustly enriched by these tobacco settlements. In the underlying bill, the McCain bill, which came out of the Commerce Committee on a 19-1 vote, they provided for arbitration. Many of us think that is the best way to resolve this matter—to have parties get together and resolve, on an arbitration basis, differences over attorneys' fees so attorneys are not unjustly enriched by these settlements.

Mr. President, most important is that I think we ought to stay on this bill until it is finished. We have spent 3 weeks of the Senate's time so far on this legislation. Let's finish the course. Let's get this bill resolved. I think that makes sense. I think it would be an enormous leadership failure if this Senate didn't take final action on this legislation. Some are saying the House isn't going to have a bill. Well, none of us can tell that until we act. We have taken a lead on this question in the U.S. Senate; we ought to complete our action and then let the House decide what it does. Let them be accountable for their action—or their failure to act.

Mr. President, I hope we will stay on this bill until we finish this bill. That ought to be our message. The reason is very important. We have delay, and this delay is costing people's lives. As I indicated, we are in a circumstance in which, since the industry entered into a settlement with the attorneys general nearly 1 year ago, 1 million kids have taken up the habit. Fully a third of them are going to die prematurely—over 300,000 young people.

Let me just close by saying the tobacco companies tell you in their paid advertising—they describe this bill in

unfavorable terms. Let's remember their background. They have misrepresented this issue repeatedly.

I thank the Chair.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER (Mr. BROWNBACK). The Senator from North Dakota, Mr. DORGAN, is recognized.

Mr. DORGAN. Mr. President, let me take another minute or so of my time. I know the Senator from Kansas wishes to seek the floor.

Virtually everything we do represents a series of choices. We have a choice now here in the Senate; we can choose to succeed, or we can choose to fail on this tobacco legislation. As Senator CONRAD has indicated, we have come a long way, and we have had people all along the way who are detractors. I can remember how controversial it was just to put a warning label on the side of a pack of cigarettes. Do you remember how controversial that was? It was the right thing to do, obviously. Would someone vote now to take the warning label off? I don't think so.

The legislation before the Senate is very important. We as Senators and as a body can choose to succeed or fail. To those who want to choose to fail and say this bill cannot become law, we are going to pull the bill and go to something else, we simply want to say that some of us will resist that with great effort. We will resist every decision to move to other legislation before we complete work on this legislation. We hope the bipartisan leadership of the Senate will decide that this bill is important enough to finish, and it can be finished, in my judgment, this week or next week. We have traveled too far a distance on this to fail in the final week on a piece of legislation this important to our country.

Mr. President, I yield the floor.

Mr. ROBERTS addressed the Chair.

The PRESIDING OFFICER. The Senator from the State of Kansas.

#### NATIONAL SECURITY AND ECONOMIC WELL-BEING

Mr. ROBERTS. Mr. President, in his remarks in this body last Friday, our colleague from Nebraska, the distinguished Senator, Mr. HAGEL, issued what I considered to be a most important wake-up call to this body.

Senator HAGEL said:

I am very concerned that this Congress is not paying enough attention to what is going on around the world. I am concerned that we are not linking it, we are not interconnecting the dots. I find it remarkable that on the floor of the U.S. Senate, over the last few weeks, we have been consumed with billions of dollars of new taxes and building a larger government when essentially half of the world is burning.

And Senator HAGEL went on to say:

"I hope that our colleagues take a serious look at what is going on around the world," and he cited the ever worsening Asian economic crisis—it now also threatens China; a serious recession in Japan; the immense and grow-

ing economic problems in regard to Russia; the resulting loss of investor confidence in world markets; and a very direct signal to all of us that "something is wrong." That certainly has been reflected in the recent decline in the stock market.

Mr. President, one thing that certainly is wrong is the inordinate amount of time that we are spending on tobacco legislation. I think the majority leader was certainly right when he said yesterday—and to a certain extent I agree with my colleagues who have just spoken before me on the floor—that we need to either end debate, or pass the bill, or actually defeat the bill, or set the bill aside.

It is not my intent to discuss the merits of what has evolved out of the tobacco briar-patch debate. I want to say that I personally support—strongly support—the efforts to address the problem of teenage smoking and addiction. I do not question the intent of supporters of what has been produced so far. But I do believe the bill has serious flaws and we have gone far afield from the original goal, more especially in regard to the problem of teenage smoking and addiction. And I would say that as we each individually shine the light of truth into the darkness in debating the tobacco bill, let us remember that our flashlights are somewhat dimmed by partisan overtones and personal finger pointing.

If Nero fiddled while Rome burned, the Senate has certainly huffed and puffed for weeks on a tobacco bill—I am not trying to perjure it—while issues of national and economic security are not being addressed.

As we debated yet another tobacco amendment yesterday, warplanes from the United States and Europe roared over the mountains of Albania and Macedonia, a direct threat to Serbian leaders to end the growing and expanding violence around Kosovo.

Twenty-seven U.S. warplanes took part in the 6-hour exercise that was called Determined Falcon. I don't know how determined that Falcon is. Three hundred and fifty U.S. soldiers are already stationed in Macedonia. NATO commanders have been asked to propose additional contingency operations.

The only response that I am aware of that has come from the Senate in regard to the growing possibility that we become directly involved in yet another ethnic civil war—an expansion of Bosnia—is the warning delivered by the distinguished chairman of the Appropriations Committee, Senator STEVENS, to Secretary of State Madeleine Albright in a recent briefing just last week.

The chairman pointed out that our military is already stretched, it is stressed, it is overcommitted, and we simply do not have the men and women and material to do that job. We have an urgent need to increase our commitment to national security.

We have an urgent need to act on the defense authorization bill so we can do

that, and so we may discuss and debate and act on our involvement in Bosnia, in the Gulf, and in Kosovo. Every single day that this stalemate on tobacco legislation continues, a pay raise is held up for America's fighting men and women around the world who continue to suffer from low morale and a lack of interest in reenlistment.

Mr. President, I have heard there could be some 90 amendments to the defense authorization bill raising matters the Senate should address. We have the potential nuclear confrontation between India and Pakistan, the administration's nonproliferation policy, and the impact of ill-advised sanctions. Sanctions? Sanctions? My word, as the Senator from Nebraska pointed out in his remarks on Friday, we have sanctions on over 70 nations around the world involving two-thirds of the world's population. Our exports have declined. We have a growing crisis in agriculture, as referred to by the Senator from North Dakota, the "stealth crisis." It is no stealth. It is real. We must address that problem.

As a result of sanctions, agriculture is going through a necessary hardship. And we have all sorts of problems in farm country—not only in the northern plains. We have disease, we have overproduction in other parts of the world, we have declining exports, we have unfair trading practices, and we have a trade policy that is yet to be determined. We have a real problem in farm country.

We can address the sanctions bill in the agriculture appropriations bill, which is waiting in the tobacco wings. In that bill we have the sanctions reform legislation of Senator LUGAR, the distinguished chairman of the Senate Agriculture Committee, more especially in regards to Pakistan and India, and key agricultural exports programs. We need to act. We need to act, Mr. President.

From that standpoint, I would be happy to yield to the distinguished Senator from Nebraska for any comments he would make. I thank him for issuing a wake-up call to the Senate as of last Friday.

I yield to the Senator.

Mr. HAGEL addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. HAGEL. Thank you, Mr. President. I thank my friend and colleague from Kansas.

Mr. President, Senator ROBERTS has touched upon some of the most important core issues in the debate that we have had over the last 4 weeks on the tobacco bill.

I would find it interesting again to recite what has really happened in the world since we began consideration of the tobacco bill on Monday, May 18th. This is our fourth week now on the debate on this bill.

What has happened in the course of the last 4 weeks is we have seen India and Pakistan test for nuclear explosions, we have seen a new wave of an

Asian market crisis begin, we have seen Asian stocks plummet, we have seen the Japanese yen drop precipitously, and leading now to China's warnings that it may devalue its currency. We have also found Japan officially entering a severe recession, the first since the early 1970s.

As my distinguished colleague from Kansas referred to a few minutes ago, Kosovo has erupted into flames with NATO exercises now fully engaged on the borders of Albania and Kosovo. There is a very real possibility of a war spreading further south into the Balkans, engaging Macedonia, Greece, and other nations.

Russia has entered a severe economic problem.

Our U.S. agricultural foreign markets are shrinking due to economic problems.

Abroad U.S. exports are down.

And, as my friend from Kansas pointed out, we have a military that for the 15th year in a row finds its budget dropping, all at the same time that we are asking our military to do more with less—more deployments, longer deployments.

Something, Mr. President, is going to have to give here.

But what has the Senate done? The Senate continues to talk about higher taxes and more government and more regulation. We let all of these other important issues that affect every American, our future, and the course of the world hang suspended like it is not there. We ignore these issues. We ignore these issues at our peril and at the world's peril.

This U.S. Senator is ready to say let's move the tobacco bill caucus off the track, and let's get to what is real in this country. Let's get to the real issues facing our Nation—not just the farmers and the ranchers in Nebraska, and exporters all over the world, but our national defense issues, our trade policy, the sanctions issues, and all of the other issues that we have talked about. That is what is real.

That is what the greatest deliberative body in the world should be dealing with and talking about—not increasing taxes by hundreds of billions of dollars and bringing to the American people more government and more regulation.

I again appreciate very much the thoughts and comments of my distinguished colleague from Kansas, Senator ROBERTS, and his remarks.

I yield the floor.

Mr. ROBERTS addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. ROBERTS. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 5 minutes 45 seconds remaining.

Mr. ROBERTS. I shall not take all of the time.

I want to thank my distinguished friend and colleague for his contribution. I want to pay particular credit to

Senator HAGEL for his work in enabling the Senate to move on IMF legislation. The Senator worked extremely hard with leadership of the Congress on both sides to implement serious reforms in the IMF bill, and to move ahead with the IMF bill. I hope the House of Representatives will simply address that legislation.

The Senator mentioned the most-favored-nation status for China, which is simply regular trading status that is exceedingly important. I have already indicated my concern about sanctions reform.

I think we ought to move on fast-track legislation. I was talking to the majority leader yesterday and he agrees with that. There are going to be 12 major farm organizations and commodity groups coming to the Hill to visit with us on Thursday. We would like to change the whole attitude and the whole situation in regard to trade.

It seems to me if we could really recommit to that, it would be most helpful—especially in agriculture. Our whole economy relies on exports. I have never seen this Congress more insular, more protectionist, and more consumed with legislation that tends to be either ideological or attempts to legislate morality. It is just as important to prevent bad legislation from passing as it is to enact good legislation. And I am not trying to point any fingers at any Member who has strong feelings about tobacco legislation. I do. I have youngsters who are teenagers, and I am concerned about this just as much as every Member of the Senate, but this has gone far afield from a bill to really direct itself at real answers to teenage smoking and addiction. And, in the meantime, we have these problems that are extremely serious.

And so I would simply quote again the majority leader who is not trying to perjure the bill. He was right when he said, "We must end debate. Either pass, defeat, or set the bill aside." And let's move and get on with the business that directly affects the livelihood and the pocketbook of virtually every American when things such as world peace are hanging in the balance.

Mr. HAGEL. If my colleague will yield for a moment.

Mr. ROBERTS. I would be happy to yield.

Mr. HAGEL. I would like to report on a comment made this morning by a senior World Bank official warning of a looming global recession. He says, "We are probably at the end of the first cycle of a crisis and we are entering into a deep recession. And you could even use the term 'depression'."

The point here is IMF funding and MFN status and fast track, all of these combine together to be essential components of a trade policy, of a foreign policy, of a national defense policy that directs this Nation and directs the world. We can't just pick and choose—maybe this, maybe not this. But it has to be debated and viewed and acted on in total. So I appreciate again my colleague's comments on this, and I yield.

Mr. ROBERTS. In closing, I am reminded of an old Mills Brothers' tune—that really dates me—and it was, "I Don't Want to Set the World on Fire." I want to make it clear, I don't want to set the tobacco bill on fire; I just want to light a flame in the heart of our national security and our economic well-being. And with that rather dubious reference as to what we are about, Mr. President—we need to act on other matters—I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, may I inquire how much time is remaining in morning business?

The PRESIDING OFFICER. There are 7 minutes remaining in morning business.

Mr. CRAIG. Mr. President, then I will use some of that time. I thank the Chair.

#### THE TOBACCO BILL

Mr. CRAIG. Mr. President, I certainly want to echo the statements of my colleagues from Kansas and Nebraska about the importance of dealing with our agricultural situation in this country. Last week, in my State of Idaho, wheat hit \$1.90 as a result of the impact of the sanctions that are being imposed by this administration in reaction to laws that were passed by Congress a good number of years ago.

I say this this morning to refocus us to understand that much of what we need to do is not getting done. Now, my colleagues on the other side, I have a feeling, would like to spend a lot more time on the tobacco issue. Somehow they think they are gaining points in the political arena that is warming up out there for many of our colleagues in the coming days through to November. I would like to suggest they look at the polling data of recent, that they talk with the American people just a little bit, that they ask teenagers in this country where the real problems are, and maybe they would agree with us that it is time we deal in some degree of finality with S. 1415, the tobacco bill.

I know it is great politics, or at least many thought it was great politics, to be antitobacco, anti-teen smoking, and to raise a heck of a lot of money to do a lot of different things from the government level. It is important that this Congress be anti-teen smoking. It is important that we express our frustration and, if necessary, our anger with the tobacco companies on what they have done, and I think we can do that and should do that. But you do not do it by sucking the life out of lower-income Americans, raising taxes, shoving this commodity that we dislike into the black market and saying you have solved the problem by creating great new bureaucracies that we know will spend the money and get very little done.

For the moment, let's do a reality check. We have been debating this bill

now for upwards of 3 weeks. We have been adding a lot of amendments. Everybody has been pounding their chest on all of the good things we are going to do if we pass the bill. Here are the good things we have not done. Let me analyze for you the revenue flow over this multibillion-dollar bill.

S. 1415, major revenues: 5 years, \$55-plus billion; floor amendments costing \$35 billion; original 1415 spending, \$65 billion; total spending commitments, \$100 billion.

Whoops, Mr. President, whoops. We have already overspent \$35 billion in the first 5 years. What does that tell you about a Congress that is trying to be fiscally responsible and balance its budget? When it comes to feeding at the trough of American politics, we do not care, do we? Or at least somebody does not care, because S. 1415 is now badly out of line with the revenues it proposes and the moneys it plans to spend.

By this action, is this Senate proposing that we raise another \$35 billion or \$40 billion over the next 5 years in revenues to fund all of these great new government programs that are going to take all of our kids off smoking, or at least 35 or 45 or 55 or 60 percent over the next decade? Have we talked to our kids recently about that? Have we asked teenage America that if we raise the price of a pack of cigarettes another \$2 a pack or \$3, are they going to quit smoking?

Well, I will tell you they don't think so. Neither do their parents. Last week, I was in the Chamber with a poll by the American Viewpoint polling group, a reputable group. You have read the poll. It has been talked about in the national press. Fifty-nine percent of the parents recognize that peer pressure and friends of their teenage sons and daughters are those who are the greatest influence on them when it comes to smoking.

Guess what the biggest problem is out there. It is not smoking. It is drugs. It is the concern by our parents, the parents of America that their kids might somehow get associated with drugs. Why? Because drugs kill immediately. That is why. And that is the greatest concern. And yet we have stumbled down the road for 3 weeks and done one good thing: convinced the American people that we are slipping back into our old, bad habits of big government and great programs and lots of new money to spend. And in the meantime, they have become convinced that the bill before us ought to be defeated by a great number. That is the reality of what we are doing.

Let me close by saying one more time, S. 1415 over the 5-year period has a deficit in money now of \$35 billion. Is the other side proposing to raise that in new taxes in some form from the working men and women of this country to fund the panacea of big, new government? I hope they do not. I will not vote for that.

I yield the floor.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. THOMAS). Morning business is now closed.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I ask unanimous consent, with the indulgence of my colleagues, that I be allowed to speak for 5 minutes as in morning business.

Mr. GORTON. Mr. President, reserving the right to object, I will not have any objection. The Senator from Minnesota was most generous with me last night. He did not have an opportunity to finish his remarks. I am happy to have him do so before we start.

The PRESIDING OFFICER. Without objection, the Senator from Minnesota is recognized for 5 minutes.

Mr. WELLSTONE. Mr. President, I thank my colleague from Washington for his graciousness.

#### LOW-LEVEL RADIOACTIVE WASTE COMPACT

Mr. WELLSTONE. Mr. President, last night, I spoke about the Texas/Maine/Vermont Compact bill, H.R. 629, that is now going to conference committee. It has to do with low-level radioactive waste being dumped in the community of Sierra Blanca, TX. It is a compact between Maine and Vermont that affects the people of Sierra Blanca.

Last night, we sent instructions to conferees to insist on two amendments that had been agreed upon by the Senate. One amendment says that if the people of Sierra Blanca, disproportionately poor and Latino, are able to prove disparate impact—that they are disproportionately affected, that they have been targeted because of low income, because they are a poor community, because of the color of their skin—then they have every right to challenge the dump. I don't know why we don't at least give people that chance. That amendment has now been approved by the Senate. It is terribly important, because all too often when it comes to the location of these sites, we dump them—no pun intended—right on the heads of poor people and communities of color.

The second amendment—and I had a chance to speak about this last night—I call a protection clause. It is very similar to the amendment offered by Congressman DOGGETT which passed in the House. Basically, it says that if the compact waste is only supposed to come from Maine and Vermont, then let's affirm this with an amendment which makes it clear that the waste will only come from Maine and Vermont. Otherwise, there is a very good chance that the people of Hudspeth County and Sierra Blanca will become a national depository for nuclear waste from all over the country. That is the last thing I think the people in Texas



want. That is certainly the last thing that the people in the community of Sierra Blanca want.

The reason I mention both of these amendments is that we now have instructions to our conferees to insist on these amendments in conference committee. This is a battle that has been going on for over a year in the Senate. I raised questions about this starting a year ago. What I said was that, as a Senator from Minnesota, I am concerned about this issue of environmental injustice and, if we have to approve this compact, let us make sure there is some fairness to this and some justice to it.

My colleagues in the Senate have gone on record in favor of both of these amendments. The House of Representatives has gone on record as being in favor of the Doggett amendment, which is also a Wellstone amendment, that says, indeed, the waste will only come from Maine and Vermont.

As we go to conference, I want to emphasize one point to my colleagues, and that is, don't strip these amendments from this bill in conference committee. That is what the nuclear utilities would like conferees to do, but it will make a mockery of the House and Senate. It will, in fact, give people not only in Texas but from around the country reason to think this is another example of a back-room deal, another example of the legislative process at its worst, another example of big utility companies riding roughshod over poor communities and, for that matter, regular citizens in this country.

I want to make it clear to colleagues that it is extremely important that the conferees live up to our instructions and that these amendments become part of this bill. If they do not, it will be a striking example of unequal access to political power, which is, I think, the reason we have too much environmental discrimination all across the country in the first place.

I make this plea to my colleagues, to the conferees: We have voted to keep these amendments in this bill. The Senate is on record unanimously as saying that these amendments should be part of this compact and therefore it is extremely important that these amendments not be stripped out. The issue of environmental justice deserves better than that, the people of Sierra Blanca deserve better than that, and people in our country have a right to expect a higher standard of conduct from their elected representatives than to try to knock this out in the dark of night.

I say to colleagues, I have tried to work with my colleagues, even those who are in disagreement with me. But if these amendments are taken out of the conference committee—and I hope that they will not be, I pray that they will not be—but if they are, I will take advantage of every procedural means at my disposal to make sure that this does not happen, and to make sure that there is some environmental justice

when it comes to this compact which all of us are going to have to vote on as Members of the U.S. Senate.

I thank my colleague from Washington for letting me have an opportunity to speak from the floor to give colleagues a sense of where we are on this compact. I yield the floor.

#### NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 1415, which the clerk will report.

The legislative clerk read as follows:

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

The Senate resumed consideration of the bill.

Pending:

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

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

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

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

Gorton amendment No. 2705 (to amendment No. 2437), to limit attorneys' fees.

#### AMENDMENT NO. 2705

Mr. GORTON. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is amendment No. 2705 by the Senator from Washington.

Mr. GORTON. Thank you, Mr. President.

Mr. President, this will mark the third occasion on which the Senate has debated a limitation on attorneys' fees in connection with the litigation that led to this debate on tobacco legislation. As a consequence, I do not believe this debate need last for as extended a period of time as did those on the earlier Faircloth amendments, and I believe the leadership is attempting to reach a time agreement on this amendment, with a vote to take place perhaps right after the official Senate photograph early this afternoon. On the other hand, I do not have any official notification about a formal time agreement, but I will proceed on the basis that this Gorton amendment can be debated relatively expeditiously.

I have examined the debate on the last amendment on attorneys' fees that took place on June 11, less than a week ago, and I believe that the rationale for passing legislation with some limits on attorneys' fees in connection with this

litigation was so well stated by the Senator from North Carolina, Senator FAIRCLOTH, and by the Senator from Alabama, Senator SESSIONS, and by others that I do not need to repeat in detail their scholarly approach and analyses of the subject.

Mr. President, you may say, agreeing with their rationale, why is it that this Senator voted against both the first and the second Faircloth amendments? The answer to that is simple. I believe that it is appropriate for the Congress to limit attorneys' fees in connection with this litigation for reasons that I will outline briefly in the course of these comments. At the same time, I did not believe that the particular limitations contained in the two earlier Faircloth amendments were fair or just. So, with some regret but with firmness, I voted to table each of those amendments.

The fundamental reason for my opposition to those two amendments was the fact that they treated all attorneys in all tobacco cases as being subject to the same cap or the same limitation. Whether that litigation and those attorneys were involved from the very beginning with the States of Mississippi and Minnesota, at a time at which tobacco companies had not lost any litigation at all, when those initial attorneys came up with what were novel and difficult theories of law and took a tremendous risk in the litigation in which they were hired, those attorneys were treated the same in the two earlier amendments as attorneys who have just recently gotten into litigation on this issue after it was obvious that, at the very least, settlements were available to all of the plaintiffs and, for that matter, were treated the same as any attorney who brings litigation in the future when both the States and this bill have so substantially changed the burden of proof in tobacco litigation that one may almost say that an attorney who loses a tobacco case will be exposed to malpractice litigation thereafter.

Mr. President, that is fundamentally unfair. And so the amendment that I have put before the Senate today, for our vote, treats attorneys' fees differently depending on when the litigation was commenced. I have adopted all of the considerations for judges to use in determining the amount of attorneys' fees that are fair in a given case that were a part of the second Faircloth amendment. They, in turn, are an expanded version of considerations that the Supreme Court of the United States has articulated as used when the question of reasonable attorneys' fees has come before the Supreme Court.

So the dollar figures that we use per hour in this amendment are ceilings; they are not floors. If, in any case, the courts or others who make judgments in this connection feel that those figures are too high—and I think there will be many instances in which they do—they may be reduced below that ceiling. We simply set a ceiling.



The ceiling, unlike the \$1,000 ceiling in the last Faircloth amendment which was mitigated by allowing a cost recovery greater than the actual cost expenditures, is simply this. For lawyers who are part of litigating cases that began before 1995, the ceiling will be \$4,000 an hour—four times that in the Faircloth amendment. For lawyers as a part of litigation that was brought after the beginning of 1995 but before April of 1997, the maximum figure, the ceiling, will be \$2,000 an hour. Why, you may ask, April 1997, 2 months before the tobacco settlement was announced? That was the date, the time, that Liggett gave up—in effect, turned state's evidence—turned all of the internal memoranda, which show the horrendous way, the unprincipled way, the tobacco companies had acted, over to the general public, to all of the lawyers.

So after that date, after a date at which tobacco litigation was not only unprecedented and of extraordinary difficulty but really quite simple and easy, the maximum figure will be the \$1,000 an hour—in this case, identical to the overall limit in that Faircloth amendment, but only a recovery of actual costs.

And, finally, beginning on a date that roughly corresponds with the beginning of this debate on the floor of the Senate, in the anticipation that even the rules of evidence will be lower and lesser if this bill should pass, the ceiling will be \$500 an hour—actually lower than the Faircloth amendment itself.

It seems to this Senator, Mr. President, that that is more nuanced and more fair than the one-size-fits-all proposition that was contained in the two earlier amendments on which we voted.

As a consequence, this amendment is suggested to all of my colleagues here in the Senate, both those who felt that a lower limit was appropriate but were unsuccessful in getting a majority and those who, like myself, objected to the two earlier Faircloth amendments.

I believe it is very difficult to stand for the proposition that there should be no limitation under any set of circumstances. That might be an appropriate position for Members of the U.S. Senate if we were not engaged in this debate. If the very people whose clients have come before us asking us to pass that bill—ratify the settlement made by the great majority of States of the United States—had not come here to Congress to ask us to pass this legislation, we would have no business simply debating attorneys' fees in the abstract in this connection. But they are here. They have used up, as the Senator from Idaho said, too much of our time already, time which might more profitably have been devoted to other legislation.

But it has been a serious debate. It has been a debate in which we have examined every single element not only of the litigation that led to this debate but of the whole relationship between

tobacco, the tobacco industry, and the farmers, teenagers, adults, health care, and the like. And to say that the only aspect of tobacco policy that we cannot and should not examine is the fees of the attorneys who are involved in this litigation, to me, Mr. President, is an unsupportable proposition.

Mr. President, a couple of weeks ago I came across a short essay by Stuart Taylor, Jr., which appears in the May 30 edition of the *National Journal*. I ask unanimous consent that that essay be printed in the *RECORD* at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. GORTON. Mr. President, Mr. Taylor, in stating the case for limitations on lawyers' fees, sets up the five fundamental arguments against doing so and deals with each of those five.

The first is, "Don't mess with the marketplace"—that these were accounts freely entered into. In the first place, I am not sure that there was a great deal of "marketplace" in connection with litigation much of which was solicited by the lawyers themselves.

But in any event, the marketplace disappears with this legislation. There is no real marketplace for tobacco products anymore. It will be the most regulated marketplace for any legal commodity in the United States, far exceeding the degree of regulation applied to alcohol and alcoholic beverages, for example. So if we can regulate the marketplace for tobacco, we can regulate the marketplace for tobacco lawyers.

The second objection that is brought up is that these are sacrosanct contract rights. But, of course, these are contract rights that are subject to review by the courts, by the judges who are dealing with this litigation. There have already been judgments made in that connection. The law is clear that attorneys' fees must be reasonable. And when they are unreasonable or overreaching, the courts, with their equity powers, said, "We can intervene." Well, then, Mr. President, it seems to me that we can intervene as well. We represent the conscience of the people of the United States. And I believe overwhelmingly the people of the United States will reject the kind of attorneys' fees running up into the billions of dollars that seem clearly possible and perhaps close to certainty should we not intervene in this aspect of the marketplace.

The third objection is States rights—that all of this litigation was brought by the States; we ought to stay out of it. Again, Mr. President, a good argument had the States not come to us and asked us to pass this legislation, because literally, in the case of most of them, they could not reach the goals they sought without the assistance of the President and the Congress of the United States.

The fourth reason—and it has been expressed on this floor—is that these

lawyers deserve these big, huge fees. I was presiding, Mr. President, when Senator HOLLINGS eloquently made that case, that whatever they get they earn. Well, I suppose one can make that argument, but I do not believe that most of the American people believe that lawyers, under any circumstances, should earn \$10,000 or \$50,000 or \$92,000 or \$200,000 an hour for their work, no matter how imaginative and how successful that work may be.

I think there are very few Members of this body who believe firmly that they deserve fees larger than the \$4,000 cap that is included in this amendment.

The final argument that Mr. Taylor set out in his essay 2 or 3 weeks ago was that \$250 an hour was not enough. That, of course, was a reference to the first Faircloth amendment, and I agreed with Mr. Taylor, \$250 was not enough for those who had begun this litigation by any stretch of the imagination. I don't think, myself, \$1,000 was enough.

That is why, with a bit more reluctance, I voted against the second Faircloth amendment. But I certainly believe that the staged amount that we have in this amendment is enough and is enough for each of the four different categories of lawyers to whom it applies. It is for that reason that I have placed this proposal before the Senate once more in a different fashion than the fashion in which it previously appeared.

This is a legitimate part of the debate over tobacco legislation. We should reflect the conscience of the American people in this connection. We should try to see to it the maximum amount of money, consistent with fairness, that changes hands in one respect or another as a result of this legislation goes to the social and mostly antismoking purposes for which it is intended. We don't need to make billionaires out of lawyers simply because they were lucky enough or even wise enough to get into this field at an opportune time. We particularly don't need to do that for those lawyers who didn't either bother or have enough imagination to get into it until this kind of litigation was a slam dunk.

This is perhaps one element of our system of justice that increasingly disturbs the American people. We have dealt with it a little bit at a time in tort reform legislation. I hope that the Senate will take up a product liability bill and I hope now we can get a bipartisan degree of support here on the Senate floor and get a signature from the President on a modest attempt to reform our legal system.

I voted for all such reforms that have come before the Senate while I have been here in the last 7 years. I am not generally considered to be someone who defends trial lawyers. I found it a little bit awkward to vote against the first two Faircloth amendments, but I think even with respect to people with whom I disagree, with whom many of

us disagree, fairness is vitally important. I have designed this amendment in a way to be fair and to be equitable, to treat people in different circumstances differently. I submit it to the consideration of the Senate on that basis.

#### EXHIBIT 1

[From the National Journal, May 30, 1998]  
(Stuart Taylor Jr.)

#### TOBACCO FEES: THE REWARDS OF WINNING COULD BE STUNNING

It's an estimate, but perhaps not all that far-fetched: In some cases, lawyers suing the tobacco companies could make as much as \$100,000 an hour if the cozy contingency fee deals they have signed with state attorneys general and others are left intact.

That helps explain why some in Congress are pressing to add curbs on lawyers' fees to the \$515 billion tobacco bill sponsored by Sen. John McCain, R-Ariz.

In Texas, five leading plaintiffs lawyers would split a pot of \$2.3 billion over the next 25 years—15 percent of a \$15.3 billion statewide settlement—under a contingency fee deal signed by Democratic state Attorney General Dan Morales for a lawsuit to recover health care costs attributable to tobacco.

The five lawyers did not keep track of the hours they worked. Nor have they specified how much of the money they would share with the dozens of other lawyers who helped them. But professor Lester Brickman of Benjamin Cardozo Law School, an expert witness in a court challenge brought by Texas' Republican Gov. George W. Bush against the fee deal, says the lawyers' hourly rates come to at least \$92,000, based on his estimate that they almost surely put in no more than 25,000 hours on the cases.

In Florida, West Palm Beach Circuit Judge Harold J. Cohen invalidated as "unconscionable" a deal that would give the state's 12 lead private lawyers \$2.8 billion—25 per cent of a similar, \$11.3 billion statewide tobacco settlement. But his decision was overturned on May 18, on procedural grounds, and sent back for further action.

The total cut for the plaintiffs lawyers in all current and future tobacco cases covered by the McCain bill could run as high as \$5 billion a year, with the biggest bucks coming from future class action suits on behalf of sick smokers and their families.

The plaintiffs lawyers and their champions—one of them Sen. Ernest F. Hollings, D-S.C.—make no serious efforts to knock down the numbers. In fact, they dismiss the dollar figures as irrelevant. "Don't give me this billable hours or \$180,000 an hour or \$5 an hour or whatever it is," Hollings declared in a May 19 debate. "This isn't any hourly thing. . . . They deserve every dime of it and more."

Hollings was speaking against an attempt by Sen. Lauch Faircloth, R-N.C., to amend the McCain bill by capping the anti-tobacco lawyers' fees at \$250 an hour. Faircloth's rider was rejected, 39-58. The bipartisan majority's objections were essentially these:

#### DON'T MESS WITH THE MARKETPLACE

Congress does not curb the gargantuan compensation packages of, say, tobacco executives, other corporate fat cats, actors or star athletes. So why should it selectively restrict the fees of the entrepreneurs of litigation—especially those who take on Big Tobacco?

#### CONTRACT RIGHTS

Any move by Capitol Hill to override contingency fee deals would interfere with the lawyers' contract rights. "A deal is a deal," in the words of Sheldon Schlesinger, one of the Florida lawyers pressing for a full 25 per cent cut.

#### STATES' RIGHTS

In the many cases in which attorneys general and other state officials have retained private lawyers to sue tobacco companies, federal fee-capping legislation would interfere with the states' rights to sign whatever contingency fee deals they choose.

#### THEY DESERVE BIG FEES

The plaintiffs' lawyers are entitled to generous rewards because they took extraordinary risks—which even state governments could not take on their own—and used their expertise, financial resources and entrepreneurial flair to bring to their knees the mighty tobacco companies, which until recently had seemed invincible.

#### \$250 IS NOT ENOUGH

While it may seem a princely wage to most people, \$250 an hour is barely half the rate tobacco companies and other corporate clients pay their highest-paid lawyers. And those lawyers are paid whether they win or lose. Contingency fee layers, on the other hand, get nothing when they lose. So when they win, they should get more—far more, in some cases—to compensate for their risks.

This last point is so clearly, well, on the money, that by itself it warrants rejection of Faircloth's \$250-an-hour cap, which smacked of standard conservative Republican lawyer bashing.

But what about a fairer, more realistic curb on fees in tobacco cases covered by the McCain measure? Brickman—a leading scholar on contingency fees and a fierce critic of excessive ones—proposes an upper limit of \$2,000 an hour, several times the rates charged by the tobacco companies' lawyers.

Although some of the points noted thus far could be raised against a \$2,000-an-hour fee cap, the counterarguments seem more persuasive.

Don't mess with the marketplace? Precious little evidence suggests that many contingency fee lawyers engage in the kind of competition for business that is the essence of a health marketplace—perhaps because most smokers and other individual plaintiffs don't have the time or expertise to bargain or shop around for better fee deals.

And even some of the fee deals signed by presumably astute state attorneys general, such as Dan Morales, seem remarkably unsophisticated (at best), with the same fixed percentage of the award going to the lawyers no matter how large the award. Noting that Morales (like many other politicians) got campaign contributions from some of the same lawyers, Bush and Brickman have suggested that he either sold out or was snookered or both. (Morales, returning the fire, has called Bush a lackey of the tobacco companies.)

Be that as it may, the McCain bill would not leave much freedom in any corner of the tobacco marketplace. It would subject tobacco products, advertising and litigation alike to pervasive federal regulation, in a manner somewhat analogous to the government's Medicare and Medicaid systems, which of course impose strict limits on doctors' fees.

The McCain measure would also make winning a lawsuit against tobacco companies far easier (by superseding key state tort law rules), while at the same time giving the companies strong financial incentives to offer plaintiffs generous settlements rather than fighting tort suits and class actions all the way to trial. For a Congress that would thus be enriching both plaintiffs and their lawyers—by eliminating much of the risk of litigation and enabling them to win with relatively little effort—it would be a bit odd to ignore the matter of how much money the lawyers should be able to take off the top.

Contract rights? As fiduciaries, lawyers everywhere are subject to ethical rules barring them from charging "excessive" or "unreasonable" fees. So Brickman's proposed fee cap would clash with the contract rights of only those who can show that they can reasonably demand more than \$2,000 an hour.

Individual lawyers should be free to try to make such a showing, on a case-by-case basis, and, if they are successful, obtain an exemption from the \$2,000-an-hour cap. But few would (or should) succeed. And a requirement that lawyers present justifications in court for such exceptionally high fees would have the wholesome effect of spurring judges to put teeth into the seldom-enforced ethics rules against unreasonable fees.

States' rights? The McCain bill would virtually take over—at the behest of the states themselves—the pending state lawsuits to recover tobacco-related costs incurred by combined state-federal Medicaid programs. In this context, on what basis could any state official object to attaching a \$2,000-an-hour fee cap, especially one that would benefit the state's citizens?

While some opponents of any fee cap assert that the main beneficiaries would be the merchants of death (aka the tobacco companies), it seems more likely to affect only the split between the merchants of litigation (aka the trial lawyers) and their clients—the states themselves, smokers and others.

Do the lawyers really deserve more than \$2,000 an hour? Many surely do not, because their risk of loss has diminished, and will diminish even more if the McCain bill passes. Fred Levin, a Florida lawyer, helped illustrate this point by boasting on ABC's *20/20* program not long ago that he not only had brokered the contingency fee deal between the state and its private lawyers for his "good friend" Democratic Gov. Lawton Chiles, but also had the lawsuit against the tobacco companies "a slam dunk," by slipping through the state Legislature obscure amendments that virtually guaranteed victory to the state.

Not much risk there. Could even so stalwart a champion of the trial lawyers as Sen. Hollings explain why, for such lawyers, \$2,000 an hour is not enough?

Mr. MCCAIN. Mr. President, first of all, I say the Senator from Idaho came to the floor to argue that the tobacco legislation now spends more money than it takes in. The argument neglects one fundamental fact, and that is the legislation can't spend more than it takes in because the authorizations, including the drug amendment, come from the trust fund only. You can earmark all you want to, but unless the money is in the trust fund, it can't be spent. That is, obviously, up to the appropriators.

Having only been here for 12 years, I have, time after time after time, observed authorizations of large amounts of money which are then reduced by the appropriators, as which is their job, to fit into the overall budget. These authorizations that are a result—the drug amendment, prevention, cessation, counterads, research, et cetera—that are authorized, cannot be appropriated unless the money is there in the trust fund.

By the way, those who would argue that we need to reduce the size of this bill by about \$100 billion, I say that is a very likely outcome if we are successful in reducing teen smoking, because the volume of cigarettes sold in

America, if we are successful, would be reduced significantly, which would, first of all, mean less revenues and less payments into the trust fund which is set up, and over time, obviously, would then reduce the amount of money that can be spent. Most experts believe that if this legislation is enacted that we could effectively reduce teen smoking in America.

So I say to my friend from Idaho when he comes to the floor, when we come to the floor in a day or so with a defense authorization bill which greatly exceeds the amount that is budgeted, I hope that he will make the same arguments that we exceeded in practically every other authorization bill. As the Senator from Idaho well knows, the way we do business around here is we authorize a certain amount of expenditures and then that is subject to the appropriators who are guided by the budget—in this case, guided by the amount of money that will be in the trust fund. I think it is important that be mentioned.

I think most of us agree it is time we made a decision on this bill. I want to comment on the Gorton amendment. I think it is important. I think it is a good amendment. I think Senator GORTON, Senator SESSIONS, and Senator FAIRCLOTH have great credibility in this body—both Senator GORTON and Senator SESSIONS having been former attorneys general. I believe that it is appropriate if we are going to designate how the money is spent that comes from the increase in the price of a pack of cigarettes, then there should also be some limitation on the amount of money that is paid for legal expenses.

Senator GORTON's amendment calls for initially \$4,000 an hour and scales down as to what time in the calendar the legal entities entered into these settlements. I think most Americans would believe that \$4,000 an hour is a rather generous wage. In fact, there are very few Americans who are compensated to the tune of \$4,000 an hour.

The argument will be made on the other side that we are dictating something that should be left up to the States, should be left up to arbitration. We have just passed several amendments that come from that side that dictate exactly what the States should do. We just passed one that said a certain amount of money had to go to early child development. We passed one that said a certain amount had to go to a specific kind of research.

In all due respect to the arguments that somehow we are interfering with some kind of States rights here, then obviously an amendment should be supported that says the States can do whatever they want to with any of the money that goes to them, which contemplated in the original bill is some 30 to 40 percent of the entire amount of money that is collected.

Most Americans, when asked if \$4,000 per hour is adequate compensation to anyone—there may be some exception

to that, perhaps brain surgery—but for legal services I think the overwhelming majority of Americans would view \$4,000 per hour as more than generous compensation. In fact, if we pass the Gorton amendment, there will be some who will complain that this is far too generous. I remind observers that this is the third iteration we have attempted to try to bring some restraint to what many Americans are appalled to discover—that a single law firm, in the case of the Florida settlement, could make a couple of billion dollars.

I don't think that is appropriate, and I believe that we ought to act overwhelmingly in favor of the Gorton amendment.

We have been told of two possible substitute amendments—one by Senator HATCH and the other by Senators GRAMM and DOMENICI. I hope and expect that if those amendments are to be offered, we can move to them shortly.

As I said, the Senate has adopted several significant amendments, particularly with respect to how funding under this bill is apportioned. I thought it might be helpful to recap for the Senate where the bill stands in that regard.

The Joint Tax Committee estimates that under the managers' amendment, \$52 million would be available in the trust fund in the first 4 years and an additional \$72 billion in the following 5 years, producing a 9-year total of \$124 billion.

The Senate adopted amendments to the bill to provide \$3 billion to assist veterans with smoking-related diseases and \$46 billion in tax cuts, leaving a total of \$75 billion over 9 years for apportionment to the four major accounts authorized under the bill—the State account, the public health account, the research account, and the farmer assistance account.

Under the bill, 40 percent of the money, or \$30 billion over the next 9 years, would be made available to the States to settle their Medicaid and legal claims against the tobacco industry. This would mean a payout of approximately \$3.3 billion per year, or an average of \$66 million per State per year, to compensate State taxpayers.

And 22 percent of the money, or \$16.5 billion over 9 years, would be made available for public health programs, including counteradvertising, smoking prevention and cessation services, as well as for drug control programs authorized under the Coverdell-Craig amendment. As the bill currently stands, the precise amounts and selected purposes would be subject to appropriations.

This means an amount of approximately \$1.8 billion available for public health and subject to drug control purposes. Under the bill, 90 percent of the money reserved for public health is to be block-granted to the States.

Another 22 percent of the funds, or \$16.5 billion over 9 years, would be made available for health research at

the National Institutes of Health and Centers for Disease Control. This would mean a payout of nearly \$1.8 billion per year for advanced medical research.

As you know, Mr. President, lately the public health groups have complained about some of the reductions as a result of setting aside \$3 billion for veterans' treatment of tobacco-related illness as a result of tax cuts and as a result of an anti-illegal drug program. It still provides \$1.8 billion per year for advanced medical research. I would say that is a significant amount of money.

The bill designates 16 percent of the fund to tobacco farmer and farm community assistance. Also, Mr. President, \$1.8 billion is available for public health. And \$1.8 billion is, I think, a sizable amount of money. This is a total of \$12 billion over 9 years, or a yearly payout of \$1.3 billion.

The farm provisions still have to be worked out. I hope we can accomplish that end expeditiously and in a manner that is fair and appropriate.

I remind my colleagues again that the bill, as modified, contains measures of enormous benefit to the Nation, including vital anti-youth smoking initiatives that will stop 3,000 kids a day from taking up a habit that will kill one-third of them, critical funding for groundbreaking health research, and assistance to our Nation's veterans who suffer from smoking-related illnesses.

I would like to mention again, Mr. President, that for reasons that are still not clear to me, money was taken to use for highways that should have been used for treating veterans who suffer from tobacco-related illnesses. This provision of the bill is an effort to provide some funding for veterans who were encouraged to smoke during the period of time they were serving this Nation.

The bill will also fund a major anti-drug effort to attack the serious threat posed by illegal drugs, and it contains one of the largest tax decreases ever to eliminate the marriage penalty for low- and moderate-income Americans, and achieve 100 percent deductibility of health insurance for self-employed individuals. In fact, every penny raised above the amount agreed to by the industry last June is returned to the American people in the form of a tax cut.

Let me repeat that, Mr. President. I think it is rather important. It happens that this tax cut takes into consideration all of the additional funds above that which were agreed to by the attorneys general and the industry last June.

The bill provides the opportunity to settle 36 pending State cases, collectively, efficiently, and in a timely fashion. I argue that it is now time to finish our business and move the process forward.

There are those who labor under the unfortunate misapprehension that if we do nothing, the issue will go away. I don't believe that is correct. I don't

believe it is correct because the facts won't go away. Mr. President, 3,000 kids take up the habit every day, teen smoking is on the rise, and that probably won't stop unless we do something.

Mr. President, 418,000 Americans die of smoking-related illnesses every year—the No. 1 cause of preventable disease and death in America by far. This death march won't stop unless we do something. The taxpayers must shell out \$50 billion a year to pay for smoking-related health care costs—nearly \$455 per household. That number is increasing because the number of youth smokers is rising. I want to again repeat, those who call this a “big tax bill”—and I congratulate the tobacco industry for doing polling and finding that most Americans understandably are opposed to “big tax increases,” but I argue that the tobacco industry is responsible for one of the biggest tax increases in the history of this country. That tax increase is what taxpayers have to pay to treat tobacco-related illnesses. Those tobacco-related illnesses are directly related to the sale of their product.

If the bill disappears—which would be much to the industry's delight—the State suits will not disappear with it. If we fail to act, the States will continue their suits and they will win judgments and the price of cigarettes will increase sharply. So please don't be misled by those who would have the public believe that killing this bill would eliminate taxes or relieve smokers of an undue price increase. Following the Minnesota settlement, the price of a pack of cigarettes went up 5 cents, on an average, throughout the country, not just in Minnesota.

Mr. President, we have a tendency to throw around polling data quite frequently. Recently, there was a poll paid for by the tobacco companies, and some of the opponents took great heart in that the American people somehow did not support legislation to attack the problem of kids smoking. There was another telephone survey conducted by Market Facts TeleNation, which is an independent polling firm, and this poll was paid for by the Effective National Action to Control Tobacco. Mr. President, these polls' questions are always very important because how they shape the question quite often dictates the answer. We know very well how highly paid pollsters are.

Here is the question:

As you may know, the Congress is currently considering the McCain tobacco bill, which creates a national tobacco policy to reduce tobacco use among kids. Based on what you know about the bill, do you favor or oppose Congress passing the McCain bill?

Registered voters in favor were 62 percent. It is broken down: 45 percent strongly favor; 17 percent somewhat favor; strongly oppose, 23 percent; somewhat oppose, 9 percent. All adults who favor are 62 percent; oppose, 30 percent.

Question: The McCain bill includes public education to discourage kids from smoking,

help for smokers to quit, enforcement of laws to prevent tobacco sales to kids and increases in the price of tobacco products to discourage use by kids. There would also be strict limitations on tobacco advertising and marketing to kids, as well as authority for the Food and Drug Administration to regulate tobacco like it does other consumer products. These programs would be funded by increasing the price of a pack of cigarettes by \$1.10 over the next 5 years. Knowing this about the McCain bill, do you favor or oppose the bill?

This is what we call usually a “push question.” And the number goes up to 66 percent registered voters strongly favor, and about 4 percent oppose.

Question: If two candidates for Congress were otherwise equal, but one supported the McCain bill and the other opposed it, would you be \* \* \*

More likely to support the candidate who supports the bill, 44 percent more likely; more likely to support the candidate who opposes the bill, 18 percent; 37 percent would say no effect on their vote; 44 percent would most likely support the candidate who supports the bill.

Question: Some in Congress have proposed amendments to the McCain bill that address issues other than tobacco use—like tax reductions and the war on illegal drugs. Which of the following statements do you agree with most?

The tobacco bill should address issues only, and other issues should be dealt with in separate legislation, 79 percent.

Mr. President, I ask unanimous consent that this poll be printed in the RECORD.

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

EFFECTIVE NATIONAL ACTION TO CONTROL  
TOBACCO: A PUBLIC HEALTH COALITION  
TOBACCO SURVEY RESULTS

Telephone survey using a random digit sample, commissioned by the Campaign for Tobacco-Free Kids and conducted June 12–15, 1998 by Market Facts' TeleNation, an independent polling firm. The poll included 924 adults and 784 registered voters. Responses below are based on the full sample of respondents unless otherwise noted. Margin of error is +/-3.2 percent for all adults and +/-3.5 percent for registered voters.

Question: As you may know, the Congress is currently considering the McCain tobacco bill which creates a national tobacco policy to reduce tobacco use among kids. Based on what you know about the bill, do you favor or oppose Congress passing the McCain bill?

	Reg- istered voters (percent)	All adults (percent)
Favor (Net) .....	62	62
Strongly Favor .....	45	44
Somewhat Favor .....	17	17
Oppose (Net) .....	31	30
Strongly Oppose .....	23	22
Somewhat Oppose .....	9	8
DK/Refused .....	7	8

Question: The McCain bill includes public education to discourage kids from smoking, help for smokers to quit, enforcement of laws to prevent tobacco sales to kids and increases in the price of tobacco products to discourage use by kids. There would also be strict limitations on tobacco advertising and marketing to kids, as well as authority for the Food and Drug Administration to regulate tobacco like it does other consumer products. These programs would be funded

by increasing the price of a pack of cigarettes by \$1.10 over the next five years. Knowing this about the McCain bill, do you favor or oppose the bill?

	Reg- istered voters (percent)	All adults (percent)
Favor (Net) .....	66	65
Strongly Favor .....	50	49
Somewhat Favor .....	17	17
Oppose (Net) .....	32	33
Strongly Oppose .....	24	24
Somewhat Oppose .....	9	8
DK/Refused .....	1	2

Question: If two candidates for Congress were otherwise equal, but one supported the McCain bill and the other opposed it, would you be:

	Reg- istered voters (percent)	All adults (percent)
More Likely to Support The Candidate Who Supports The Bill (Net) .....	44	44
Much More Likely .....	30	31
Somewhat More Likely .....	14	13
More Likely to Support The Candidate Who Opposes The Bill (Net) .....	18	19
Much More Likely .....	14	13
Somewhat More Likely .....	5	5
No Effect On Vote .....	36	37
DK/Refused .....	1	1

Question: Some in Congress have proposed amendments to the McCain bill that address issues other than tobacco use—like tax reductions and the war on illegal drugs. Which of the following statements do you agree with the most?

Randomized	Reg- istered voters (percent)	All adults (percent)
The tobacco bill should address tobacco issues only, and other issues should be dealt with in separate legislation .....	79	79
Issues such as tax reduction and illegal drugs are so important that they should be addressed in the tobacco bill even if it means reducing funds for programs to combat tobacco use among kids .....	18	18
DK/Refused .....	4	4

Question: Now let me ask you about a couple of specific amendments to the tobacco bill. Please tell me which of the following positions you agree with most.

	Reg- istered voters (percent)	All adults (percent)
Some in Congress want to amend the bill to use money intended for tobacco prevention to reduce the so-called marriage tax for couples with incomes under \$50,000 because these couples currently pay somewhat more in income taxes than two individuals who are not married .....	22	22
Others say the marriage tax should not be addressed in the tobacco bill and that it takes too much of the money intended for programs to reduce tobacco use among kids .....	69	69
DK/Refused .....	9	9

Question: Which of the following positions do you agree with most?

	Reg- istered voters (percent)	All adults (percent)
Some in Congress want to take much of the revenue generated by tobacco price increases that is intended for programs to reduce tobacco use among kids and use it instead to add to the funds the government has for fighting illegal drugs .....	21	22
Others say the money raised by the tobacco bill should be used first and foremost to address the tobacco problem, and that if more money is needed to fight illegal drugs, it should come from other source .....	75	74

	Reg- istered voters (percent)	All adults (percent)
DK/Refused .....	4	4

*Question:* Please tell me whether you favor or oppose spending the revenues from the McCain tobacco bill for each of the following.

Do you (strongly/somewhat) favor or oppose spending the revenues from the McCain tobacco bill for?

Randomized	Reg- istered voters (percent)	All adults (percent)
Reimbursing the states for the money they have spent treating sick smokers (favor (Net)) .....	43	43
Funding health and medical research (favor (Net)) .....	78	78
Funding programs designed to reduce tobacco use among kids like public education campaigns, school-based programs, and enforcement of laws prohibiting tobacco sales to minors (favor (Net)) .....	84	85
Providing money and other assistance to tobacco farmers to help them in the transition to other ways of making a living (favor (Net)) .....	62	62
Reducing the marriage tax for couples making under \$50,000 (favor (Net)) .....	34	35
Adding funding to the government's budget for fighting illegal drugs (favor (Net)) .....	46	46
Funding for states to provide expanded child care services (favor (Net)) .....	46	48

*Question:* And which of those uses of the McCain tobacco bill's revenues is the most important in your mind?

Randomized	Reg- istered voters (percent)	All adults (percent)
Reimbursing the states for the money they have spent treating sick smokers .....	6	6
Funding health and medical research .....	16	15
Funding programs designed to reduce tobacco use among kids like public education campaigns, school-based programs, and enforcement of laws prohibiting tobacco sales to minors .....	48	48
Providing money and other assistance to tobacco farmers to help them in the transition to other ways of making a living .....	7	8
Reducing the marriage tax for couples making under \$50,000 (favor (Net)) .....	5	5
Adding funding to the government's budget for fighting illegal drugs (favor (Net)) .....	8	8
Funding for states to provide expanded child care services (favor (Net)) .....	7	7

*Question:* Amendments passed so far to the McCain tobacco bill have removed virtually all funds dedicated to tobacco prevention programs. Funds remain in the bill for medical research, tobacco farmers, child care, reimbursement of state medical costs, the marriage tax reduction, and additional funds to fight illegal drugs.

Do you favor or oppose restoring the money in the bill for tobacco prevention efforts even if it means reducing the funds available for these other purposes?

	Reg- istered voters (percent)	All adults (percent)
Favor (Net) .....	61	61
Strongly Favor .....	37	36
Somewhat Favor .....	24	25
Oppose (Net) .....	33	33
Strongly Oppose .....	17	17
Somewhat Oppose .....	16	16
DK/Refused .....	6	6

*Question:* Other things equal, if one candidate for Congress supported restoring the money for tobacco prevention programs in the McCain bill and the other candidate opposed restoring the money, would you be:

	Reg- istered voters (percent)	All adults (percent)
More Likely to Support The Candidate Who Supported Restoring The Tobacco Prevention Money (Net) .....	54	53

	Reg- istered voters (percent)	All adults (percent)
Much More Likely .....	30	29
Somewhat More Likely .....	25	23
More Likely To Support The Candidate Who Opposed Restoring The Tobacco Prevention Money (Net) .....	14	14
Much More Likely .....	4	3
Somewhat More Likely .....	10	11
No Effect On Vote .....	26	26
DK/Refused .....	7	7

*Question:* How much do you trust each of the following to do the right thing on national tobacco policy?

How much do you trust Democrats in Congress to do the right thing on national tobacco policy? Do you:

	Reg- istered voters (percent)	All adults (percent)
Trust (Net) .....	47	47
Trust a lot .....	11	11
Trust somewhat .....	36	37
Distrust (Net) .....	49	49
Distrust a lot .....	23	23
Distrust somewhat .....	27	26
DK/Refused .....	3	4

How much do you trust Republicans in Congress to do the right thing on national tobacco policy? Do you:

	Reg- istered voters (percent)	All adults (percent)
Trust (Net) .....	46	45
Trust a lot .....	9	8
Trust somewhat .....	37	37
Distrust (Net) .....	51	51
Distrust a lot .....	25	25
Distrust somewhat .....	25	26
DK/Refused .....	4	4

How much do you trust President Clinton to do the right thing on national tobacco policy?

	Reg- istered voters (percent)	All adults (percent)
Trust (Net) .....	51	52
Trust a lot .....	21	19
Trust somewhat .....	31	32
Distrust (Net) .....	48	47
Distrust a lot .....	32	31
Distrust somewhat .....	16	16
DK/Refused .....	1	2

*Question:* If the McCain bill to reduce tobacco use among kids is not passed by the Congress, who will be most responsible for it not passing?

	Reg- istered voters (percent)	All adults (percent)
Democrats in Congress .....	16	16
Republicans in Congress .....	40	37
President Clinton .....	13	14
All of the above .....	11	12
None of the above .....	4	4
DK/Refused .....	16	17

*Question:* Which of the following describes your use of tobacco products?

	Reg- istered voters (percent)	All adults (percent)
Current regular smoker or regular smokeless tobacco user .....	25	26
Former regular smoker or regular smokeless tobacco user, or .....	25	25
Never smoked cigarettes regularly or used smokeless tobacco regularly .....	49	48

*Question:* Do you generally consider yourself a Republican or a Democrat?

	Reg- istered voters (percent)	All adults (percent)
Republican .....	37	35
Democrat .....	39	39
Independent .....	17	17
Other .....	5	6
DK/Refused .....	2	3

*Question:* Are you currently registered to vote in the state where you live?

	Reg- istered voters (percent)	All adults (percent)
Yes .....	100	86
No .....		14
DK/Refused .....		1

Mr. MCCAIN. Mr. President, as we do battle of the polls, there is one today that I think in many ways supports the argument that the American people want to do something about the issue. The other argument that I hear quite often is the American people do not care, that they care more about illegal drugs, that they care more about crime, that they care more about education. I agree with that. But they also care about tobacco.

After this issue is taken up, I understand there will be efforts to take up the issue of patients' rights under the present health management regime in America. I haven't seen that in any polls. That is one of the most important issues. Yet, I think Members of this body think that it is of great importance. We are going to take up the defense bill, of which there will be several controversial issues, such as ballistic missile defense, our sanctions on China, et cetera.

I haven't seen those in any polls either. But yet I think the American people care about our Nation's security, especially our ability to defend the Nation.

Should we do something about illegal drugs? Yes. I hope we will. I believe that this bill has been improved by that.

Should we do something about education? I believe that we have had significant and substantial debate on the floor of the Senate regarding that issue. The very excellent bill of Senator COVERDELL was passed after a very difficult process.

Should we do things about crime? Yes.

But, Mr. President, I think we should also do something about this issue as well.

As I began my comments, I believe that we are in an important period of time. I say the best way to proceed is to have a cloture vote proposed by the majority leader, which is the way we do business around here. If the Senate, in its wisdom, decides by 40 votes, and we don't have enough votes to conclude debate after being here in this fourth week, then we should go on to other issues. If there are sufficient votes, 60 votes to invoke cloture, I urge both proponents and opponents of the legislation to try to complete action on this legislation this week.

We all know we have 13 appropriations bills; perhaps product liability reform; perhaps other issues that are important to the American people as well.

I don't mind staying here all summer, if I may borrow a phrase from another leader of a different magnitude than I. But I believe that we have discussed and debated this issue at great length, and it is now time for us to make a decision as to whether we move forward on this bill or not, or throw the issue back to the States. Thirty-six attorneys general voted for it. Larger and larger settlements, and larger and larger legal fees will occur. But most importantly, as I have said on a number of occasions on the floor, today 3,000 kids will start to smoke, and tomorrow, and the next day, and the next day.

Mr. President, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, I thank my colleague, Senator McCain, for his remarks and putting some of this argument back in perspective.

I want to address briefly the amendment of the Senator from Washington, Senator GORTON. I know there are other colleagues waiting to speak on this question.

Mr. President, I understand the strong feeling that we want to limit lawyers' fees. I don't think there is a Member of this body that isn't concerned about seeing lawyers get windfall results for themselves as a result of this litigation.

We have in the McCain legislation, the bill that came out of the Commerce Committee on a 19-to-1 vote, a strong bipartisan vote, a means of addressing that problem.

What is in the bill is a provision for arbitration panels to determine what are the appropriate legal fees.

I think probably that is the best answer, as imperfect as it is.

The problem with the our taking action is, What action do you take? I think Senator GORTON has probably the best chance of prevailing. But it has problems. I think his is probably the most thoughtful provision before us.

But I say to my colleague from Washington, I think there are real problems with what he has proposed. Under Senator GORTON's proposal, fees would be limited to \$4,000 an hour for actions filed before 12-31 of 1994. The problem is that may be way too much. It is even conceivable in certain circumstances that it is too little, but I think it is more likely that it is too much.

He also provides \$2,000 an hour for actions filed between 12-31 1994 and 4-1 1997.

I tell you, my own view is that may well be too much. It is hard to say because it is an arbitrary cap. That is the problem with what the Senator from Washington is offering. In many cases, it may be way too much.

He says it establishes a cap, not a floor. But I think we all understand

what happens in these cases. Very often what is intended is a cap which then becomes a floor. What we may find out is that people being compensated at \$4,000 an hour do not deserve a fraction of that. Or we may find that we have attorneys who file actions between 12-31 1994 and 4-1 1997 who are capped at \$2,000 an hour. That may be far in excess of what they should receive.

He also provides for \$1,000 an hour for actions filed between 4-1 1979, and 6-15 of 1998; \$1,000 an hour.

Again, because this is arbitrary, it can wind up being too much in one case when it goes down to \$500 for actions filed after 6-15 of 1998. Those would be new cases.

That may be appropriate for those who have just gone out and made a copy of the previous actions filed by others, but if it is a new action, taking on the tobacco industry on a new theory where a law firm has to put up substantial resources of its own to bring an action, \$500 may not be enough.

The point is we don't know. Sitting here in this Chamber, how do we make a decision about what is an appropriate legal fee for literally thousands of cases across this country. I don't think it is possible for us to make this judgment. That is why some of us believe an arbitration panel is the appropriate resolution. Let's leave it up to the parties at issue. They each name somebody on their behalf, and those two name a third, and they reach a conclusion on what the appropriate fees are in a particular case. But to have us sit in Washington and try to decide what a contract ought to be in the State of Minnesota is really pretty far-fetched. We often say we are engaged in too much micromanagement from here in Washington. In fact, our friends on the other side of the aisle say that frequently, and frequently they are right. If there was ever a case of micromanagement, this is it. We are deciding what legal fees should be in the State of Washington, the State of Minnesota, the State of North Dakota. I don't think so. I tell you what an appropriate legal fee in North Dakota is and what an appropriate legal fee in New York is are probably not the same. For us just to put in an arbitrary amount that applies across the country is meddling at a level that I think is counterproductive.

Now, we have heard, gee, some of these cases that are settled are going to lead to a windfall for the attorneys at issue. I tell you, I am very concerned about that. That is why I have supported arbitration, because where there is a difference between those who hired the lawyers and those who have been hired, there ought to be a way of resolving it so lawyers do not enjoy windfall returns.

We have heard a lot of discussion about Florida. There has been the suggestion that law firms down there are going to get \$2 billion. I tell you, that is outrageous, absolutely outrageous

—\$2 billion for a case in Florida. But I am not the only one who thinks it is outrageous. The State court in Florida thinks it is outrageous. In fact, they have said it is unconscionable in the State of Florida, and they have not approved it.

So why are we substituting our judgment for the judgment of courts in the individual States and the judgment of the attorneys general in the various States who are the ones who have hired lawyers on a contingency basis? Because that is why we have the problem. We have the problem because individual attorneys general did not, by themselves, have the resources to go take on the tobacco industry. They did not have the resources to do that. We all understand, before this series of cases, the tobacco industry had never lost a case and they had the best legal talent in the country.

By the way, as I understand it, the proposal of the Senator from Washington only applies to plaintiffs' attorneys. It does not apply to the tobacco industry's attorneys. So you have kind of an uneven fight here: The tobacco industry has no limitation, and the plaintiffs' lawyers, those who sue on behalf of the victims, are capped. And the caps that apply under the amendment of the Senator from Washington may be way too much. In fact, I think in virtually every case \$4,000 an hour is way too much; \$2,000 an hour for a different set of classes based on the time that they were filed may be way too much; \$500 an hour for new cases may be too little if the law firm has to put up substantial resources of its own in order to bring the action and successfully take on the multibillion-dollar tobacco industry, especially given the tobacco industry's rate of success.

Mr. President, in the task force that I headed for our side, the conclusion we came to as the appropriate resolution is not to have us try to determine appropriate legal fees. The Senate of the United States is not equipped, frankly, to reach into the facts, the different fact patterns of hundreds of different cases, even thousands of different cases across this country, and determine what are the appropriate legal fees.

I think that is a profound mistake, and it sets a precedent. Are we going to start to determine the legal fees in cases that involve the automobile industry? Are we going to start to get involved in what the legal fees should be in the medical industry?

Boy, I tell you, I do not think that is a road we want to go down, because I do not think this body is equipped to determine the legal fees. I think we may make very serious mistakes, and I can easily see under the amendment offered by the Senator from Washington that we could wind up with a scheme in which lawyers were compensated far more than they should be.

Now, if we look at what has happened around the country, I think we will see that, in fact, the individual States are responding to these challenges. We are



seeing in State after State that they are not accepting these outrageous contingency agreements that were entered into. They are not accepting 25 percent contingency agreements. In State after State they have changed what was proposed.

In Minnesota, outside counsel agreed to accept 7.5 percent instead of the 25 percent fee as called for in the original contract. In Mississippi, both the State and their counsel have agreed to submit a decision on fees and expenses to an arbitration panel. In both Texas and Florida, where there is a dispute over fees, the attorneys' fees and expenses will be decided either through agreement, arbitration, or court order. In each case, mechanisms are now in place to determine the amount of the attorneys' fees.

In Texas, a State court ruled that a 15 percent contingency fee called for in the contract between the State attorney general and the attorneys was reasonable but refused to award a specific dollar amount. In that State, the Governor has now petitioned the court to reconsider its decision and has asked for an evidentiary hearing. The decision is not expected until later this year.

In Florida, as I indicated, the State court rejected as unconscionable the fee request of the attorneys. Well, good for the court in Florida; they should have rejected it as unconscionable. But that is where the decision ought to be made. It should not be made here in this Chamber where we are not privy to the facts in each of these cases and not in the position to determine what are the appropriate legal fees.

Let me say further that the Gorton amendment would interfere in private contracts. That is a very serious matter. Where a State attorney general has entered into an agreement with an outside law firm, I think it is highly questionable for the Senate to reach behind that contract and say we know better, we know what the appropriate legal fees should be, and we divide it on this arbitrary basis as is called for in the Gorton amendment. I do not think I have ever heard our colleagues on the other side of the aisle call for interference in private contracts. I do not think that is a precedent that stands much scrutiny.

I am going to have more to say about this amendment as we go forward. I would say that Senator GORTON, I think, has done the most serious job of trying to address this vexing question, to try to prevent windfalls to attorneys, but I am afraid it fails at least the test that I would apply for something that can meet the very different standards one sees all across the country in the literally thousands of different cases where legal fees apply.

I yield the floor.

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

Mr. GORTON. Mr. President, the Senator from North Dakota finds himself on the horns of a delicious di-

lemma. He feels there may be cases in which the amendment I propose would result in attorneys' fees being awarded that are too great, and so his answer is to reject the amendment and allow attorneys' fees in any amount. Attorneys' fees in one case, in Texas, I believe, have already been approved by the court in an amount more than 10 times higher than the highest amount in this amendment. I am afraid the Senator from North Dakota misreads the amendment.

The heart and soul of the amendment is a set of criteria for determining reasonable attorneys' fees, listing a wide range of factors, some of which we have discussed here, but leaving the matter to the discretion of the court. There is a limitation imposed on the discretion of the court by the amendment in the amounts that we have stated and debated. This is a cap and by no means a floor.

The Senator from North Dakota says that the better system is the system that is included in this bill, a system of arbitration. But, and the current Presiding Officer has read this very carefully, this is some kind of arbitration. This arbitration is to be decided under the bill by three arbitrators—one appointed by the plaintiff's trial lawyer himself, one appointed by the plaintiff, and a third appointed by the first two. The plaintiff has already signed an agreement—the plaintiff in most of these major cases is the State—they have signed an agreement, in some cases, for a 25-percent contingency fee on billions of dollars' worth of recoveries. Who is going to represent the public interest in this arbitration? No, Mr. President, there isn't anyone there to do that.

Mr. CONRAD. Will the Senator yield for a quick point?

Mr. GORTON. Sure.

(Mr. COATS assumed the Chair.)

Mr. CONRAD. I think the Senator misspoke himself. The Senator indicated in the arbitration panel one would be appointed by the plaintiff, one by the plaintiff's lawyer, and then one by the two. I am sure the Senator will acknowledge it is one by the defendant, one by the plaintiff, and the two of them determine the third member. Section 1413 provides how the arbitration panel will work. Obviously, the two sides at issue each pick one, and the two of them pick the third. That is the standard means of establishing an arbitration panel.

Mr. GORTON. I am reading section 1413. It says:

... In any such arbitration, the arbitration panel shall consist of 3 persons, one of whom shall be chosen by the plaintiff, one of whom shall be chosen by the attorney, and one of whom shall be chosen jointly by those 2 arbitrators.

That is not plaintiff and defendant. That is a fixed deal. In any event, to say that because it is possible that this sets a ceiling, that a \$4,000 fee or a \$2,000 fee might be too great a ceiling, we should, therefore, have no ceiling at

all, we should, therefore, allow attorneys' fees that have already been approved in far larger amounts, is, I think, a difficult argument to make.

The Senator from North Dakota makes it very well. But, in fact, the Congress of the United States has set attorneys' fees in all kinds of cases. They were discussed a few days ago by the Senator from Alabama and by others. There are many forms of litigation against the government itself in which we have set attorneys' fees that now, I think, are rather modest with the passage of time.

This is not unprecedented by any stretch of the imagination. What is unprecedented is the generosity of the proposal that I have put before the Senate. It is not unprecedented from the point of view of whether or not we have done it. No, we either have to say that because the States of these attorneys have come to us and have asked us to regulate tobacco in every conceivable, possible fashion, because they have asked us for a bill—this bill that makes it almost impossible for them to lose a case in the future because it totally changes the burden of proof—that we can say there is a certain level beyond which the conscience just simply doesn't allow attorneys' fees to go, or you have to take the position that we can regulate everything with respect to tobacco to the minutest degree, but we dare not touch attorneys' fees, personally, I think that is a very, very difficult argument to make.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. CONRAD. Will the Senator from Minnesota yield for just one moment?

Mr. WELLSTONE. I will be pleased to yield if I can have the floor.

The PRESIDING OFFICER. The Senator is entitled to yield for a question in order to regain the floor.

Mr. CONRAD. I ask unanimous consent, so I can get recognition, that the Senator from Minnesota be recognized right after I finish. I will take 1 minute.

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

Mr. CONRAD. Mr. President, I want to clear up this confusion about the arbitration panel. On page 438 of the bill it says:

\* \* \* the arbitration panel shall consist of 3 persons, one of whom shall be chosen by the plaintiff—

In this case, the State, who has hired the attorney—  
one of whom shall be chosen by the attorney—

That would be the claimant for the fees—

and one of whom shall be chosen jointly by those 2 arbitrators.

That is the standard method of setting up an arbitration panel. Nothing new, nothing unusual here. That is the way of setting up an arbitration panel



to get a result that is fair to both parties.

I say to my colleague from Washington, for us to decide we have better judgment than the State courts that administer the cases that are before them, I think, is a huge mistake. We talk about micromanagement. When we start deciding legal fees in this Senate Chamber, we are making a mistake. We do need to be worried about windfalls to attorneys; absolutely we do. That is why arbitration panels were included in the legislation that came out of the Commerce Committee on a 19-to-1 bipartisan vote. I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. I thank the Chair. Mr. President, my colleague from North Dakota has spoken to the arbitration provision in the legislation. I shall not do so. I just want to present a Minnesota perspective for just a moment.

I come from a State where we just went through a very important trial. The lawyers in my State, working with the attorney general, were able to unearth 33 million pages of documents—33 million pages of documents. This was during a discovery process that went from August 1994 to the end of 1997. Many of those documents have had an enormous impact, not just on the settlement in Minnesota, which was a very important settlement, but also directly on the debate in the U.S. Congress. Thirty-nine thousand pages of those documents were ordered produced by the Minnesota judge and were ultimately subpoenaed by the House of Representatives and made public on the Internet.

What I want to do is speak to the part of this amendment that concerns me the most. I have had some discussion with my colleague from Alabama, and I have said to him, "Why don't you, in fact, not make this retroactive," when he had his similar amendments on the floor, because I don't think we should be taking action here that reaches back to the Minnesota settlement, which has already been entered into and has been declared final by the court. We already have an arrangement between the State and the Attorney General and the lawyers who represented our State. Congress should not disturb that.

I think the amendment of my colleague from the State of Washington has a different weakness and that is its lack of evenhandedness. What I want to see at a bare minimum is to have the same kind of caps or limits put on those attorneys representing the tobacco companies. I say to colleagues, when you vote on this amendment, the thing you ought to fasten your attention on is that we don't have the same kind of ceiling, the same kind of caps put on fees that go to lawyers representing the tobacco companies. I see

nothing here that does that, in which case I would argue that we are hardly talking about a level playing field.

I think the problem with the amendment is that it just simply lacks balance. I cannot support an amendment that puts caps on the fees of plaintiffs' attorneys representing consumers and representing the attorney general from a State, but at the same time puts no cap at all on the fees of attorneys hired by tobacco companies or other big corporations with their corporate lawyers working with these companies, but there is no cap on the fees. That just simply makes no sense to me from a kind of elementary standard of fairness, and that is why I think the amendment is fatally flawed.

#### HOMOSEXUALITY AND THE NOMINATION OF JAMES HORMEL

Mr. WELLSTONE. Mr. President, before I give up my time on the floor, I just want to take 1 minute also to mention another matter that has something to do with fairness. I am going to do this with a tremendous amount of sensitivity, but I just want to take a minute to mention this.

There were a number of newspaper articles today which report on the majority leader's comments about homosexuality. I ask unanimous consent they be printed in the RECORD.

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

[From the New York Times, June 16, 1998]

LOTT SAYS HOMOSEXUALITY IS A SIN AND  
COMPARES IT TO ALCOHOLISM

(By Alison Mitchell)

WASHINGTON, June 15—In an interview about his personal beliefs, Senator Trent Lott, the majority leader, told a conservative talk show host today that homosexuality is a sin and then compared it to such personal problems as alcoholism, kleptomania and "sex addiction."

The Mississippi Republican made his remarks in a 40-minute taped interview conducted by Armstrong Williams for the America's Voice network, a cable television network. The interview—part of a series on some of the nation's political leaders—was timed for Father's Day and is scheduled for broadcasting over the weekend or next week.

Mr. Lott and Mr. Williams explored a range of social topics from Mr. Lott's thoughts on disciplining children (he said that on occasion he used a belt) to his opposition to abortion to his views on the role of men and women in marriage. He described his childhood growing up in Mississippi in the late 1950's and early 1960's as a "good time for America."

Mr. Lott has made his views on homosexuality known in the past, speaking out in 1996 against a bill, narrowly defeated by the Senate, that would have banned discrimination against homosexuals in the work place. At the time he called the legislation "part of a larger and more audacious effort to make the public accept behavior that most Americans consider dangerous, unhealthy or just plain wrong."

Asked today by Mr. Williams whether homosexuality is a sin, Mr. Lott replied, "Yes, it is." He added that "in America right now there's an element that wants to make that alternative life style acceptable."

Mr. Lott said: "You still love that person and you should not try to mistreat them or treat them as outcasts. You should try to show them a way to deal with that." He said his own father had had a problem with alcoholism, adding: "Others have a sex addiction or are kleptomaniacs. There are all kinds of problems and addictions and difficulties and experiences of this kind that are wrong. But you should try to work with that person to learn to control that problem."

With the investigation of President Clinton's connection to a former White House intern as a backdrop, Mr. Lott also spoke about his marriage to his wife, Tricia. He said he had never been unfaithful in their 34 years of marriage "because I love her and because I believe that's wrong."

Asked if he was ever tempted, he allowed: "Sure I was. I'm a human being." But he said he took great care to insure that his behavior was beyond reproach. When he travels in his Mississippi district with a woman who works for him as a field worker, he said, "I would never get in a situation where it was just the two of us in a car." He said he took that precaution "because just the appearance bothered me."

Mr. Lott said his opposition to abortion was taught to him by his mother. He remembered coming home from high school and telling his mother he thought abortion might be acceptable under certain conditions, only to see her drop a dish towel and burst into tears. "She started crying and said, 'If I have raised you to have no moral respect for human life then I have failed,'" he said.

Mr. Lott, who is a Southern Baptist, stepped carefully when asked about the Southern Baptist Convention's declaration that a woman should "submit herself graciously" to her husband's leadership. He said that he felt "very strongly" about his faith, but said he would speak of marriage roles "in different terms." Spouses, he said, should "serve each other."

[From the Washington Post, June 16, 1998]

LOTT: GAYS NEED HELP "TO DEAL WITH THAT PROBLEM"

Senate Majority Leader Trent Lott (R-Miss.) said yesterday that he believes homosexuality is a sin and that gay people should be assisted in dealing with it "just like alcohol...or sex addiction...or kleptomaniac."

While taping an interview for "The Armstrong Williams Show," a cable television program, Williams asked Lott if he believed homosexuality is a sin. The senator replied, "Yeah, it is."

Lott added: "You should still love that person. You should not try to mistreat them, or treat them as outcasts. You should try to show them a way to deal with that problem, just like alcohol...or sex addiction...or kleptomaniacs."

"There are all kinds of problems, addictions, difficulties, experiences of things that are wrong, but you should try to work with that person to learn to control that problem," he said.

Lott's comments show "how the extreme right wing has a stranglehold on the leadership" of Congress, said Winnie Stachelberg, political director of the Human Rights Campaign, the nation's biggest gay political organization. Stachelberg also said Lott is "out of step" with scientific studies of the causes of homosexuality.

Some groups believe homosexuality is a chosen lifestyle and have searched for a "cure" for being gay. Many in the gay community, however, insist that homosexuality is a matter of biology.

"The medical community, the mental health community for 20 years now has

known homosexuality is not a disorder," Stachelberg said.

Lott spokeswoman Susan Irby declined to comment on Stachelberg's remarks.

Williams, the television program host, said the interview probably will be aired this week.

Mr. WELLSTONE. Mr. President, the majority leader, when asked whether or not homosexuality is a sin, stated, "Yes, it is." He added that "in America right now there's an element that wants to make that alternative lifestyle acceptable." Then he went on to say, "Others have a sex addiction or are kleptomaniacs. There are all kinds of problems and addictions and difficulties and experiences of this kind that are wrong. But you should try to work with that person to learn to control that problem."

He also said—to be fair to the majority leader—"You still love that person and you should not try to mistreat them or treat them as outcasts. You should try to show them a way to deal with that." That was the beginning of the quote. I do not want to take anything out of context.

Mr. President, I am concerned about calling homosexuality a sin, comparing it to the problems of alcoholism or other diseases. I am concerned because of the medical evidence. I am concerned because I think that in many ways this statement takes us back quite a ways from where we are.

We do not bash each other here; and there is civility here. That is what I like best. So let me just simply say, the majority leader is entitled to his view and he is entitled to his vote. But I am concerned. I have been on the floor of the Senate week after week talking about the nomination of James Hormel. I really believe that, given this statement by the majority leader, and given other statements that have been made, the U.S. Senate would be better off if we bring this nomination to the floor.

It was literally back in November of last year, November 4, 1997, that Mr. Hormel was voted out of the Senate Foreign Relations Committee by a 16-2 vote. There have been holds on the nomination. We ought to bring it to the floor so that we can have an honest discussion. The majority leader is entitled to his opinion and he is entitled to his vote, but the rest of us are also entitled to our opinions and we are entitled to our votes.

I think it is extremely important that this nomination be brought to the floor; that we have an honest discussion. No acrimony whatsoever, but please let us deal with this issue, and let us give Mr. Hormel the fairness that he deserves. I will not talk more about him right now. I will not talk about his very distinguished career. But I must say, given the majority leader's statements, it makes me stronger in my belief that we need to bring this nomination to the floor, and we need to have a discussion about this question.

It will be a civil discussion. It will be an honest discussion. I think the vast

majority of Senators are ready to vote for Mr. Hormel. I will have an amendment that I will put on a bill that will deal with this question, probably the first bill after the tobacco bill. But where I want to get to is to bring this nomination to the floor. Otherwise I worry about a climate that is going to become increasingly polarized, increasingly poisonous, and we do not want that to happen. We do not want that to happen.

So I am hopeful that the U.S. Senate, in a spirit of civility and honesty with one another, and honesty with Mr. James Hormel, will bring this to the floor.

I thank my colleagues for letting me also mention this matter. I yield the floor.

Mr. SESSIONS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

#### NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The Senate continued with the consideration of the bill.

Mr. SESSIONS. Mr. President, I would like to thank—

Mr. GORTON. Will the Senator yield?

Mr. SESSIONS. I will.

#### AMENDMENT NO. 2705, AS MODIFIED

Mr. GORTON. Mr. President, I have a modification of my amendment at the desk. And I take it that I have the right to modify the amendment.

The PRESIDING OFFICER. The Senator has that right. The amendment is so modified.

The amendment, as modified, is as follows:

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

#### SEC. LIMIT ON ATTORNEYS' FEES.

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

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

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

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

(4) efforts expended that in whole or in part resulted in or created a model for programs in this Act, shall be determined by this Section.

#### (b) ATTORNEYS' FEES.

(1) JURISDICTION.—Upon petition by any interested party, the attorneys' fees shall be determined by the last court in which the action was pending.

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

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

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

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

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

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

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

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

(i) whether those expenses were reimbursable; and

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

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

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

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

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

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

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

(L) Such other factors as justice may require.

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

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

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

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

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

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

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

Mr. GORTON. I thank the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank the Senator from Washington for his legislation, which I am pleased to support.

I suppose it is round four in this battle. This is the fourth vote we will have had on it. I think the Senator from Washington has attempted in good faith to deal with some of the complaints that have been raised about capping attorneys' fees.

Our last vote was at \$1,000 an hour. He has come in and said, well, if you establish certain things, and you started early, and you worked hard on this and are one of the people who really deserve credit for this litigation, you could get up to \$4,000—that is up to \$4,000. So it should not be criticized as a guarantee of \$4,000 per hour. I think these judges would decide on that. But he caps it at that amount. For other people who were involved less in the case, it would be capped later.

And to my good friend, the Senator from Minnesota, he talked about the Minnesota perspective. I believe Minnesota has been at this some time. They worked a number of hours on this case. They would be paid at least \$2,000, and I believe up to perhaps \$4,000 per hour for their work, depending on how much the judge were to give them. I think that is a very generous legal fee. As a matter of fact, it goes beyond what I would consider within the mainstream.

As a matter of fact, I was just called off the floor a few minutes ago and met a group of young people from my home State. And I asked them if they thought \$4,000 an hour—how would they feel about that to pay an attorney for doing legal work. And they did not think I was serious. They thought it was a joke. Talking about \$4,000 an hour—that is a lot of money. So I think we have to deal with this.

Let me talk briefly about the fact that Senators on the other side have suggested, well, we have an arbitration process. The arbitration process is not between the people who are paying the fees or the defendants in the litigation. The arbitration process is between the plaintiffs, which in this case are the States represented by the attorneys general, and their attorneys, the plaintiffs' lawyers, the attorneys. And what it says is, if they are unable to agree; that is, the attorney general and the lawyer he hired and who agreed to a certain fee, if those two are unable to agree with respect to any dispute that may arise between them regarding the fee agreement—regarding the fee agreement—then the matter goes to arbitration, then the matter goes to arbitration. Under the fee agreement, they are talking about a 25 percent, 20 percent, 15 percent contingent fee, which would enrich these lawyers to an extraordinary degree.

What the Senator from Washington has understood—and I think his legislation recognizes—is that a lot of the attorneys in this litigation have done little or no work. A few of these cases

were started early on; a lot of legal work was done; a lot of attorney investment and time and some personal funds were expended on behalf of this litigation. And that is one thing.

But as the time went by, other States joined. Many of them joined in a matter of weeks or a matter of months before the settlement by the tobacco companies was offered. Those lawyers now want to walk in and claim 25 percent of what is being paid in, and they worked only a very few hours on this case.

Some of these lawyers, it has been estimated, according to a professor from Cardozo Law School, are to receive as much as \$92,000 per hour—\$92,000 per hour—unless something is done about it. So I think we have to act now. We have a responsibility to act. And I am certain of that.

Mr. GORTON. Will the Senator from Alabama yield?

Mr. SESSIONS. I certainly will.

Mr. GORTON. Is the Senator from Alabama aware of the fact that the U.S. district court of Texas has determined that a legal fee of \$2.3 billion would be reasonable?

Mr. SESSIONS. I am aware of that. And I am glad the Senator from Washington made that insightful observation.

Mr. GORTON. Does not the Senator from Alabama agree that is a matter in which we here in the Congress, dealing with this bill, can be interested in saying, no, that is too high?

Mr. SESSIONS. I certainly do.

Mr. GORTON. I thank my friend from Alabama.

Mr. SESSIONS. With regard to the Florida case, the trial judge found it was unconscionable, as I hope this body finds these fees are unconscionable. But that case has been reviewed at a higher court and that opinion has been withdrawn.

So we don't know yet whether the lawyers in Florida will get \$2.8 billion that they request or not. In fact, Mr. Montgomery, the lead attorney in the case, said he fully expects to be paid what his fee agreement said. He expects to prevail. He says he has a contract.

How can we violate contracts? We violate contracts all the time in this body. We are telling the tobacco companies they can't advertise. Many of them have advertising contracts extended for years. We are changing the whole way of doing business about tobacco. Everything about the tobacco business is being changed by this legislation. It is a comprehensive legislation in which we deal with almost every aspect of it. One of those aspects ought to be how much these fees should count for.

I was in Alabama recently to see one of the finest and biggest industrial announcements in the history of the State and one of the largest in the country. Boeing is going to build a rocket plant near Decatur. It is 50 acres under one roof. They told me

with great pride that the cost of that building and facility and land and construction would be \$450 million. We are talking about attorneys in Florida asking \$2.8 billion, five or six times that much, five or six times the cost of one of the largest industrial announcements in America by one of the world's largest corporations. That is the extent of the fees we are talking about in Alabama. The general fund of the noneducation budget is less than \$1 billion. These attorneys are asking for more than that.

As a matter of fact, a professor from Cardozo Law School estimates that it will make 20 to 25 attorneys in America billionaires. I had my staff check. I believe the Fortune Magazine that rates America's richest people, the world's richest people, listed 60 billionaires in the United States. This litigation, unless we act, could create 20 more billionaires, many of whom have worked less than a year, maybe even only a few months, on the cases with which they are dealing.

Now, I am not against a contingent fee. I support that concept. But the attorneys and the attorneys general have come to the Congress and asked us to legislate. The plaintiff attorneys have and the attorneys general have asked us to comprehensively review this entire process and litigate on it. This is an unusual type of case because we have never seen these kind of moneys before and we have never seen these kind of fees before.

It is perfectly appropriate for us to contain them. As the Senator from Washington said, we limit fees to \$125 an hour in equal access to justice cases. Appointed criminal attorneys in Federal court get paid \$75 an hour. I think \$2,000, \$4,000 an hour is enough. It will make them rich beyond all imagining, just that alone. If they haven't done any work on the case and don't have any hours into the case, they ought not be made any more rich than they are.

Mr. CONRAD. Will the Senator yield?

Mr. SESSIONS. I yield.

Mr. CONRAD. In the Senator's previous amendment, didn't the Senator have a cap of \$1,000 an hour?

Mr. SESSIONS. Yes.

Mr. CONRAD. How can this Senator justify supporting an amendment now that goes to \$4,000 an hour?

Mr. SESSIONS. I am glad to answer that. First of all, if we don't cap it at \$4,000 an hour, we are likely to end up as in Texas at \$92,000 an hour. A judge has approved that fee in Texas. It is going to go through. So certainly this is better than nothing.

No. 2, the fee is capped at \$4,000 an hour. A judge must consider the skill, the expertise, the commitment, and the value of the contribution of that attorney. Some flunky in the firm isn't going to be paid \$4,000 an hour. The lead lawyers, the ones who have demonstrated the greatest skill and leadership and effectiveness, would have the opportunity to reach that high but no higher.

So it is certainly a step in the right direction and preferable to nothing, although, as you well know, I was very supportive of the \$1,000-per-hour cap.

Mr. CONRAD. Could I ask the Senator a further question?

Mr. SESSIONS. Certainly.

Mr. CONRAD. Is it not the case in the Texas matter that there has not been a dollar paid and there is no final resolution of that matter, that that matter is on appeal, and the Governor has interceded in that case?

Mr. SESSIONS. That is correct. But the suggestion that judges are going to somehow guarantee that these exorbitant, as you indicated, unconscionable fees will not occur is not clear from that case because the judge has, in fact, affirmed that case.

The Governor, George Bush of Texas, is doing everything he can to resist the payment of those exorbitant fees, but he has not yet prevailed. We don't need to have litigation in every State in America. We ought to comprehensively legislate this legislation with all of the others in this case.

Mr. CONRAD. One final question I ask of the Senator. Isn't the Senator concerned, as I am, that the \$4,000-per-hour fee cap that is supposed to be a cap, supposed to be a ceiling, could well turn into a floor, and the fact is that we will see unconscionable attorneys' fees under this amendment?

The Senator viewed \$1,000 an hour as a limit and now this has \$4,000 an hour as a limit. Isn't it possible that we will see absolutely unconscionable attorneys' fees out of an amendment like this?

Mr. SESSIONS. Let me respond with a question. Does the Senator from North Dakota believe there should be no cap on the attorneys' fees?

Mr. CONRAD. The Senator from North Dakota believes that the Senate is ill equipped to reach into the thousands of cases across the country and determine what is an appropriate fee. The Senator from North Dakota is the author of the arbitration provisions that are in this bill because I concluded after listening to witnesses on all sides that we could see truly outrageous returns to attorneys, windfall profits for attorneys under the cases that are across the country. The best way to stop that was arbitration panels. Any time we fix an arbitrary fee amount, it may be way too much or may turn out to be too little.

I must say, I can't imagine any circumstance in which \$4,000 an hour is too little. I can imagine a circumstance in which, as a previous amendment had \$250 an hour proposed, I can imagine for those firms that went out on their own nickel and took on the tobacco industry, that they faced a very tough circumstance, \$250 an hour may be too little.

I really am very concerned when we say \$4,000 an hour and we put our stamp of approval on that. For every case that was filed back before 1994, we will wind up with a circumstance where people get unjustly enriched.

Mr. SESSIONS. I understand that, but the point clearly is this is a cap of \$4,000 per hour. It is not a guarantee of \$4,000 per hour. I preferred a cap of \$1,000 per hour. The Senator from North Dakota opposed that. So we raised the figure now. I don't see how anybody can complain about this cap.

As to this arbitration agreement, it either does one of two things: It either violates the contracts and, therefore, the legislation written by the Senator from North Dakota has, in fact, undertaken to override the fee written agreement between the attorneys general and their plaintiff lawyers; or it does not.

I am afraid, however, that it doesn't do what the Senator from North Dakota suggests, because the way I read it, the only complaint that can be made is when the attorney general disagrees with the amount of the fee with the lawyer he hired. The exact language is:

With respect to any dispute that may arise between them regarding the fee agreement, the matter shall be submitted to arbitration.

So, I am not sure that this arbitration agreement has any impact whatever on attorneys' fees. The only thing that would happen is some judges may find it unconscionable and just refuse to enforce it. That is obvious to us, that many of these agreements are unconscionable and ought not to be enforced.

With regard to the Florida fee where the judge held it to be unconscionable, those lawyers have worked a pretty good while on that case. They have done a pretty good amount of work.

The lawyers in Mississippi and Texas have put in a lot of work. The lawyers in Minnesota have put in a lot of work. But there are quite a number of States where the attorneys have done almost no work and they expect to receive a billion dollars. A lawyer, Mr. Angelos, who I believe owns the Baltimore Orioles, had a 25 percent agreement with the State of Maryland. After the case collapsed and they agreed to pay the money—and I don't know how long after he filed the lawsuit, but he certainly wasn't one of the early hard workers on the litigation—he agreed to cut his fee in half to 12.5 percent. That was real generous of him. As I read that in the newspapers, that was a billion dollars. That 12.5 percent was over a billion dollars. And he has done almost nothing.

These are fees the likes of which the world has never seen in history. The amount of work that went into obtaining these fees is minuscule in many cases, and as we are going about tobacco legislation, we simply ought not to allow it to happen. I can't say how strongly I believe that is true. No bill should come out of this Congress that does not have a realistic cap on attorneys' fees. To do so would be to dishonor the taxpayers of this country. And to argue, as some have, that it is being paid by the lawyers or the tobacco companies, and therefore not

paid by the citizens of the country, is likewise an improper and unacceptable argument.

The truth is that any way you look at it, it is money paid by the tobacco companies to settle the lawsuit. It is sort of unwise and unhealthy, in my opinion, for it to be structured this way. Well, the plaintiff lawyers who are representing the State of Alabama, or the State of Mississippi, say: State of Mississippi, you don't have to pay my fee; I will just take my fee over here from the tobacco companies; they will pay it.

Well, one of the classic rules of law is that a person who pays your fee is the one you have loyalty to. It creates an impermissible conflict of interest, in my view, between the attorney and his true client—the State—that he is representing. So sometimes they argue that it doesn't count because it was paid by the tobacco companies. That is bad from an ethical point of view, in my opinion. It is also an unjustified argument, because the tobacco company doesn't care whether the money they pay goes to the attorneys' fees or to the State, they just want the lawsuit to end, so they will pay some of it over there and some over there. They just say, "Tell me where you want me to pay it, State of North Dakota, and I will write the check. Do you want me to write a billion dollars to the attorneys? I will do it. Or I will write you a check for \$4 billion. Whatever you say." It is just money to settle a lawsuit to them. Certainly that billion dollars could have been put in for health care, tax reductions, and other good things. So that argument, to me, is very unhealthy.

In the history of litigation throughout the entire world, we have never seen the kind of enrichment possibilities that exist for attorneys as it exists in this case. With regard to the Florida case, although the trial judge found it unconscionable and he tried his best to eliminate it, his opinion has been withdrawn and is not the final court opinion. The attorney who stands to gain the money still asserts he hopes to get those fees exactly as he was promised. With regard to Texas, a judge has approved a \$2.3 billion attorney fee already. I don't know if Governor Bush can succeed in turning that around or not. He is doing all he can to do so, as well he should, because when you consider how much Texas could use \$2.3 billion, as any State could, he ought to resist the loss of that revenue for the people of Texas.

I think the Senator from Washington has worked hard on this amendment. He has listened to the objections from the other side, and he has sought to draft a piece of legislation that would meet those objections. It pays a little more than I think is necessary, but it would have a significant impact in containing the most unconscionable fees that are likely to occur in this matter. I think he has done a good job with it. It certainly does not mandate \$4,000-

per-hour fees. A judge has to justify those kinds of fees in a finding. That should mean that young lawyers who may have just done basic background work, or a little research and other types things, won't be paid \$4,000; only the very best will.

I think it is a good step forward. We will now see who wants to pay these attorneys a legitimate wage for their work. This is a legitimate wage for their work. I expect that we would have bipartisan support for Senator GORTON's amendment. It is a good amendment. It is a generous amendment for the trial lawyers. It rewards them to a degree that is unheard of for their work. I don't know of any fees I have ever heard of at \$4,000 per hour. It ought to bring this matter to a conclusion. Again, I don't believe we will have any legislation on tobacco that does not contain a limitation on attorneys' fees, and that certainly represents my opinion.

I yield the floor.

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. CONRAD. Mr. President, this is a well-intentioned amendment but it is a profound mistake—absolutely profound. The Senator from Alabama said the courts would have to justify paying the \$4,000 an hour provided for in this amendment. We have just provided the justification. If you read the amendment, it says, "The amendment sets the following limits on attorney's fees: \$4,000 an hour for actions filed before 12/31/94."

Well, guess what? If you file an action before 12/31/94, you just hit the gusher, you get \$4,000 an hour. And the U.S. Senate has said that is OK. I don't think the Senate of the United States should say OK to \$4,000 an hour for every case filed before 12/31/94. How can we possibly justify that on the floor of the U.S. Senate?

This amendment says that you get \$2,000 an hour for any action filed between 12/31/94 and 4/1/97—\$2,000 an hour. Again, you hit the jackpot. It is almost like playing instant lotto and you are a guaranteed winner, because if you filed a case before 12/31/94, you get \$4,000 an hour, and the U.S. Senate says that is an appropriate fee. Well, this Senator is not going to say that is an appropriate fee, and this Senator is not going to say it is an appropriate fee to provide \$2,000 an hour if you filed any time between 12/31/94 and 4/1/97—absolutely not.

The Senator from Washington argued persuasively on the last amendment, which had a \$1,000 cap, that it might be too much or it might be too little. Now we have \$4,000. Well, I can guarantee you that, in most cases, that is far too much. Yet, the U.S. Senate will be on record as saying that is an appropriate legal fee. I don't think it is an appropriate legal fee. As one Senator, I am not going to endorse that.

Mr. SESSIONS. Will the Senator yield?

Mr. CONRAD. Yes.

Mr. SESSIONS. Would the Senator recognize that the language that he quoted starts off and says, "attorneys' fees as approved by the court in such action" and "any attorneys' fees shall not exceed the per hour rate of . . ." Then there is a set of criteria for the judge to consider what the hourly fee should be. I suggest that very few will justify reaching that rate. But whatever, it will be decided by judges on a case-by-case basis.

As the Senator suggested, he believes that some cases are different. This allows flexibility.

Would the Senator not agree with that?

Mr. CONRAD. No; the Senator would not agree with that, because this is the exact criterion that is included in the bill with respect to reforming the arbitration panel decisions—the exact same criterion. I know what is going to happen. The courts out there are going to see that the U.S. Senate says that it is appropriate to bill \$4,000 an hour if your action was filed before 12-31-94. That is what is intended—is the ceiling is going to become a floor. And we are going to see case after case where the attorneys are unjustly enriched at \$4,000 an hour.

That is exactly what is wrong with this kind of an amendment. It is arbitrary, it is capricious, it sets a limit that allows for unjust enrichment, and it will have the stamp of endorsement of the U.S. Senate. That is a profound mistake. We shouldn't be in the business of deciding what the legal fees are in any case. That is not our business. That is overreach. That is the kind of micromanagement that people on the other side of the aisle have warned us against. It is the kind of thing that people resent, because they know we can't possibly know the factual matter in each and every case that is before a court in every jurisdiction in this country. For us to substitute our judgment for State judges' determinations of what are the appropriate legal fees in a case is a profound mistake. We shouldn't do it.

I go on to point out in the amendment that the Senator from Washington just changed his amendment. The change he made is very interesting. He just sent a modification to the desk that says, upon petition by any interested party, the attorneys' fees shall be determined by the last court in which the action was pending.

Those words don't seem to really mean much. But do you know, they mean a lot. They mean a lot. What they mean is that in the four cases that have already been resolved where the tobacco industry has agreed to pay the attorneys, that now they would be able to come in the back door and challenge the fees that they already agreed to. That is what this language could do. This little modification was just sent so quietly to the desk and received no explanation. "Any interested party." That means Philip Morris

might challenge the attorneys' fees of the attorneys that brought the case against Philip Morris. That is a pretty good deal.

That is exactly the kind of thing we shouldn't be doing. That is not the kind of thing we should be allowing. That isn't the kind of thing that should be permitted here on the floor of the U.S. Senate.

Let me say to my colleagues who are well intended on the other side, to put in a stamp of approval by the U.S. Senate that \$4,000 an hour is an appropriate legal fee is just a profound mistake. We embarrass this Chamber, we embarrass this Congress, by putting our stamp of approval and say \$4,000 an hour is OK. I don't believe the Senator from Alabama believes \$4,000—I mean, I think it is preposterous, and yet we are about to vote seriously on an amendment that says \$4,000 an hour is OK. I don't think it is OK. I don't think it should be approved.

Mr. DURBIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, here we go again.

There are people who hate trial lawyers just intuitively and instinctively. I guess the fact that I used to be one before I was elected to the House of Representatives, I kind of take exception to that observation.

But I can recall times in my legal practice when people would walk into my office who were literally dirt poor. They didn't have any money. They had been injured, or they had some claim. And, frankly, the only opportunity they had to go to court was if an attorney said, "OK, we will take it on a contingency-fee basis. If we can win the case, then you pay a part of the winnings. If we don't win, you don't pay anything." Contingency fee, trial lawyers—for a lot of people, it is their only ticket to the courthouse.

Who in the world can come up with \$50,000 or \$100,000 to pay some lawyer or some legal firm when they need representation? A lot of Americans just can't do that.

So this is really a system of justice which gives the plaintiff a ticket to the door of the courthouse on a contingent basis: "If we win, you pay the lawyer. If we lose, the lawyer gets nothing."

Take the case of the tobacco companies. Imagine, if you will, 42 State attorneys general who said, "We want to sue the tobacco companies, the largest corporations in America, the most politically powerful, a group that never loses a lawsuit. How are we going to do that?" You can't stop the business of representing the attorney general of Illinois or California. The only way you can do this is by going to the private sector, to private attorneys, and saying to them, "Will you give us a contingent-fee deal here?" In other words, "Will you join the State attorneys general in suing the tobacco companies? And, if we win—if we win—you will be

paid. If we lose, you won't get anything." Contingency fee basis. Trial lawyers.

And imagine the tobacco company executives when finally it dawned on them that 42 States had found these law firms around the country willing to take on the risk, willing to take the gamble. Was it a gamble, or was this a sure thing? History tells us it was the biggest legal gamble in the history of America. The tobacco companies had never lost a lawsuit—never. Yet, these law firms came forward and said, "We will help the State attorneys general. We will sign on a contingency-fee basis. Win or lose, let's see what happens." We know what happened. It ended up that the tobacco companies came to the realization that they couldn't win. They sat down about a year ago with the States' attorneys general and tried to hammer out some kind of an agreement. Part of that agreement has to be, "How are we going to pay these attorneys? We agreed we would pay them for what they were going to do if we won."

Now come the tobacco companies and those people who have no use for trial lawyers to the floor of the U.S. Senate and say, "We want to have a voice in this process. We want to rewrite these agreements. We want to decide what was fair and unfair."

I don't think this is a fundamentally sound amendment. I think we should defeat this amendment. Let me give you one basic reason why we should defeat this amendment: Because the critics of the trial lawyers, the critics of the attorneys who brought these lawsuits against the tobacco companies, have done it again, ladies and gentlemen. They have come in and said it is an outrage to pay lawyers this amount of money, an absolute disgrace, if they are plaintiffs' lawyers, if they are lawyers representing people who died of cancer, if they are representing people in the State of Illinois who paid out millions of dollars in taxes. But did they put any limit whatsoever on the fees paid to tobacco company lawyers? Not one word.

Take a look at this amendment. It is disgraceful for us to stand up here and say this is a matter of justice, that we are not going to allow these attorneys to be paid that amount of money, and to exempt the tobacco companies' lawyers. Make no mistake: In these lawsuits, these law firms representing tobacco companies have been raking in millions and millions and millions of dollars for decades. Now we know, because of the suit in Minnesota, for example, that there has been an effort to hide important documents behind the attorney-client privilege. We know these lawyers have been complicit in this effort. Do we punish them with this amendment? No, no, no, no. Our anger for lawyers is reserved only for those lawyers who sue tobacco companies, not for the lawyers who defend tobacco companies.

Let me tell you that I think this is fundamentally unfair. It is fundamen-

tally unfair for us to step in at this stage in the proceedings, not only because of the injustice which it does to the lawsuits which have been filed but because if this amendment passes, it applies to future lawsuits as well. Who will stand up in the future and tackle the billionaire giant tobacco companies with the prospect of limitation of legal fees of this magnitude? Four thousand dollars sounds so exceedingly generous until you wonder and speculate what is at risk here. How would a law firm decide to dedicate all of its resources and all of its time for an entire year or more to try to get to trial against the tobacco companies? What a gamble. What a risk. And the people who are pushing this amendment want to make certain that couldn't happen again. They want to close the courthouse doors to make sure that people who head up tobacco companies are not going to be intimidated by these lawsuits.

We would not be here today on the floor of the Senate, we would not be discussing a tobacco bill, if it were not for the initiative of the State attorneys general and were it not for the cooperation of these private attorneys who got involved in the lawsuit.

You hear a lot of speculation: "You know these lawyers get paid billions of dollars. Isn't that too much?" Yes; I think it is. But that is my judgment. The judgment in the bill says it will be made by arbitration panels. We will have people sit down and decide what is fair. And in States, they have dramatically reduced the attorneys' fees that would have come to these private firms with these judges' decisions and arbitration panels. And that will continue. That is the right thing to do. But for us to step up as the U.S. Senate to intervene in this debate and say that we know best, to say that the firms that came forward to have the courage to take on the tobacco companies should now be ignored and their agreements be ignored, their contracts pushed off the table, we know best here in the U.S. Senate, I think it is an outrage. It is an outrage for us, and it is an outrage for those in the future who count on this mechanism, who count on the opportunity to go into court and to plead their case in order to find justice.

How many times in the history of this country have this Congress and the President failed to act and relied on the courts? So many times in my lifetime. I can recall the civil rights struggle. It generally started in the courts. It wasn't until the important cases in the 1950s that finally Congress could muster the courage to deal with this thorny issue. And the same thing is true on tobacco. I have been fighting these tobacco companies as long as I have been in Congress.

I have had some victories and I have had some defeats. They are tough customers, and they have a lot of money. And boy do they have a lot of friends in the House and Senate. They found out there was one group they could not

buy, the judicial system. They found out that when lawyers could come into court before a jury of peers and argue the case about their deadly product and what they were doing with it, they could not win. A year ago they threw in the towel and said, "We are ready to settle. We are ready to make big changes in the way we market our product."

That never would have happened were it not for the judicial system, I am sorry to say. And now we have those who resent that system, the tobacco companies, critics of trial lawyers, who say, "Isn't it a shame that this happened the way it did. We are going to rewrite history. We are going to change the terms for these attorneys."

We cannot let them do it because, ladies and gentlemen, we do not know where the next argument is going to be and where the next case will be. These were 42 cases brought on behalf of 42 different States. In my home State of Illinois, Attorney General Jim Ryan, a Republican, a man I admire for the courage in filing this lawsuit, stood up for our taxpayers. Michael Moore in Mississippi was the man who initiated that action.

And now we come to the question, Are we going to close the door in the future to this opportunity? Which will be the group that wants to take on the tobacco companies? How will they muster the resources? How will they put together the lawsuit and the case law to prevail? If this amendment passes, we are tying their hands. We are saying to them that in the future you will not have the same chance as these 42 different attorneys general.

That is fundamentally unfair. To do this and tie the hands of the plaintiffs' attorneys, the attorneys representing the people, while saying that the tobacco lawyers can continue to rake it in, millions of dollars deceiving, millions of dollars defending, that is fundamentally wrong. I stand in opposition to this amendment.

We have an important bill here, a bill that can reduce the number of deaths in America from tobacco. It is a shame that we are diverted now in a battle against trial lawyers. This should be a battle against the tobacco company tactics that lure our children into a nicotine addiction, which for one out of three of them means an early grave. That is what this bill is really about. It is not about lawyers. It is about our kids. I sincerely hope my colleagues on both sides of the aisle will join me in opposing this amendment.

I yield back the remainder of my time.

Mr. CONRAD. Mr. President, I thank the Senator from Illinois for his really superb presentation. He makes many important points about what this amendment is about. I just want to direct my final remarks to those who may think, as I do, that some lawyers are in line for unjust enrichment. I tell you it makes my blood boil to hear



lawyers in Texas may get \$2 billion. That is outrageous. That is unconscionable. I do not believe it is going to happen. That matter is on appeal.

In Florida, when the lawyers there submitted bills like that, the court said it was unconscionable and told them to forget it. That is what every State court ought to do when presented with unconscionable claims by lawyers in these cases.

I have to say to my colleagues who are thinking about voting for this amendment, you are going to have to be able to go back home and justify the Senate of the United States saying \$4,000 an hour is OK. I do not believe it is. I do not believe you can justify going back home and saying, yes, I voted for an amendment that would provide \$4,000 an hour for any case filed before 12-31 of 1994. I do not think people in my State would think the Senate ought to say, well, \$4,000 an hour is OK for every case filed before 12-31 of 1994. Boy, I tell you, the best lawyers in my State bill about \$150 an hour. And now we would be saying, well, in a tobacco case, if you just happened to file before this magical date of 12-31-94, you get \$4,000 an hour. And the Senate has said that is OK. Boy, I tell you, I think that would be a profound mistake.

Let me just say the Senator from Illinois is also correct; there are circumstances where some of the limits are not enough. The \$500 an hour which is provided for in this amendment for cases filed after 6-15 of 1998 may be too little. If we discover, going through the documents, that there is some new legal theory to take on the tobacco industry but we say to firms across America you are limited to \$500 an hour when you do not have any idea whether you are going to win or not and you may have to put millions of dollars into making the case and then the Senate, in its wisdom, says you are limited to \$500 an hour, that is probably too little. What law firm is going to take the case?

And then, as the Senator from Illinois has pointed out, interestingly enough, this amendment applies to one set of lawyers, the lawyers for the people who are hurt by these products. The lawyers for the families of somebody who has contracted cancer or has lung disease or has heart disease, they are limited but the tobacco industry lawyers are not. And the bizarre thing is the limits that are put on here may well be far too much. I really cannot see justifying \$4,000 an hour. I don't know how that gets justified. And \$2,000 an hour if you filed between 12-31-94 and 4-1-97; \$1,000 an hour for actions filed before 4-1-97 and 6-15-98, those are pretty fancy numbers where I come from. So I just think this amendment is a mistake and ought to be rejected by our colleagues.

I thank the Chair and yield the floor.

Mr. McCONNELL. Mr. President, I rise today to speak, yet again, on the issue of limiting tobacco trial lawyer fees to a reasonable level.

Unfortunately, the Senate has repeatedly refused to limit the fees to a reasonable wage. And, now we are forced to consider an amendment to allow tobacco trial lawyers to earn as much as \$4,000 an hour!

But—Mr. President—\$4000 an hour is better than the alternative and it's about all we have left. We've tried to cap the fees at a reasonable level, and that's been rejected. A cap of \$4000 an hour is our last alternative. If we fail to pass the Gorton amendment, then we will be allowing attorneys to make as much as \$88,000 an hour!

Let me remind my colleagues of how we got to \$4000 an hour. First, we tried to limit the fees to \$250 an hour—nearly 50 times the minimum wage. This attempt was soundly rejected by the Senate. \$250 an hour was simply not enough for the trial lawyers.

So, Senator FAIRCLOTH, Senator SESSIONS and I got together to regroup and try again. We discussed how much is enough for the trial lawyers? \$500/hour? \$750/hour?

We debated these amounts—and frankly—it turned our stomachs to think about the federal government approving a bill to give tobacco trial lawyers \$500 an hour or \$750 an hour. Especially when you consider that the average lawyer in America only earns about \$48 an hour and the average doctor only earns about \$100 an hour.

But, we knew that it would be difficult to get the friends of the trial bar to agree to any limit at all. So, we held our noses and introduced a new amendment to cap the lawyer fees at \$1000 an hour! Surely, \$1000 an hour would be considered a fair wage for the trial bar.

Mr. President, was \$1,000 an hour enough for the friends of the trial bar? No, absolutely not. They needed much more. They wanted to maintain the status quo. They wanted the Senate to keep the National Trial Lawyer Enrichment Bill intact.

The friends of the trial bar wanted us to continue to allow: lawyers in Minnesota to earn \$4,500 an hour; lawyers in Florida to earn \$7,000 an hour—assuming of course that these Florida lawyers worked 24 hours a day for three-and-a-half years; lawyers in Mississippi to earn \$10,000 an hour; and lawyers in Texas to earn \$88,000 an hour.

So, we tried to cap the fees at \$1000 an hour and we lost 50-45. We got closer, but still not enough.

So Senator GORTON has put together a comprehensive outer-limits amendment that says—\$4,000 an hour is better than \$88,000 an hour. Surely, we can get 51 Senators to agree to that notion.

Now, let me take a minute to address two or three issues raised by the proponents of unlimited billionaire fees for trial lawyers.

Billionaire Lawyer Argument No. 1: "We're just businesspeople, like anybody else".

First, Senator DASCHLE argued a few days ago that the Senate should not limit plaintiff's lawyer fees because

"[a] lawyer is a legal businessperson." So, Senator DASCHLE is effectively arguing that we should no longer see lawyers as lawyers, but rather we should see them as businessmen and venture capitalists—a few good men looking to make a buck.

With all due respect, I could not disagree more. Lawyers are not supposed to be businessmen and businesswoman out to make up a buck. It is this type of make-a-buck-at-any-cost mentality that drives so much wasteful and frivolous litigation in our society. Too often, litigation is about enriching the lawyer, not compensating the client.

Mr. President, every first-year law student is taught that he or she is not some businessperson out to make a buck. I remember my days in law school where our professors taught us that we were supposed to be fiduciaries—representing the interests of our client, not our own selfish, profit-making interests.

In fact, legal ethics prohibit attorneys from charging fees that are not "reasonable." As Professor Lester Brickman explained in today's Wall Street Journal: "If the standard of reasonableness has any meaning, it is surely violated by fees of tens of thousands of dollars an hour?"

Moreover, Professor Brickman concluded:

The public has a compelling interest in preserving legal ethics, including the rule that fees must be reasonable. The higher the fees tort lawyers get, the greater the share they take of injured clients' recoveries. Moreover, the higher the fees, the more tort litigation and the more costs that are imposed on society. The civil justice system, which generates the fees that Mr. Daschle does not want curbed, exists to serve citizens. Lawyers are not businesspeople; they are professionals entrusted with the people's businesses.

So, Mr. President, every lawyer in America knows that he or she has no constitutional right to charge excessive and unreasonable fees. We must pass the Gorton amendment as our last best hope of ensuring that the fees get somewhere near reasonable and rational.

Billionaire Lawyer Argument No. 2: "Private Contracts Can Never Be Altered".

Second, the proponents of unlimited lawyer fees argue that the federal government cannot interfere with private contracts in any way, shape or form.

This argument is absolutely nonsensical. The tobacco bill is full of provisions that may force tobacco companies to abrogate contracts with retailers and advertisers—among others. The Supreme Court has made clear that "Congress may set minimum wages, control prices, or create causes of action that did not previously exist."

Furthermore, the Court has made clear that private parties may not preempt governmental action by simply entering a contract. Can you imagine if every time that we passed a new minimum wage law, we exempted all employers who have a previous contract



with their employees to pay at a level lower than the new minimum wage? Can you imagine the outcry in the Senate if we exempted private parties from a new minimum wage law whenever those parties had a contract "pre-empting" Congressional action?

I also find it curious that my colleagues on the other side of the aisle argue on the one hand that the right of contract is inviolate and above Congressional action—yet on the other hand, argue that the right of contract may be violated by some unknown arbitration panel.

So, the friends of plaintiffs bar argue that an unknown arbitration panel may modify contracts, but the United States Senate—the elected representatives of the people—may not modify fee contracts.

Which one is it? Can we adjust these contracts or can we not adjust contracts? Mr. President, we can't have it both ways. We can't say out of one side of our mouths that the fees and contracts can be adjusted by an arbitration panel, and then say out of the other side of our mouth that the fees and contracts are a done deal and may not be adjusted by Congressional action.

The bill as currently written says that all types of contracts can be adjusted by this sweeping federal regulatory bill. In particular, the bill says that lawyer fee contracts can be adjusted by an arbitration panel.

So, frankly, I am tired of hearing that contracts cannot be adjusted and that fees cannot be made reasonable. If we are giving the arbitration panel the ability to adjust contracts and fees, then it is perfectly consistent to establish a fee ceiling and a frame of reference for adjusting these contracts and fees.

Billionaire Lawyer Argument No. 3: "\$4,000 Is Too Generous":

I was amazed this morning to hear those who carry the water for the trial bar arguing that \$4,000/hour is too much money for their friends to earn. Yes, Mr. President, you heard me right. Some of the friends of the trial bar are now arguing that \$4,000 an hour is too much money for the trial bar.

So, let me get this straight. \$250 an hour is not enough money for the lawyers. But, \$4,000 an hour is too much money for the lawyers.

What about something in between \$250 and \$4,000? Oh, say, \$1,000 an hour. What about \$1,000 an hour as a midpoint? Oh wait a minute, the Senate rejected that amount to.

So \$250 an hour is not enough. \$4,000 an hour is too much. And, \$1,000, I suppose, just doesn't feel right.

If \$4,000 an hour is too high, then what is \$88,000 an hour?

I'll tell you what \$88,000 an hour is—it's how much money we are going to allow the attorney general to pay the lawyers in Texas if we don't pass the Gorton amendment.

We must pass the Gorton amendment. It deals with every possible per-

mutation and takes into account any variation in degrees of risk assumed by the plaintiffs' lawyers.

It provides a cap of \$4,000 an hour for all the attorneys who suited up and led the fight to kill tobacco in the earliest stages of the war.

It provides a cap of \$2,000 an hour for those who signed up when the war was coming to a close in the national settlement last spring and summer.

It then provides a cap of \$1,000 an hour for any lawyer who ran onto the battlefield after the settlement was signed, and a cap of \$500 an hour for all lawyers who will rush straight to the courthouse as soon as we pass this fee cap.

Senator GORTON has covered the waterfront here. I hope that we can pass this amendment as the last best hope for a fee cap.

Mr. FAIRCLOTH. Mr. President, I am shocked that the Senate rejected two prior attempts to limit these attorneys' fees, and I am amazed that we are here to debate whether a four thousand dollar per hour cap is enough for the trial lawyers.

Over the past few days, a number of constituents asked me how we could possibly condone paying these lawyers more than 250 dollars per hour, which was the rate in my original amendment.

Where I come from, Mr. President, 250 dollars is an incredible amount of money. That is a weekly wage for a lot of working people. These are the same working people, I might add, whose taxes we are raising to pay these lawyers' fees. This bill is an unparalleled transfer of wealth from the poor to the super-rich.

My constituents were upset about 250 dollar per hour and 1000 per hour payments to lawyers, but I explained that the Texas lawyers expect to make ninety-two thousand dollars per hour, and my constituents enthusiastically agreed that these caps were better than ninety-two thousand dollars per hour. The Texas lawyers have already been paid ninety million dollars and expect more than two-point-two billion dollars more.

In fact, the Attorney General of Texas is so intent on paying them their two-point-three billion dollars in fees that he filed a lawsuit against the Governor because the Governor tried to intervene on behalf of the taxpayers who will foot the bill. Yes, the taxpayers, because the Attorney General admitted to the New York Times on May 27 that part of the attorneys' fees will come from the Federal Government.

It is a betrayal of the American people, the taxpayers, to raise their taxes to pay lawyers four thousand dollars per hour. That's more than most families make in a month. That is outrageous. Working Americans—people scraping to pay the mortgage—being asked to pay for more luxury houses and yachts for billionaire trial lawyers. It's an abuse of the taxpayers. Yes, the taxpayers, that's what the Texas Attorney General said.

It is important to note that this is a cap, not a flat fee, so few lawyers should expect to be paid at the top end of these categories. The amendment limits the number of cases that fall within the top category to just a handful. That is a critical distinction, Mr. President, and one that makes this amendment more attractive to those of us shocked by these numbers.

However, as the Senate rejected my previous two amendments to limit fees, I have no alternative but to vote for these higher dollar numbers. These outrageous numbers are testament to the strength of the ultimate Washington special interest, the special interest most inclined to put personal interest above national interest, the trial lawyers.

Mr. President, I will vote for this amendment, but I do so only because some limitation is better than no limitation on these predatory and, I might add, unethical attorneys' fees payments.

Mr. LEVIN. Mr. President, I cannot support the Gorton amendment. This amendment would create a complicated, bureaucratic and arbitrary set of criteria for establishing payments to the plaintiffs' lawyers while leaving the fees of the tobacco companies' lawyers without restriction. The amendment would set forth unusually high hourly amounts for attorneys' fees which could lead to higher payments. The underlying legislation establishes a preferable process by setting up a three-person arbitration board to resolve disputes regarding the attorneys' fees. The board would have a representative of the plaintiff, a representative of the attorney, and a third party chosen jointly by those two arbitrators.

Mr. KENNEDY addressed the Chair.

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

Mr. KENNEDY. Mr. President, as I understand, we have an order for adjournment at 12:30?

The PRESIDING OFFICER. The Senate is to adjourn at 12:30.

Mr. KENNEDY. I ask unanimous consent that we might extend that for 7 minutes.

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

Mr. KENNEDY. I thank the Chair.

Mr. President, as Senator DURBIN and Senator CONRAD have pointed out, the current amendment is not really about saving money for the States. The amendment is one more backhanded attempt to protect the tobacco industry. It is the third amendment offered on attorneys' fees. The prior two were rejected by a substantial majority. It is a transparent effort to distract attention from the enormous public health issues on which the American people want us to focus. Let's defeat this amendment and turn our attention to stopping youth smoking.

The Senate has debated this landmark youth smoking reduction bill for

a month. Each of us has had an ample opportunity to state our views. The Senate should commit to vote on final passage this week. We owe it to the children who are being entrapped into a life of addiction and premature death by the tobacco industry every day.

The opponents of this legislation have used every parliamentary tool at their disposal to extend the debate and divert attention to an unrelated issue. They want to talk about every subject but the impact of smoking on the Nation's health. However, the real issue cannot be obscured by their verbal smokescreen. It is time for us to move from talking to voting. Each day that the opponents delay final Senate passage of the bill, 3,000 more children begin to smoke and a third of these children will die prematurely from lung cancer, emphysema, heart disease, and other smoking-caused illnesses.

Each day that we delay, the price of a pack of cigarettes will continue to be affordable to the Nation's children and more and more of them will take up this deadly habit. And each day that we delay, tobacco will continue to target children with billions of dollars in advertising and promotional giveaways that promise popularity, excitement, and success for young men and women who start smoking. Each day that we delay, millions of nonsmokers will be exposed to secondhand smoke. According to the Environmental Protection Agency, secondhand smoke causes 3,000 to 5,000 lung cancer deaths each year in the United States—more than all other regulated hazardous air pollutants combined. Secondhand smoke is also responsible for as many as 60 percent of cases of asthma, bronchitis, and wheezing among young children.

Each day that we delay, tobacco will remain virtually the only product manufactured for human consumption that is not subject to federal health and safety regulations, despite the fact that it causes over 400,000 deaths a year.

Preventing this human tragedy should be the Senate's first order of business. With so much at stake for so many of our children, it is truly irresponsible for the opponents of this legislation to practice the politics of obstruction. Let the Senate vote.

The public supports this bill overwhelmingly, despite the tobacco industry's extravagantly funded campaign of misinformation.

A new poll released this morning shows that the American people want the McCain bill to pass by a margin of two to one; 62 percent support the legislation, while only 31 percent oppose it. The American people can see through the tobacco industry's smokescreen, why can't the Senate?

The same survey shows that the public knows who will be responsible if the McCain bill does not pass. By a 2½ to 1 margin, the American people say the Republicans in Congress will be most responsible if the bill dies. By a similar margin, voters say they would be more likely to vote for a candidate who supported the McCain bill, and less likely to vote for a candidate who opposed it.

This bill will do an effective job of providing that protection for our children. It will save 5 million of today's children from a lifetime of addiction and premature death. It contains a series of strong provisions that have withstood repeated attempts to weaken them:

It contains a substantial price increase to keep children from starting to smoke.

It gives the FDA strong authority to regulate tobacco like the drug it is.

It has tough restrictions on advertising, to stop tobacco companies from cynically targeting children.

It contains a strong lookback provision that requires large additional payments by tobacco companies if they fail to meet the targets in the bill for reducing youth smoking in the years ahead.

It gives no immunity from liability to the tobacco companies for the illnesses they have caused.

We can reach a reasonable accommodation on how best to protect tobacco farmers, and how best to use the revenues obtained from the tobacco industry. There is no excuse for further delay. The Senate should pass this bill this week, and send it to the House. Senators who refuse to act will pay a high price for abdicating their responsibility.

Mr. President, I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I ask unanimous consent that we postpone the recess for 5 minutes.

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

Mr. GORTON. Mr. President, in an informal discussion with the Senator from North Dakota, each of us has expressed a hope that we may be able to vote on my amendment shortly after the recess and perhaps after the official photograph of the Senate. I will simply summarize arguments that the Presiding Officer has made so eloquently on each of the amendments on this subject that has been before us and that I made earlier.

It does seem to me curious that the two opponents of the amendment made dramatically opposite statements in opposing this amendment. The Senator from North Dakota said in spite of the clear language of the amendment, that instead of a ceiling of so many thousands of dollars an hour, depending on when the litigation began that is the thrust of my amendment, that, in fact, it will be considered a floor.

One can take that position only by not reading the amendment and all the considerations that are included in it, but he was afraid that it would mean in many cases we would be paying too much.

The Senator from Illinois felt it was terrible to limit lawyers even to \$4,000 an hour, because many of them had made agreements under which they would get more. And indeed, as the Presiding Officer said in response to a question from me, we already have one example of one set of attorneys already

being awarded well over \$2 billion for representing one State, the State of Texas, in litigation of this sort and the attorney general of Texas bitterly opposing the attempt by the Governor of Texas to get a more reasonable set of attorneys' fees.

We want to end those debates, and the adoption of this amendment will end those debates, because it will provide a ceiling, I think a highly reasonable ceiling. In fact, I had some of my colleagues tell me privately that they don't like my amendment because it is too much. They can't explain even these amounts. In the abstract, that, of course, is the case, but as against \$2.3 billion, as against many of the contingent fee agreements, one can explain these limitations and they are just that; they are ceilings and not anything else.

For those who feel that the sky should be the limit, that no matter how many billions of dollars attorneys have contracted for, no matter how much they have pled with us to pass this legislation, no matter how much minute regulation they are asking us to impose on every aspect of the tobacco industry—the farmers, the manufacturers, the wholesalers, the retailers—more regulation than the Congress of the United States has ever imposed on any other legal business in history, that, nonetheless, one aspect of the contracts between States and other plaintiffs and their lawyers should be entirely free of any concern on our part whatsoever.

Mr. President, I just can't see how anyone can justify this bill, hundreds of pages of detailed regulations, and say nothing about attorneys' fees other than an arbitration in which the only people represented are the plaintiffs' lawyers and the plaintiffs who have signed the contracts in the first place. No, that is not balance; that is not fair.

As the Presiding Officer knows, I disagreed with his previous amendment because it seemed to me that there were certain circumstances under which it was too low. I think we ought to do justice to lawyers who have done an extraordinary job, who have in some cases come up with new theories and have been successful with those theories, but I think we have the right to say enough is enough. This amendment, Mr. President, says enough is enough. And in the future, when tobacco litigation will be very, very easy, a much smaller enough is going to be enough.

Probably the long-term result of this amendment would be not dissimilar in the total amount of attorneys' fees paid from the Faircloth amendment that came so close to adoption late last week. This amendment, however, would see to it the lion's share of those recoveries would go to the attorneys who actually earned them and not those who have gotten in very late.

I commend this to my colleagues, both Republicans and Democrats, as being reasonable and as being something that should be a part of any overall pattern that we pass, and that is to put us at the heart of the whole debate over tobacco. If we can regulate everyone else, we can regulate the attorneys. We do it fairly in this amendment, and I trust as soon as we come to an agreement on the time it will be voted on, that it will be adopted and we can go on to other important developments in this bill.

#### RECESS UNTIL 2:15 P.M.

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, at 12:38 p.m., the Senate recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the President Pro Tempore.

Mr. LOTT addressed the Chair.

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

#### OFFICIAL PHOTOGRAPH OF THE 105TH CONGRESS

Mr. LOTT. Mr. President, for the information of all Senators, if they would go ahead and be seated if they are in the Chamber—I note that there are a number of our colleagues who are still not here—we will go into a quorum call momentarily to allow Senators to reach the Chamber and be seated.

Also, those who are here, I want to note that the camera is located in this corner over to your right. So I ask that all Senators turn their chairs toward the camera. We need to be able to see the camera. The photographer will then take eight pictures, so there will be eight flashes.

Once we get started, it should not take very long. But it would be helpful if the Senators who are in the Chamber would take their seats so that when the others arrive we will be able to go straight to the pictures.

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

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. LOTT. Mr. President, if all Senators would take their seats, we could get a more accurate count of who might be absent.

I also want to note once again, as I did earlier, the camera that will be taking the picture is over my right shoulder here in the corner. If both sides of the aisle would adjust chairs where you can see the camera, we could get a good shot. The photographer will take 8 pictures with 8

flashes. Once we get all Senators in their chairs, it shouldn't take but just a few minutes to get that done.

After the photograph is taken, we will go, I believe immediately without any intervening debate, to a vote on the Gorton amendment. Then we will go to the next Democrat amendment.

Those of you that are due to be at a bill signing ceremony about 3 o'clock should be able to make it. If all Senators would take their seats we should be ready to go momentarily.

I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDENT pro tempore. Without objection, it is so ordered.

#### RECESS

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate stand in recess subject to the call of the Chair.

There being no objection, the Senate, at 2:26 p.m., recessed until 2:31 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. COATS).

#### NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The Senate continued with the consideration of the bill.

##### AMENDMENT NO. 2705, AS MODIFIED

The PRESIDING OFFICER. The pending question is the Gorton amendment, No. 2705, as modified.

Mr. LOTT. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. They have not.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays are ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mrs. BOXER (when her name was called). Present.

Mr. LOTT (when his name was called.) Present.

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

The result was announced—yeas 49, nays 48, as follows:

##### YEAS—49

Abraham	Dodd	Hutchinson
Allard	Domenici	Hutchison
Ashcroft	Dorgan	Inhofe
Bond	Enzi	Kempthorne
Brownback	Faircloth	Kyl
Burns	Frist	Lieberman
Byrd	Gorton	Lugar
Campbell	Gramm	Mack
Chafee	Grams	McCain
Coats	Grassley	McConnell
Collins	Gregg	Murkowski
Coverdell	Hagel	Nickles
Craig	Helms	Roberts

Santorum  
Sessions  
Smith (NH)  
Smith (OR)

Snowe  
Stevens  
Thomas  
Thompson

Thurmond  
Warner

##### NAYS—48

Akaka	Feinstein	Leahy
Baucus	Ford	Levin
Bennett	Glenn	Mikulski
Biden	Graham	Moseley-Braun
Bingaman	Harkin	Moynihan
Breaux	Hatch	Murray
Bryan	Hollings	Reed
Bumpers	Inouye	Reid
Cleland	Jeffords	Robb
Cochran	Johnson	Rockefeller
Conrad	Kennedy	Roth
D'Amato	Kerrey	Sarbanes
Daschle	Kerry	Shelby
DeWine	Kohl	Torricelli
Durbin	Landrieu	Wellstone
Feingold	Lautenberg	Wyden

##### ANSWERED "PRESENT"—2

Boxer Lott

##### NOT VOTING—1

Specter

The amendment (No. 2705), as modified, was agreed to.

Mr. MCCAIN. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

##### EXPLANATION OF VOTE

Mrs. BOXER. Mr. President, I wish to inform the Senate of the reason I voted "present" on the Gorton amendment related to limits on attorneys' fees in tobacco cases.

I abstained on this vote because my husband's law firm is co-counsel in several lawsuits against tobacco companies filed in California state court by health and welfare trust funds.

The Ethics Committee has advised me that voting on an amendment such as this "would not pose an actual conflict of interest" under the Senate Code of Conduct.

However, I decided that this vote could create the appearance of a conflict of interest and therefore I abstained by voting "present."

##### EXPLANATION OF ABSENCE

Mr. DURBIN. Mr. President, I would like to take a moment to explain my absence during vote number 159 last night. I was returning to Washington from Chicago when the airplane I was on was delayed by weather problems. While the vote was going on, the plane was in the air over the Washington area as we waited for the airport to reopen so that we could land.

Had I been present, I would have voted 'nay' on the motion to table the Reed amendment to the tobacco bill. I am a cosponsor of the Reed amendment and I believe it should be part of the final tobacco legislation.

The tobacco industry has been targeting kids with its advertisements and marketing gimmicks for far too long. The tobacco bill would re-promulgate the FDA's regulations, currently on hold, that seek to restrict tobacco advertising and marketing that appeals to children.

The Reed amendment adds new teeth to the restrictions by linking each tobacco company's tax deduction for advertising expenses to its compliance

with the regulations. As long as a tobacco company obeys the law and complies with the FDA regulations, the company can continue to deduct its expenses for permissible advertising. But, under the Reed amendment, if a tobacco company violates these restrictions, the company's privilege of deducting its advertising expenses for tax purposes would be lifted for all of its advertising expenses for the year in which the violation occurred.

This amendment, as with the look-back amendment, is about accountability. If a tobacco company decides to try to skirt the FDA regulations, to keep advertising or marketing in ways that appeal to children, that company will face not just a regulatory action by the loss of its advertising deduction. With this amendment, taxpayers will no longer help foot the advertising bill for companies that continue to market to children. Tobacco companies will no longer get a tax break for advertising expenses if any of the company's advertising violates the FDA's regulations for protecting children.

It's a simple amendment with a simple point. Its message is that we are serious when we say to the tobacco companies: no more advertising to children. This amendment deserves the support of the Senate.

Mr. MCCAIN addressed the Chair.

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

Mr. MCCAIN. Mr. President, the Senator from Kentucky has been waiting very patiently to propose his amendment. I just want to sum up what we just passed here, and I think it is very important.

We passed limits on attorneys' fees of \$4,000 per hour for actions filed before 12-31-94; \$2,000 per hour for actions filed between 12-31-94 and 4-1-97; \$1,000 per hour for actions filed between 4-1-97 and 6-15-98; and \$500 per hour for actions filed after 6-15-98.

Before the Senator from Washington leaves the floor, I would like to thank him for his amendment. I thank him for his persuasive arguments in a very close vote. Obviously, it was the effort of the Senator from Washington that tilted the vote in favor of this amendment, albeit by one vote. So I express my appreciation to the Senator from Washington.

Mr. President, I just go on to say, it does not apply to any fees paid to attorneys that are defending tobacco companies. It does not apply to any fees actually remitted and received by an attorney before 6-15-98, nor to reimbursement of actual out-of-pocket expenses approved by a court in such actions.

It applies to all actions brought on behalf of a State or political subdivision, the Castano civil actions, and all tobacco actions brought on behalf of private litigants that are settled or "finally resolved" after June 15, 1998.

It directs the courts to consider the following factors in determining an at-

torney's fee as: likelihood of success; time and labor invested; expenses incurred; novelty of the legal issues involved; skill required to prosecute the action; and results obtained.

It permits the tobacco companies to petition to reduce fees that they had already agreed to pay to plaintiffs' attorneys in the States that have already settled.

Mr. President, I think it is an important amendment. I do believe that my friend from Massachusetts would agree with me that really it is as outstanding as the agricultural issue, the farmers issue.

We can go through iterations—and there are maybe hundreds of amendments filed—but except for the agriculture issue, we have pretty well resolved the outstanding issues that are associated with this legislation. And I would like to first express optimism that we can address that issue. I still hope we can reach a compromise between the two—the LEAF Act and the so-called Lugar Act. But in addition to that, I believe that we can invoke cloture and dispense with this bill this week.

I thank my colleagues for their cooperation, and I yield the floor.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, let me say on behalf of my colleagues, that with respect to the last amendment, their vote was a reflection, I know, of grave concerns on our side of the aisle about the Senate putting its stamp of approval on a \$4,000-per-hour fee.

Some may think that is a fee that they are willing to attach automatically based on a date, but I think a lot of people felt very strongly that the independence of the judiciary and its capacity to be able to analyze according to the very same standards in the Gorton amendment—the Gorton amendment borrowed from our bill each of the categories of evaluation that would be applied by the courts. So in effect, they are really mandating an outcome which may or may not fit for one case or another case.

I know I heard colleague after colleague suggest to me that, as a Senator, they did not want to approve of a \$4,000-an-hour fee. So that is the distinction here. Some were willing to put their approval on it; some were not. But the fact is, the amendment carried by one vote, and that is the will of the Senate.

We now find ourselves—I want to express my agreement with the Senator from Arizona—we have traveled a 3-week journey, and we have waded through the most difficult issues. The closeness of the votes on some of them clearly indicates the difficulty of trying to come to agreement, but nevertheless, the Senate has spoken on those.

We have resolved the most significant issues—the liability issue, the question of look-back amendments.

The bill was strengthened in those regards. We resolved the marriage penalty. Again, for some, the bill was strengthened by providing a certain component of a tax cut and a drug program. So those are the fundamental components of this legislation—together with an FDA regulatory process that is essential to the capacity to deal with tobacco.

Therefore, that brings us to the point now where the Senator from Kentucky is about to tackle the really last tough issue with respect to this legislation. Speaking on behalf of the Senators on our side of the aisle, there are more than 40 Senators that I know of prepared to vote for this legislation now. More than 40 Senators are prepared to vote to end debate now, and more than 40 Senators are prepared to vote for the legislation in order that we can move it to the House and ultimately to a conference.

So the real test before the Senate this week is the test of whether or not the members of the Republican Party are going to join those 40 to create the critical mass necessary to pass tobacco legislation. If we pass it, it will be because we come together as a Senate. If we fail to pass it, it will be because the Republicans decided they did not want to pass it. Given the number of Democrats in our caucus—45—to have more than 40 prepared to vote now on a bill is significant.

So that is where we find ourselves. I hope that in the next hours we will resolve the farm issue satisfactorily. To the degree there are any amendments left on the Democrat side, we are prepared to enter very short time agreements if indeed there will be those amendments. So we have the ability on this side of the aisle to move rapidly; not to tie up the Senate in knots, but to pass competent tobacco legislation. And it is my fervent hope that in the interests of the last 3½ or 3 weeks-plus, and the several years of labor that has been engaged in by a number of different people in the Senate before this bill ever came to the Commerce Committee, that we would be able to do that. I think the Senator from Arizona shares that hope.

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, I say very briefly that what the Senator from Arizona and the Senator from Massachusetts have said is exactly on point. We really now have one major outstanding issue, and that is the question of how tobacco farmers are treated in this legislation. Hopefully, that could be resolved in a way that would be acceptable to both sides.

We understand discussions are under way, and we hope that they could be concluded. But really that is the one major issue left. Then we get on to a whole series of amendments that many Senators would like to offer. I can say for myself I have a number of amendments pending that I am willing to

withhold in the interest of advancing this legislation.

I have had lots of colleagues come to me this morning and say they, too, would be willing to withhold their amendments if that would advance actually reaching conclusion on this bill. We are in the fourth week. We have dealt with contentious issue after contentious issue. Now is the time to reach conclusion. I urge our colleagues on both sides, if they can, withhold amendments that they have pending so that after the farmer issue is resolved we can move to final passage.

I thank the Chair, and I thank my colleagues who have been so patient.

The PRESIDING OFFICER. The Senator from Kentucky.

AMENDMENT NO. 2707 TO AMENDMENT NO. 2437

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD] proposes an amendment numbered 2707 to amendment No. 2437.

Mr. FORD. I ask unanimous consent reading of the amendment be dispensed with.

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

The amendment is as follows:

At the end of the amendment, insert the following:

**SEC. . INAPPLICABILITY OF TITLE XV.**

The provisions of Title XV shall have no force and effect.

**SEC. . ASSISTANCE FOR PRODUCERS EXPERIENCING LOSSES OF FARM INCOME.**

(a) IN GENERAL.—Notwithstanding any other provision of this Act, from amounts made available under section 451(d), the Secretary of Agriculture shall use up to \$250,000,000 for each of fiscal years 1999 through 2004 to establish a program to indemnify eligible producers that have experienced, or are experiencing, catastrophic losses in farm income during any of the 1997 through 2004 crop years, as determined by the Secretary.

(b) GROSS INCOME AND PAYMENT LIMITATIONS.—In carrying out this section, the Secretary shall, to the maximum extent practicable, use gross income and payment limitations established for the Disaster Reserve Assistance Program under section 813 of the Agricultural Act of 1970 (7 U.S.C. 1427a).

(c) EFFECT ON OTHER PAYMENTS.—None of the payments made under this section shall limit or alter in any manner the payments authorized under section 1021 of this Act.

Mr. FORD. Mr. President, we will discuss this amendment, I am sure, at great length. We have here a system for producers who are experiencing farm income loss which we feel is only fair and will help farmers all across the country.

Members have heard two of our distinguished colleagues and the chairman of the Commerce Committee saying that they hope we can move forward with passage of this bill this week. I do, too.

I also want to say I have a lot to say about this amendment I have just of-

fered because it goes to the heart of this bill for me and for my constituents and it deals directly, it deals most directly, with how my constituents are treated. Very briefly, if the quota is removed, you make the tobacco companies another \$1 billion a year. If you remove the tobacco quota, the value of the land in Kentucky to my farmers is reduced up to \$7 billion. A farmer could go to bed tonight having a mortgage that was completely covered by the land he owned or had mortgaged, and we take the tobacco quota away from him and he wakes up the next morning and he doesn't have enough value for that land to cover his mortgage, and his mortgage is called.

So I think it is important that we begin to look at the ramifications of losing the tobacco program as we know it. We have tried to put into this amendment the transition from where we are today as it relates to the tobacco program to what might come in the future if we reduce underage smoking. I am very much for the reduction of underage smoking. Let's put that up front. I have no problem with that. But in the fact of reducing teen smoking or underage smoking, it is pretty tough to put people out of business.

So we will be discussing this amendment for some time. My colleague and friend from Virginia, Senator ROBB—and there will be other Senators on our side—will be supporting this amendment, and I think there will be some Senators on the other side of the aisle who may want to speak, who will be supporting this amendment.

What I do under this amendment is to strike title XV, and that is doing away with the tobacco program and using 69 percent of all the moneys in this bill for health programs, for research, and for child care. It is very, very important not only to the farmers of my State but those health groups. We have 24 health groups in this country that have endorsed the LEAF program. The smoke-free kids—there is a letter on your desk that shows that they support the LEAF Act. ENACT supports the LEAF Act. All farmer organizations, practically, that have some longevity to them support the LEAF Act.

Let me summarize the main reasons why title XV must not remain in this bill. Now, title XV is designed, whether on purpose or not, to save tobacco companies \$1 billion a year. So you get down and the vote ultimately will be: Are you going to vote for the farmers? Are you going to vote for the cigarette manufacturers? Are you going to take \$1 billion off the backs of the tobacco farmers and give that saving to the cigarette manufacturers? Make no mistake, title XV forces Senators to choose between the tobacco companies and the tobacco farmers. Unless we want to save tobacco companies \$1 billion per year at the expense of the tobacco farmer, the motion to strike must be supported.

Now, title X, not title XV, is supported overwhelmingly by a majority

of tobacco farm organizations. I have a list of all those and probably will insert those in the RECORD or read them later. Title XV is not supported by the public health community. The public health community supports the LEAF Act. They support retaining the program. They support keeping control over the growth of tobacco and the prices high. So, it is heartening that the health groups and the tobacco groups have gotten together and signed the core principles. Those core principles are to reduce underage smoking, to keep the tobacco program. All these principles are out there.

If this motion passes, the public health programs and health research programs in this bill, if my amendment passes, we save 69 percent of all the moneys that would go into the health research and development. Title XV eats up 47 percent of the funds in the bill over the first 3 years. Title XV, known as the Lugar-McConnell amendment, already has an amendment at the desk, and that amendment says that all the money in this bill, up to 47 percent, will go to that program in the first 3 years. So 40 percent to the States, 47 percent to this program; that is 87 percent of all the money. Where are you going to get the marriage penalty? How are you going to do the drug amendment that Senator COVERDELL put up?

So, we will talk about how title X was developed. I think my colleague from Virginia wishes to make some remarks.

**PRIVILEGE OF THE FLOOR**

Mr. FORD. Mr. President, I ask unanimous consent that Rob Mangas and Dave Regan be admitted to the floor during debate and vote of this amendment.

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

Mr. ROBB addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ROBB. Mr. President, I rise in strong support of the motion to strike the amendment offered by the Senator from Indiana, title XV. I have a very high regard for Senator LUGAR. He and I have worked closely together on the Foreign Relations Committee, and we have fought to open foreign markets and to promote free trade. I share his tenacious belief in the free market. Harnessing the drive that motivates individuals to succeed yields the benefits of a free market. But government has a role in checking the excesses that can flow from an unfettered free market.

The market won't educate children. The market won't protect workers. The market won't check monopolies. And the market won't safeguard our natural resources. Left completely unchecked, the free market will always seek the lowest cost, even at the expense of other social goals. So our charge, as policymakers in a capitalist economy, is to allow individuals and entrepreneurs and businesses the freest rein possible while safeguarding society's other concerns.

Defining those concerns and implementing those safeguards without destroying the benefits we achieve from the free market is one of the most difficult tasks we face. The Lugar-McConnell provision eliminates the Federal program that limits the amount of tobacco that can be produced in the United States.

Arguments advanced for killing the supply-limiting program center on the desire to see a free market in tobacco. Since the argument is to create a free market, we ought to examine just what benefits we would gain from such a system. Economists estimate that going to a system allowing unlimited production of tobacco would likely increase the amount of tobacco grown in the United States by 50 percent.

This increased supply would cause the price of tobacco to decrease by approximately 30 percent. Without a tobacco program, tobacco could be grown anywhere in the United States, so it is likely that tobacco would be grown in many more States than it is grown in today. That production would migrate from where it exists in many areas today with hilly terrain and small farms to larger, flatter farms.

So the benefits to be gained from going to a free market would be cheaper tobacco, more tobacco production, dislocated communities, and unregulated production. The small farmer would not be able to produce enough volume at the lower price to make the farming operation economical. Without some certainty as to price, it is unlikely that any financial institution would extend the credit so necessary for small farming operations to survive. Therefore, if the tobacco program were to be wiped away, the only true beneficiaries would be large corporate farms and tobacco companies, because tobacco would then become cheaper.

The public health community has increasingly focused on what would happen if we eliminated a program to restrict the amount of tobacco production in the United States and has concluded that the benefits are simply not worth the costs. They note that it would be the height of irony if—in the same bill where we increased the regulation of the manufacture, marketing, advertising and retailing of tobacco—we deregulated the production of tobacco, which is why the public health community, including the Campaign for Tobacco-Free Kids, the American Heart Association, the American Cancer Society, the American Public Health Association, and the American College of Preventive Medicine all support retaining a supply-limiting program.

In fact, these public health groups, and a number of tobacco grower associations, have been meeting for a number of years, which has admittedly intensified since June 20 of last year, to see whether they could find common ground.

I am proud to say that these discussions have been under the auspices of

the University of Virginia and involved a number of growers from Virginia.

From these discussions, the groups were able to agree on a set of core principles. The first of these core principles is that a tobacco production control program, which limits supply and which sets minimum purchase prices, is in the best interests of the public health community and the tobacco producer community.

The public health groups support controls on production because they cannot support what would happen without them: Uncontrolled tobacco production, plummeting tobacco prices, devastated farm families and farming communities, and enormous benefits for the tobacco companies.

Despite the opposition of both the grower community and the public health community, there are those who continue to insist that the market in tobacco must be unfettered and uncontrolled.

The argument for eliminating the supply-limiting program is a philosophical one, focusing on the natural benefits of a free market regardless of the consequences. But the aim of a free market system is to insure that the consumer efficiently gets the lowest-cost product.

We want consumers to be able to get the highest quality, lowest-cost products, like cotton shirts and cereal, and anything else you can think of.

The argument for a free market in cotton, wheat, corn, or any other commodity, is to lower cost to benefit consumers and increase exports. This tobacco legislation, however, is seeking exactly the opposite goal. The very heart of this legislation is to have the Government interfere in the free market by raising prices to reduce consumption.

It is highly ironic that some of those calling for a free market for tobacco voted a couple of weeks ago to have the Government add the cost of \$1.50 to the price of a pack of cigarettes. That is not a free market, Mr. President. In fact, the entire aim of the comprehensive tobacco legislation is to increase the cost to consumers, not decrease them.

Eliminating a tobacco program to achieve a free market system would destroy existing communities and the livelihood of existing farmers without realizing the goal of a free market, which is to increase efficiency and lower costs to the consumer.

There is no other agricultural product that faces this unique situation, where the Government's policy is to increase the costs to the consumer, not decrease them.

Tobacco is simply unlike any other commodity covered by the Freedom to Farm Act. The Freedom to Farm Act did not authorize the Government to run advertisements telling people not to use the farmers' products.

The Freedom to Farm Act did not tax cotton shirts, or cereal, or ethanol to raise the revenues that went to

make the payments to farmers. The Freedom to Farm Act did not limit the Government's ability to open foreign markets.

In short, there are few parallels that can be drawn between the commodities covered by the Freedom to Farm and tobacco, other than that the commodities are all grown by decent, hard-working, dedicated people whose lives are profoundly affected by what we do.

Tobacco is also different in another crucial respect, which bears directly on the question of whether eliminating the tobacco program would in fact produce a free market, which is the stated aim of the proponents of the Lugar-McConnell provision.

A market that is dominated by a limited number of buyers, by definition, is not a free market. And that is the situation with tobacco. There are four buyers in the marketplace who purchase 98 percent of the tobacco produced by our Nation's 124,000 tobacco farmers.

The economists, of course, have a name for such a controlled market. It is called an "oligopsony." According to the Encyclopedia of Economics, "oligopsony exists when a few buyers of a commodity or service deal with a large number of sellers." According to this text, this "situation can lead to tacit collusion among buyers to depress their buying prices generally at the expense of the sellers who supply them." One of the examples they give for an oligopsony is "markets for leaf tobacco."

Webster's New Collegiate Dictionary defines oligopsony as "a market situation in which each of a few buyers exerts a disproportionate influence on the market."

So that is the market that these farmers would face if they had to deal individually with each of the four major buyers. This would not be a free market. This would be a market where the buyers would dictate the price to the sellers and reap the rewards.

In fact, the USDA estimates that by "terminating quotas and phasing out price supports, cigarette manufacturers and leaf exporters are projected to have windfall gains of about \$800 million annually . . . The cigarette manufacturers would continue to receive this windfall over time once the price support system is phased out. Over 25 years, this windfall could amount to \$20 billion or more."

The money the companies save would be money that formerly went to tobacco farmers. Eliminating the program would result in a transfer of money from farm families to cigarette manufacturers of about \$800 million annually.

In the face of all this, why do some still want to eliminate a production controlling program?

One of the arguments I have heard is that tobacco is bad and so the Government shouldn't be involved in it.

Mr. President, this whole bill, however, is about Government involvement in tobacco. It makes little sense to



have the Government involved in controlling every aspect of cigarette making and selling except the production of the key ingredient. The Government is not promoting tobacco, it is restricting it.

A supply-limiting program limits supply. That does not promote tobacco. The fact that farm families benefit from that restriction, in my view, is not a reason to abolish the program, because without the program, it is not the public's health that would benefit, it is the companies'.

There are those who advocate reducing the number of tobacco farmers in this country. Under the LEAF Act, we provide a voluntary buyout, which we believe will encourage but not force tobacco farmers to move to other pursuits. We believe that is a sounder and much more humane approach than the one advocated by proponents of the Lugar-McConnell bill which simply pulls the rug out from under farm families after 3 years and forces them to scramble for survival.

In fact, the comprehensive legislation we are considering is likely to be incentive enough for many farmers to make a transition out of tobacco farming. As consumption falls over time, as counteradvertising mounts, and as economic development funds start creating infrastructure in tobacco communities, there will be migration out of the tobacco fields.

Tobacco farming is hard work, and while it is more lucrative than growing other crops, it does not make the average tobacco farmer rich. In fact, the average farm income of a tobacco farmer is less than \$22,000 a year. If we can create opportunities in tobacco growing communities for children to pursue other paths, that is what we need to do. But that cannot be done in 3 years, and I believe it would be cruel to try.

There are those who support the Lugar-McConnell provision because they foresee the death of the tobacco program. Programs, however, do not die of natural causes. They have to be killed. And those who vote for the Lugar-McConnell provision are voting to kill the program. So do not be fooled by those who vote for the Lugar-McConnell provision saying they support the program while voting to kill it.

Finally, I strongly oppose the Lugar-McConnell provision because I believe it holds out false hope. Under the provision, farmer compensation would be paid out over 3 years. Under the LEAF Act, farmer payments would be paid out over 10 years. In order to make the payout over 3 years, we would have to dedicate over 40 percent of the proceeds from the legislation to farmers during those first 3 years. That 40 percent is more than the share to the States, more than the share to medical research, and more than the share to public health. And when you consider that we have already diverted funds away from these accounts, with the ad-

dition of the Coverdell amendment and the Gramm amendment, the addition of a mandatory 3-year buyout under the Lugar-McConnell provision would collapse this bill's budget.

I urge my colleagues to look at the numbers. In the first year after this bill is approved, the National Tobacco Trust Fund would receive total revenues of \$14.4 billion. Yet, to make the payout over 3 years, as the Lugar-McConnell provision mandates, we would have to spend over \$17.2 billion in the first year. And that is without spending a single dime on medical research or public health programs.

Are those who support the Lugar-McConnell provision willing to take away money from medical research and public health programs to finance a 3-year buyout? Are they willing to eliminate the so-called marriage penalty tax cut or the antidrug programs offered by Senator COVERDELL to pay for this plan? Because voting to retain the Lugar-McConnell provision will make it impossible to fund each of these other programs contained in this bill.

The LEAF Act, in contrast, recognizes the funding constraints of the underlying legislation and would not take funds away from the other programs contained in this bill. This is not to say that I wouldn't very much like to be able to pay the growers over 3 years, and, in fact, a number of us tried to figure a way to get compensation to growers in less than 10 years. Unfortunately, there were simply too many other competing demands on the funds.

In conclusion, Mr. President, I oppose in the strongest terms elimination of controls on the production of tobacco. It would destroy small family farms, decrease tobacco prices, increase tobacco production, and transfer wealth from growers to the companies, all without any discernible benefit to the people.

For these reasons, Mr. President, I urge my colleagues to support the motion made by the Senator from Kentucky, Senator FORD, to strike the Lugar-McConnell amendment and to support the LEAF Act.

Mr. President, I yield the floor.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that my name be added as a cosponsor to the Ford amendment striking title XV.

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

Mr. HOLLINGS. Mr. President, let me harken how we began June a year ago and explain my objection to the procedure.

With respect to a year ago, what really occurred was that the tobacco companies were spending a goodly fortune defending class actions and individual causes of action due to tobacco smoking causing certain injury and death.

These are very responsible companies. They have very responsible boards

of directors. Right to the point, they had the urge to try to regain credibility for their overall operation. Philip Morris, for example, sells not only tobacco cigarettes but, of course, it is into Kraft foods and many other allied endeavors. R.J. Reynolds down in North Carolina is in the Ritz cracker business, plus other different businesses. They were getting pilloried, so to speak, in the courtrooms of America. They were successful. They weren't losing. They had won every case. There was not a jury verdict against a tobacco company. But looking at the bottom line, as good businessmen and operators, they were spending around \$500 million to \$600 million a year in legal fees.

This crowd up here in Washington is worried about trial lawyers. If you really want to get taken to the cleaners, get one of these corporate lawyers. I suggest to the distinguished Chair that if he ever gets into trouble, for gosh sakes, don't get General Motors's lawyer or IBM's lawyer. You had better get a real lawyer who is used to getting in the courtrooms.

This crowd sort of works with themselves on billable hours. That is the ailment that has taken over. The billable hours, the defenses, and all were costing them about \$500 million to \$600 million. More than anything else, it was depressing their stock.

The lawyers themselves had not won any cases. They were moving with the States' attorneys general. So, with the States' attorneys general, they got together. They had been meeting on opposite sides of the table in courtrooms all over America. As I understand it, they got together on an agreed settlement. The agreed settlement would, No. 1, increase taxes.

The reason I emphasize this, Mr. President, is if you go home and turn on your television or listen to the radio, the "scoundrel Congress" up here is the one that is trying to increase taxes on poor America, middle America, and whatever America. There is no suggestion that this idea came from the tobacco companies, the ones who are paying for the advertising, and in a luxurious amount. But this is the reality. The idea of increasing taxes originated with the tobacco companies themselves, in the so-called Global Tobacco Settlement.

I worked with the defense appropriations bill. And that amounts to \$250 billion. When I heard on TV and then later read in the newspaper \$368 billion, I still thought it was a mistake—\$368 billion. I said, "Where in the world would they get all of that money?" Well, if you reasoned out 25 years and so much per year as it goes up, yes, you can get to that amount, or get to \$1.10, as the present Commerce Committee bill now envisions. You get around \$500 billion.

But the real initiative of raising taxes was by the companies themselves—not the squealing, crying, moaning, and groaning on national TV



about, "This terrible Congress is going awry." Not so. They came up and said, "All right, we will put this money up, and for you States and States' attorneys general, what we will do is, we will pay in a good 40 percent of it to the States to take care of the Medicaid costs, the health costs, and everything, as an incidence, a result, of tobacco smoking and ailments and death that was caused by tobacco smoking." So that would take care of the States. The States' attorneys general got together and agreed on that.

Another part of the agreement, of course, was to try to control tobacco smoking and discourage young people from smoking. The children, instead of getting Joe Camel, were getting the adverse ads, the warnings, not just on the pack of cigarettes but on national TV—how injurious to health it could be. We found out in the early 1970s that these negative-type ads worked. We tried it before. I don't know whether the price increase would work. They say in downtown London, where they have a pack of cigarettes at \$4.30 and up, it has not worked with respect to deterring children from starting to smoke.

But in any event, it was good intent, a good purpose, and a good provision that they would do it, and do it in all honesty and sincerity. In fact, to back up their pledge, they hit on the unique "look-back provision." I had never heard of that before in all the years I have been up here. But they had a look-back provision whereby they said, "We will measure it each year with the diminution of tobacco smoking with respect to children," and if they don't comply with a certain percentage decrease each year, they will pay more multimillion-dollar, almost billion dollars, or maybe over a billion dollars, in penalties, penalizing themselves.

There was not any question about the sincerity of the purpose. They had it all worked out. The White House agreed to it. The health community was in conference from time to time on this particular agreement. And it was announced. The first thing that hit this Senator when it was announced was not only the \$368 billion, an enormous amount, but what is in there for the man who is making a living—namely, the tobacco farmer. When the Pilgrims landed here in the earliest of days, they found the Indians, who were smoking tobacco. Are we now going to really have prohibition? No. We tried that once before with alcoholic beverages, and it corrupted the entire society and crime went through the roof. So we learned the hard lesson and repealed that 18th amendment.

Certainly with respect to tobacco smoking and everything else of that kind, we realize there are certain realistic considerations: One, that we are not going to have an embargo or prohibit the production itself; two, that when it comes to advertising, there is that First Amendment right and we are not going to be able to force-feed—the companies have to agree with re-

spect to the limitation on advertising or the agreement to negatively advertise against smoking, those kinds of things, and then the allocation of the money to have to come about with respect to the matter of the States, and not only that, but with respect to the health community. Necessarily, we all want to increase the research out at the National Institutes of Health on the injurious effect of tobacco smoking.

I have had hearings over 30-some years now with the doctors out there at the Cancer Institute, not only on how cancer is caused but how a pack-a-day smoker can rejuvenate the health of his lungs after 5 years and really recover from it if he stops.

I might add, Mr. President, that more people have stopped smoking than are smoking today. I repeat: There are more people who have stopped smoking than are smoking today. So when they get to the victims and the matter of habit forming and addictiveness and everything else, that is a jury question that the jurors of America have never gone along with. They have never gone along with it until this recent verdict down here of a little six-man jury in Florida, and we don't know what will happen with that on appeal. But that is a pretty solid record. We have Senators running up and down knocking over the chairs and desks saying, "Why give this industry immunity?"

Well, Mr. President, the jurors of America, far more savvy with respect to the actual facts before them, have given the tobacco companies immunity—not the distinguished Presiding Officer, not this Senator from South Carolina, but over the many, many years, the jurors, the people of America, have given them immunity because for 33 years we have had an advertisement that they are injurious to your health.

Now, I looked in that global tobacco settlement, and I said wait a minute—something is wrong here. We don't have any provision in there for a large segment of the economy of South Carolina. We have over 2,000 tobacco farms in South Carolina involving some 40,000 jobs with the warehousemen, the equipment dealers and everything else of that kind, with a \$1 billion impact on the communities, veritable tobacco towns. If you want to start Tobacco Road, which we have seen in the Depression, pass this title XV that the distinguished Senator from Kentucky, Mr. FORD, wants to strike. I commend his leadership on this score because he has been in the forefront looking out for an important segment of our society and important communities in my State and his and in the several surrounding States.

How they could get together on an agreement and not even consider tobacco farmers is beyond me. But we were told immediately, oh, no, no, no, no, don't worry about that; we will take care of the farmers. I wondered in

October when the distinguished Senator from Indiana put in the Lugar, what he called transition bill, which is a bankruptcy act—an elimination bill is what it was because in just a 3-year period bam, bam, bam, the farmers would be gone. Nothing for the warehousemen, nothing for the fertilizer dealer, nothing for the community with respect to the bank making the loan or the automobile loan, nothing for various other parts of the society itself, the families to adjust and take care of themselves.

Under the leadership of Senator FORD, the LEAF Act was developed when we saw this particular Indiana initiative. I remember recently seeing where the Attorney General of Indiana, who, incidentally, was in on the original agreement, said, "We had no idea of taking care of the farmer."

Well, that is not what they told us. Everybody said, on both sides of the aisle, in a bipartisan fashion, "Of course, we have got to take care of the farmer," and the White House, along with the Congress itself, said, "Yes, we have got to take care of the farmer."

So the LEAF Act was developed in a studied fashion with respect not only to the holder of the particular quota but the actual farmer who farmed the crop. It took care of the warehousemen. It took care of the fertilizer and equipment dealer. It took care of the communities. And we put it out at the very beginning of the year as an amendment, the LEAF Act.

Of course, when the distinguished Senator from Arizona, the chairman of our Commerce Committee, came to me, he said, "Now, the majority leader has suggested that our committee put out the tobacco agreement as a commerce bill. And I would like it to be bipartisan." I told Senator MCCAIN I would like it to be bipartisan also, but, of course, we had to take care of the farmer. Well, that is the first time I really began to doubt about this "take care of the farmer" because the distinguished chairman of the committee turned to me and he said, "No, we can't put that on." I was wondering why. That was the first time I had ever heard that nobody wanted to take care of the farmer.

When he told me that, I said, "Well, it's going to be very partisan, because I am not going to stand by and let this go through committee, without bringing up this important segment of the economy." Yes, we are trying to stop little children from smoking. Yes, we are trying to take care of those who have been injured from smoking. Yes, we are trying to get research. And, yes, we are trying to control the advertising. But everybody, from the word go in June of last year, said, "We are going to take care of the farmer," and the LEAF Act did. The Senator from Arizona said no, he didn't think he could do that. Several days later, he came back and said, "Yes, you are right, we ought to make it bipartisan, and we will take care of the farmer."

As a result, we spent a marathon session with the staffs of all the Senators involved on both sides of the aisle in the Commerce Committee, the White House, Dr. Koop, Dr. Kessler, and the various entities against children smoking, checking back and forth. There is no question that the distinguished Senator from Arizona did an outstanding job to get a bill that we could all agree upon by a vote of 19 to 1. We did agree on the tobacco bill, and it included the LEAF Act.

As we were ready to bring this bill to the floor, we were given notice that what we ought to do in order to get this bill passed was not to spend too much time with respect to amendments; let's see what amendments are going to carry immediate and recognizable weight and see if we can't agree to put those on now, cut the time involved, because the leader wants to handle this in a couple of days, at the most 3 days, and we have to get together with the White House. We don't want to put in a bill without knowing that it will be approved.

So we did. We had five sessions with the White House—Senator MCCAIN and Senator MACK on that side of the aisle and Senator KERREY and myself on our side of the aisle. We kept meeting with them, and I kept checking with them to guarantee the LEAF Act was intact. I kept asking everybody—not to worry, they told me.

We had those five sessions, the last one being in my own office here in the Nation's Capital. At 4 o'clock it broke up, and about an hour or so later, about 6 o'clock, I heard a rumor about the Lugar bill. I said, "Come on, somebody is way off. They might want to put it on, but it can't be on our Commerce bill."

They said, "No; that's what the leader is going to do."

I said, "How does that occur?"

The bill itself, which is title XV, had one hearing, according to the best check I have made on it. It had one hearing last fall and has not had any hearings since that time, has not had any markup, no committee report, no report out of the committee. It was just an individual Senator's bill—we all will agree, one of the most respected Senators and one of the most powerful in that he is the chairman of our Agriculture Committee.

I knew if there was any real intent or force behind it or interest, that he long since would have had that bill reported out of his committee and we could have studied it, and if there had been any differences with the LEAF Act, they could have been reconciled.

But, Mr. President, it was the most dastardly procedure I have ever seen when the majority leader stood up and said, "Oh, no, I'm putting the Lugar bill on your committee bill."

I said, "You can't do that without the committee."

He said, "Well, the committee is on here; we have a majority."

I said, "You can't have a majority without the distinguished Senator from Arizona."

The Senator from Arizona and I had traveled together to Florence, SC. We notified every quota holder, every equipment dealer, and we had around 2,500 or 3,000 who met in the hockey arena there. We both made our little pitches. The Congressmen made their talks. We answered questions for over an hour's time, and we met with the press for over a half-hour and reaffirmed again and again our support for the LEAF Act. We explained it, why it was there, how it was worded, the difference between burley tobacco and flue-cured tobacco and why we worded different things. Because of this effort, and the Senator's sincerity, I just couldn't believe anyone could make representations then changing the tobacco bill, putting the bill just summarily on another bill.

I am not sure that the committee met, but you have to take the majority leader's word. He said they met and that they voted, 11 Senators; it was under the rules. That is the procedure that I object to. If for no other reason, this ought to be voted down. We ought not to sanction this kind of conduct on the working arrangements. Everybody is talking about the confrontational nature and how the club is breaking up and how we are just all politics. We have to trust each other, Mr. President, and we can't endanger that trust by having an understanding throughout 10 days of a heated markup, through five separate sessions with the White House, through a gathering of our tobacco farmers in our backyard, and being assured again and again in explaining the bill was it, and then to put this up and fix the vote on the other side of the aisle. That is what I understand has occurred.

That is my first and foremost reason for opposing the Lugar amendment. My foremost reason was to take care of the farmers. My foremost reason now is to take care of the Senate. If that is the way we are going to conduct business, so be it. We can all play that game, with rule and ruin and trickery and everything else of that kind.

Let me show you exactly where we are now and take stock with respect to this Lugar amendment.

What we have done with this kind of handling of the bill is, we have added on the payments to the States of 40 percent. Of course, that is \$5.76 billion. We have added on the marriage penalty of \$3.1 billion and the Coverdell drug provision—that is \$2 billion—for a total of \$10.86 billion. The cost of the Lugar amendment, title XV—to be stricken, I hope—is \$6.4 billion. That is a sum total of \$17.26 billion the first year, whereas a total estimation for the first year in the bill we have before us—and I raise it for the Senators to see—this S. 1415 allocates \$14.4 billion to the National Tobacco Trust Fund, but we have already spent \$17.26 billion.

Unless you strike—I wish this was a session of the Budget Committee, because we could have a budget point of order. This is totally without the budg-

et, but it has gotten to be a habit where it is getting into all committees now. If you go along with title XV, you have then expended \$2.86 billion—\$2,860,000,000—more than what the bill will bring in. Yet, the tobacco companies are talking about how they are being devastated. They haven't seen anything yet. If they don't adopt this amendment and go forward with ideas on the House side, they will learn just exactly what has happened.

But, of course, the tobacco companies said, "Let the Senator from South Carolina talk along, because here under Senator LUGAR's proposal there's a real winner for us companies," because in 1999 Senator LUGAR's plan cuts the price support for tobacco by 25 percent, from \$1.68 a pound to \$1.22 a pound. "This equates to a savings for us tobacco companies"—now I am posturing myself so you will understand it. If I am a tobacco company, I love this title XV, because the first year I really make \$987 million, just out a billion bucks. So I am a billion bucks to the good with this Lugar amendment.

And then in 2000, this proposal cuts the price support by another 10 percent, from \$1.22 a pound to \$1.10 a pound. "This equates to a savings to us tobacco companies now. We are in business. And we know how to get amendments passed—sneak them on at the last minute. Don't ever debate them. Don't ever have a committee report it out one way or the other. Just forget about the bill last year, but get the majority leader to sneak the bill on"—\$1.276 billion.

And then in the year 2001—a 3-year program—what happens in that third year? This proposal cuts the price support by another 10 percent, from \$1.10 to 99 cents a pound. This equates to a savings by the company of another \$1,543,500,000.

So the total savings—total savings, Mr. President—by the tobacco companies on this title XV, if it is not stricken over the next 3 years, is \$3,804,500,000. I did not realize it was that much—\$3,804,500,000.

Of course, that leaves nothing for health care, not a thing for public health, nothing for health research or anything else of that kind.

To come in with this at the last minute and take all this money is like when they used to organize the insurance companies when I was Governor down there in South Carolina. And they had one company—Capital Life was looking for a new slogan, and they finally came up with the winning slogan, after considering all their friends' suggestions. They said, "Capital Life will surely pay if the small print on the back doesn't take it away."

I know that is exactly what has happened. They said that we are going to have all this money to do the various programs—health care, research, and what-have-you, moneys for the attorneys general, and everything else like that—and the tobacco companies, with a last minute strike, come up with

\$3,804,500,000, and the farmers are left high and dry.

If you want to see the Tobacco Road that we had during the days of the Depression, with the dust and the filth and the desperation and the despair, keep the Lugar amendment in here, and not Senator FORD's LEAF amendment, and we are goners—we are goners. There is no question in my mind.

Now, there has been some confusion. The tobacco companies, like to put the spin that we in the Congress are raising taxes when it was their idea just a year ago—no Congressman was at the table; no Senator was at the table—it was the tobacco companies at the table that came out with this scheme, and now they are putting the twist on that we are raising taxes. They are the ones who raised the tax.

Now they are trying to put on here the twist that the farmers are going to be taken care of, and at the last minute put on the Lugar amendment, fix the vote, and leave them high and dry. I do not like it. And you can tell by the tone of my voice it should not be liked.

I have been around. I have worked with everybody throughout the years here and have had good bipartisan support. We handled the Telecommunications Act, got 95 votes for it. I handled Gramm-Rudman-Hollings on this side of the aisle on 14 votes up and down, and got a majority of the Democrats, over the objection of the leader at that time and the chairman of the Budget Committee. But we got the majority of Democrats to support that particular budget initiative.

I have had success over the years working in a bipartisan fashion. This is in the most treacherous fashion I can possibly think of, to take a matter that had not completed the hearings—yet to be reported, yet to have a vote on, no committee report to read or study, no conversation on the contrary—all conversation, all representations: "Don't worry, the LEAF Act is fine." We go down, even before the farmers, and tell them that, and everything else like that, and then go along at the last minute with this ambush.

This is ambushing my farmers, Mr. President. And we will have more to say about it. But I think that the RECORD ought to show exactly what has occurred here. We have a studied bill. We have the tobacco farmers taken care of with respect through the payments that are made now on the average yield for those in flue-cured tobacco, for the quota holders, because the existing system is eliminated. What we have is a system of permits to do away with the quotas. And, incidentally, they wanted to argue—and you are going to hear this ad infinitum—that with all the other farm programs gone, why should we support this? This is the one crop that has had its production limited. And it is a very sensitive crop, and it was here when we landed over 200-some years ago.

So we have been handling it over the years in a clean, responsible, produc-

tive fashion. And we have created the communities, we have created the fertilizer dealers, we have created the warehouses and the warehousing, as well as the farmers.

So in order to be sure that we do not just turn them over to welfare and say that in 2 years they can come and get retraining, we must not abandon them. Incidentally, Mr. President, let me talk about that retraining just one moment. We had down in my backyard the Oneida knitting mills that made nothing but little T-shirts. Anybody could make them, but at one time they had 487 there. The age average was 47 years. They were a very productive company, complying, if you please, with all the requirements—clean air, clean water, Social Security, Medicare, Medicaid, minimum wage, safe working place, safe machinery, plant closing notice, parental leave, on and on and on—that Republicans and Democrats said before you open up you have to comply with. That goes into the cost of production. So the plant moved to Mexico, for 58 cents an hour and none of those requirements.

So Washington is so keen on how to get things done, they say: "Retrain, global economy, global competition. We're moving into the age of technology, retrain, skills."

Well, don't tell this Senator about it. I am the author of the Advanced Technology Program. I am the author of the manufacturing extension centers known as Hollings Centers. I fought to keep those programs going. I instituted technical colleges and special schools back 38 years ago in my own home State. So I am appreciative of technology and its needs.

But assume the 487 are immediately retrained the Washington way tomorrow morning, and you have 487 computer operators. Are you going to hire the 47-year-old computer operator or the 21-year-old computer operator? It is quite obvious, Mr. President, that their community of Andrews will be high and dry and out of luck. And that has happened all over the U.S. since NAFTA was passed. And we have lost a fell sum of 24,000 textile and apparel jobs in my State alone. So that next sum, while we have gotten in the BMWs, the Fujis, the Hoffmann-La Roches, and the Hondas—and we are proud of it—the net loss is this, that we have lost 12,400 jobs since NAFTA was passed.

Now we are coming up with a very "wise," as they would call it, "assault," I call it, upon the tobacco farmer to put him out of business in a studied fashion over 3 years: take all the money and run with it, devastate the health program and the research program, and the several States are not going to get their money and everything else. And yet it is on there and it hasn't been discussed.

I see now the distinguished Senator from Indiana is with us and I am delighted to hear from him. I yield the floor.

#### PRIVILEGE OF THE FLOOR

Mr. LUGAR. Mr. President, I ask unanimous consent that Mary Dietrich, a detailee to the Agriculture Committee from the General Accounting Office, be granted privilege of the floor during the pendency of the tobacco farmer amendment.

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

Mr. LUGAR. Mr. President, I rise to support a program that will end tobacco subsidies, give fair compensation to farmers now rather than many years from now, make an extra \$10 billion available for public health and other worthy purposes, and provide some degree of certainty for tobacco farmers, for agricultural America, with regard to our policies that would pertain with greater fairness to all farmers.

Let me simply cite, at the outset my discussion of these issues, what I perceive to be the significant differences between the Lugar amendment, which I favor and which the distinguished senior Senator from Kentucky has chosen through his amendment now to strike from the bill, and, in fact, the amendment provided by the distinguished Senator from Kentucky, the distinguished Senator from South Carolina and others who have supported their point of view.

The basic differences come down to, first of all, should the U.S. Government support tobacco? That is a very fundamental issue. The debate, which now is in its third week on this subject, suggests that the American people are not prepared for their Federal Government to support a crop, a set of products, which they find injurious to health. Indeed, much of our debate has been about how we can protect the health of children, how we can pay for the difficulties in health that citizens of all ages have experienced.

If it were not for these health issues which are serious for tens of millions of Americans and prospectively for many more, this debate would not be so intense; clearly, the remedy suggested would not be so severe. It really begs understanding of this issue as to how the same government that may legislate severely with regard to tobacco, could at the same time decide to support the price of tobacco, to support the industry, the warehousing, the infrastructure, as the current tobacco program does and has done for almost six decades.

That is the first issue. Do we want the U.S. Government to support tobacco? And my judgment is we should not support tobacco. The legislation that I have suggested does not give prioritization to tobacco. Rather, it says that tobacco, so long as it is a legal crop, can be produced in America on the same terms as corn, wheat, soybeans, same freedom to farm that all other farmers have, same tests of the market, same tests of efficiency, of production.

That, it seems to me, is the only way this can be rationalized, with those in

agricultural America asking, Why special treatment for tobacco? Why specific situations that support that price, to support those farmers? There is no good answer to that. I understand the constituency problems of the distinguished Senators who have many tobacco farmers, and I am certainly mindful of approximately 10,000 farms in Indiana, albeit smaller ones than in Kentucky and in North Carolina and some other States, but nevertheless tobacco farmers who are impacted significantly by this debate. I have visited with them extensively. They support my amendment for good reason.

Why would they support my amendment if I am prepared to say the Federal Government ought not to support tobacco? They do so because the Lugar amendment provides payment to those who hold tobacco quota, the certificates distributed principally in the 1930s, that allow people in this country to produce tobacco. We are prepared in my amendment to purchase those rights in a 3-year period of time.

My amendment is attractive because the money comes to the tobacco farmers, but even more importantly, to the holders of quota certificates who are frequently elderly people, people no longer involved in production. They lease and rent the certificates to others. They really have no desire to continue in the tobacco business. On a one-time basis they can receive capital for pensions, for scholarships, money in the communities that are impacted—substantial money—and they can receive it quickly in a 3-year period of time. That is why tobacco growers in most States have indicated through their organizations that they support the Lugar approach.

The Senate as a whole has to ask which of the two approaches, the Ford-Hollings or the Lugar approach, costs more. Clearly, the Ford-Hollings costs at least \$10 billion more than the Lugar approach. It has a great deal more in it in terms of community development for States and localities that have tobacco farmers over the years. It is simply a very different approach which retains the tobacco program and some of the apparatus that has been associated with it over the years.

I make that point because in the course of these remarks the statement has been made that somehow or other the Lugar approach will subtract money from health causes or other important objectives of the legislation, but in fact it will subtract \$10 billion less than the Ford-Hollings amendment. There is no getting around that.

I simply say, finally, that to argue—I believe almost disingenuously—that health groups would prefer a situation where \$10 billion less is left in the general fund of this bill for health or anything else is to, I suppose, deny common sense. Many health groups perhaps were misled by the thought that in the event we went to freedom-to-farm tobacco, the price of tobacco

would go down. The price of tobacco probably will go down.

We have had testimony before the Senate Agriculture Committee and we have had extensive hearings, as a matter of fact, on tobacco issues from which the Lugar amendment came. Essentially, the testimony was that the price of tobacco might fall by as much as 25 percent, perhaps more, depending upon how competitive American tobacco is in the world markets, and competitive abilities have been in decline. Most Americans are not aware that 40 percent of the tobacco now used in the production of American cigarettes comes from abroad, not from here. It comes from abroad because of questions of price and quality, normal economic questions. That deterioration of the American tobacco demand has been continuing at a fairly rapid pace.

So, Mr. President, let me just state it fairly simply. If a pack of cigarettes now costs \$2 before this bill, it will cost a great deal more after this bill. Approximately 6 cents of that \$2 might be attributed to the tobacco in the package. If in fact that goes down by a quarter, maybe a cent or a cent and a half is at stake. To suggest that somehow this brings either unconscionable profits to tobacco companies or enormous new demands by young people taking up smoking is, I think, to defy both economics and logic in the midst of our raising the price of a pack of cigarettes by at least \$1 or \$2, or whatever the bill finally comes out to be with the overhead and all the economic costs associated.

As a matter of fact, Mr. President, health groups for a long time have centered in on the fundamental issue I began with: Should the Federal Government be supporting tobacco at all? What kind of a signal does that give when we give official sponsorship and economic support to the price and warehousing and infrastructure of tobacco? I don't think the signal is very good. As a matter of fact, it is so ambiguous that it borders upon hypocrisy. At some stage, we will have to make a choice as to which of these two general thrusts in life we are for—health or support of tobacco.

Mr. President, let me just say, finally, that we are going to have to come to grips with the issue that is posed by the distinguished Senator from Kentucky in his striking of my amendment. I appreciate that. The parliamentary situation is that the Ford-Hollings approach and the Lugar approach are both in the bill. I suggested that one or the other of us might, at some point in this debate, move to strike the other, and the Senator from Kentucky, my good friend, has decided he would move to strike my situation.

So that is the issue before us. Members have to make a choice. I simply say to the distinguished Senator from Kentucky, who is on the floor, that it would not be my purpose to delay the choice. My feeling is, essentially, by this time, if Members are not aware of

the issues, they never will be. My feeling is that we ought to get on with it and resolve it. I stated up front that this will not be a long speech and, if there are not many more, we might come to a conclusion.

Let me say that in defense of what we have been doing in the Agriculture Committee, in my own point of view, I rise to affirmatively support the Lugar approach, which has been moved by the Senator from Kentucky to be stricken. I believe that it is important to adopt my approach, to keep it alive by voting "no" on the motion to strike, because we will end tobacco subsidies, we will end the tobacco program.

Mr. President, to be quite frank, this is the major point that I make, the reason I am in this debate. I believe that agricultural policy ought to be based upon supply and demand. I believe that all farmers producing crops in this country ought to be treated equally. We had a revolution in agriculture in 1996 in which we said freedom to farm means that a farmer may decide to plant whatever he or she wants to plant on their land, have full control of that, without the Federal Government dictating how many pounds, how many acres, how many bushels. The only signals would be market signals, and they are now world market signals. They are important to America because agriculture is the thing we do best, and our surplus and balance of trade is the greatest in that area.

But freedom to farm also means taking risks. It means there is no warehouse for wheat, or for corn, or for soybeans, no props, no passing on from one generation to the next the right to grow corn or wheat. We really have to get over that, Mr. President. I understand why it came about in the 1930s because essentially people felt that if you let farmers have freedom, they would inevitably plant too much, they would do too much, they would be too ingenious, and, as a result, supplies would be horrendous, prices would fall, agricultural communities would fail. The New Deal policy was one of killing little pigs, knocking out rows of corn, to dramatically change the supply and to bring the price up. Whatever may have been the rationalization in those days, it was convenient to carry this on for about six more decades.

Many people in America would still like the idea of being guaranteed a price for a bushel of whatever they are producing. They would like to be guaranteed that their neighbor could not do more. But at the same time, most farmers in agricultural America resent the Federal Government's control. They resent the fly-overs, the measurement of fields, the endless sign-ups—and rightly so. So we came to a revolution of sorts, Mr. President, and we went to freedom to farm, except in the area of tobacco, for example, where persons in that industry said that, "Notwithstanding everything else going on in agricultural America, we want to retain the same program we have had."

Now, Mr. President, my own view is that the program is deteriorating. I am not one who would predict the month, the year, or even the decade where it will finally collapse. I just say that tobacco farmers coming to my office from my State, and also from Kentucky, North Carolina, Georgia, and from South Carolina, I have said during the past year, although we had quota and the right to produce tobacco and to sell it and to have a price, we were cut back 10 percent in what we could do. Furthermore, they believe they are going to be cut back 15 percent this coming year regardless of what we do on this bill. That is a big cut. That is a deteriorating program. No wonder they were attracted by my thought that they might receive \$8 per pound for quota, so many of them could get out of the business altogether. Now, a good number said they want to stay in the business, but they realize they are going to have to do so on the basis of supply and demand. That is the way the world works—without all the apparatus, the warehousemen, and so forth. That is fair enough.

My bill provides that you continue right on producing, if you want to, and take money for quota, if you had it. If you are renting, fair enough, you have a transition of 3 years with some payments in support, the same as do corn farmers, wheat farmers, rice and cotton farmers, in the freedom to farm bill. It is a transition period. I think that is important, Mr. President. But at least we bring to an end an era that, I think, is coming to an end anyway.

Now, what if we don't pass the tobacco bill? What if, in fact, the idea of the Senator from Kentucky, or mine—either one—is not a part of the final picture? That is a real problem for tobacco farmers. It is a problem that should have been contemplated by the attorneys general when they were working this situation out last year. But, as a matter of fact, at that time they left the whole grower issue aside. That is why we had hearings in the Agriculture Committee and why Senator FORD and others have been working in the Commerce Committee—to say, what do we do about this very important group of people; namely, growers, holders of quota, holders of equity property out there in at least 10 States in substantial numbers?

Now, Mr. President, my guess is that one or the other of our amendments may prevail, but I am not confident of that. It could very well be that the Senate will decide they don't want either one. It could be that if we argue this long enough, people will begin to raise questions. What is an acre of tobacco worth? In some cases, 10 times what an acre of corn might be worth on this same farm, as is the case in my home State of Indiana. One reason is because it is a very special privilege. And as Americans take a look at this, they won't like what they have to see.

In the Agriculture Committee for years, I witnessed—at least during the

21-plus years that I have been a member of the committee—people protecting each other. There were a lot of special deals. People got on the committee often to make certain they protected their deal and their farmers in their State. I understand that. Most did a good job of it. Now there are fewer special deals. There really is a very short list of situations that need to be tidied up, and this is one of them.

So I come, Mr. President, to the floor to suggest that this is a good time, while there is a general settlement going on, money on the table, lots of money. The question has been raised, Does the grower money subtract from health? No. The Senate doesn't want to subtract. They simply provided any sequence of years we wanted. But when Members come to the floor and they talk about \$300 billion, \$400 billion, \$500 billion, \$600 billion, the \$18 billion I am talking about in the Lugar bill is a very small part of that money. If people are worried about whether it comes upfront, my advice would be to provide money upfront. If you want to provide more money for health at the same time, do it. This bill is as fluid as any piece of legislation I have ever seen. Nothing is engraved in stone as to which dollar comes where.

All I am saying is if you are serious about tobacco farmers and their plight, you give them their money upfront. You do it promptly, and those that want to leave, leave. Those that want to stay, stay, and react like farmers in almost any other sphere, including sometime the same farmers are producing corn as well as tobacco on the same farm.

Mr. President, that is the first big issue: The end of the tobacco program, the end of official U.S. Government sponsorship of all of this.

Let me say, secondly, that my plan costs less. One could argue that in the course of all of this we have banded about these hundreds of billions of dollars that perhaps we have lost track altogether as to how money is going to be spent. But I hope not. If there are any Members who are interested in cost, they will vote for an \$18 billion bill, the Lugar bill, as opposed to a \$28 billion Ford bill.

In addition, I am advised that the bill of the Senator from Kentucky now includes special relief for problems in North Dakota, or perhaps other States that have been afflicted by unusual weather problems. I am hopeful that in the course of the debate all of that will be explained. But it is another unusual addition to an already belabored situation.

All I am saying is that if you are interested in cost, you will be for the Lugar alternative. It is less. Obviously, Mr. President, the money gets to the tobacco farmers sooner. If you are a tobacco farmer, the Lugar bill gets money to you more rapidly. Time is money—money upfront, money that could be used for capital for other farming, for pension, for scholarships,

for other things that people have a quota for, or who are farmers where that quota can be utilized, and I think that is an important issue.

Finally, let's be very clear on the health issues. I go back over that again.

The fact is that the health groups of the United States—major proponents of this legislation—have analyzed these bills, and some have come out one way and some another. But I would just say simply that the money for health is finally going to be the determination of this Senate in this bill in whatever amounts that we want to provide for.

Some have accused the President of the United States for asking for a number of things in the health area. He cited some in the State of the Union Address, and on this side of the aisle many of us have said we ought not to be funding the State of the Union Address in the tobacco bill. But having said that, we are funding a good number of proposals that the President or the administration and its various Secretaries have made at some point. We do so because the problems of health attributed to tobacco have badly afflicted tens of millions of Americans. These problems have created enormous public costs in the Medicare Program, Medicaid, and various other ways, and compounded black lung disease and other difficult health problems in our country.

Mr. President, the logic has been that if we are going to have a tobacco bill, there ought to be some compensation to States. In fact, some States have not waited for compensation. Lawsuits have been proposed and some have been successful. Thus, the attorneys general came together and said perhaps we can have a comprehensive settlement. Many in the Congress found that to be intriguing. It would have been helpful if the President of the United States, last fall, had offered a bill as opposed to general guidelines. It might have been helpful, as a matter of fact, if there had been a comprehensive bill here that had embraced at least what I know have been seemingly contradictory strains on occasion. I certainly do not fault the managers of the bill. They have had a difficult time.

But we have come now to a point where the one item, one significant item mentioned by everybody that was omitted—namely the growers, the farmers—has to be addressed. I believe it should be addressed. I don't believe it should be omitted. It is not specifically a health issue, and one can argue it competes with health issues. But inequity to farmers in these 10 States, and to tobacco farmers in particular, my intent and that of the Senators from Kentucky and South Carolina has been to take that very seriously. Although we may differ upon the amounts of money and the continuation of the tobacco program and various particulars in terms of expenditures in the States for community development and other aspects, we do not

differ on very serious equity problems for farmers and for holders of quota.

So we must address that issue. I am simply hopeful that this issue will not be seen as a subtraction or addition to health per se. It is a narrow issue of compensation to farmers and to their communities.

I hope the Senate will accept the fact that there is equity in doing that. The so-called narrow version of the tobacco legislation—that principle—might not be accepted.

So we are expanding today what the attorneys general and the State governments in their wisdom tried to negotiate last year. We are doing it so deliberately. Testimony before the Senate Agriculture Committee said essentially the attorneys general, health groups, and everyone else anticipated the Senate at some point would act in behalf of growers, as we are doing, and, in fact, explicitly or implicitly endorsed that activity.

Mr. President, I will rest my case for the time simply on the basis that I believe I have outlined why the Lugar approach is the best. Members will have a choice, either shortly or in the long term, depending upon how much debate Members wish to hear or endure on this subject. But I will not stymie progress of the bill. This is an issue that needs to be resolved. Members will have to make an overall judgment, I believe, on the bill on the basis of all factors, this one included.

I hope at least in the course of this debate that we eliminate those issues that Members want to grasp, want to hear, and will be helpful in reaching a conclusion.

I thank the Chair.

Mr. CLELAND addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CLELAND. Mr. President, I rise in support of Senator FORD's amendment to strike title XV of the Lugar-McConnell tobacco farming provision and to express my support for the Long-term Economic Assistance for Farmers Act, or LEAF Act.

First, I would like to thank my distinguished colleagues, the chairman, Senator MCCAIN, and ranking member, Senator HOLLINGS, for their superb leadership of this bill, the principal aim of which is the vitally important objective of curbing youth smoking. Also, I would like to extend my sincerest appreciation to Senator FORD for his time and energy in crafting a bill that effectively looks out for the interests of the tobacco farmers and their communities' interests, which were all ignored until he spoke out so forcefully and effectively. Senator FORD's integrity and honesty and courage will be sorely missed when he leaves this Chamber, and I, like many of my Senate colleagues, will deeply miss the opportunity to seek his counsel on the important issues about which the Senator has tremendous knowledge and passion. Certainly there has been no finer, more consistent friend of family tobacco farmers than the distinguished senior Senator from

Kentucky. I ask my colleagues to remember this fact as we debate on this matter.

In my personal review of the tobacco settlement legislation, I have had two main objectives—to prevent our children from smoking and to ensure that tobacco farmers and their communities are taken care of.

Now, I am sure that all of my colleagues are committed to this first objective, but I want to make sure that the second objective of promoting and protecting tobacco farmers is actually provided for in this bill. I fully support the LEAF Act and, indeed, was an original cosponsor, and I want to state my reasons for favoring the LEAF approach over the proposal offered by the distinguished Senator from Indiana, Mr. Lugar.

First, I do not support Senator Lugar's proposal, because I think it provides for quick termination of the Federal tobacco program. I have a concern about who the actual beneficiaries of this action will be. Is it tobacco farmers, is it the taxpayer, or is it the tobacco industry?

According to an Agriculture Department analysis, if the tobacco price support program ends, as it would under the Lugar plan, the price of flue-cured tobacco would drop from \$1.72 per pound to \$1.15 while burley tobacco would drop from \$1.89 to \$1.15. Accordingly, if these estimates prove to be accurate, this would save cigarette companies approximately \$1 billion every year; that is, \$1 billion annually, Mr. President.

Considering the fact that the tobacco program is a no-net-cost program to taxpayers and tobacco farmers will be receiving a 35 percent reduction in farm income, I think it is pretty obvious who will be benefiting under Senator Lugar's proposal—the tobacco industry, period. Then where are we? What have we accomplished? What good will be our efforts to eliminate underage smoking by raising the price of cigarettes if the tobacco companies receive a \$1 billion windfall every year at the expense of tobacco farmers? This is a crucial question that I believe must be answered before the Senate contemplates letting the Lugar proposal remain in the legislation.

Second, while it provides more in buyout payments over a shorter timeframe, the Lugar proposal provides for substantially less in assistance for farm families and community assistance than the LEAF bill. Senator Lugar's proposal eliminates nearly \$10 billion in funds for this type of transitional aid. It eliminates funding earmarked to provide higher education opportunities for tobacco farmers and their families, for transition payments to tobacco industry workers who lose jobs, as well as billions of dollars in funds to provide grants to communities for agricultural and economic development in tobacco-producing counties.

I can understand the appeal that a quick buyout for tobacco quota might have for a tobacco farmer, but I am extremely concerned that the buyout

proposal included in the Lugar bill is actually nonattainable. The funding level contemplated in Senator Lugar's bill is \$18 billion over 3 years. At this level, it would require Congress to provide \$6 billion a year for this one purpose, which is three times—three times—the amount available under this bill during this period.

So what happens if this money is not fully delivered? I will tell you, Mr. President, what I think could happen. We will have left the tobacco farmer and their communities with an unfulfilled promise. In my home State of Georgia, farmers, including those who grow tobacco, have experienced extremely hard times over the last few years and are anxious to hear any good news. Then they hear about something called a buyout with large payments over 3 years, and understandably some get excited. But in order to deliver this amount of funds in this timeframe, we would have to cut the amount of funds available for public health programs and research by almost 75 percent.

Now, I ask you, Mr. President, is this likely? Can we legitimately expect that we are going to eliminate 75 percent of the funding for counteradvertising, child care, NIH research, and cancer clinical trials? Can we honestly believe that these buyout funds will be available? In this Senator's opinion, the answer is clearly no. Let us not make false promises to tobacco farmers and their communities. Let us be honest. I implore my colleagues to carefully review the impact of each of these proposals as well as our ability to achieve them.

I urge you to oppose the proposal offered by Senator LUGAR and support the LEAF Act.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Mr. President, I thank my friend from Georgia for his eloquent remarks and hope that our colleagues were listening and they understand well what drives us who are more familiar maybe with the tobacco farmer, the small farmer.

The distinguished Senator from Indiana laid out how he arrived at where he is as it relates to his position on the tobacco farmer. It is ideology with him more than it is fact for the farmer. He just does not believe that Government ought to help people, and so therefore he thinks everybody ought to be out there scratching on their own. And maybe that is the correct way. But I have always thought that government is here to serve people, and if it does not serve people, then we do not need government.

I guess the Senator from Indiana understands that what he is about to do is just put people out of business. Under the Freedom to Farm Act, we are paying for millions of acres—millions of acres—and under the tobacco program there are less than a million total.



Under the Freedom to Farm Act, the purpose there was to increase production. What Senator LUGAR will do, if his amendment is agreed to, will be to put people out of business.

I have sat on a good many front porches, Mr. President; I have been in many kitchens having a cup of coffee with the farmer, his wife, and family; I have been in seven States talking to farmers—as we would say, to the people who put the tobacco on the stick. I think I understand their hopes and their dreams and their aspirations, and all have been based on history and what they expect the future to bring.

I have a statement here from the National Commission on Small Farms. The National Commission on Small Farms said:

The tobacco program for more than 50 years has cushioned small farmers, African American farmers, new and beginning farmers, by providing them a degree of economic certainty. It's not the tobacco crop for which there is no alternative but the tobacco program itself.

There is a strange thing in the Lugar amendment that was put on after the committee had met and sent the bill to the floor. The Lugar amendment does away with the program. That means the tobacco farmer can grow all the tobacco he wants to grow from year 1, but the Lugar amendment keeps the price support in for 3 years.

Now, think about that. Here I am, a farmer growing 10,000 pounds of tobacco. They do away with the program. I can grow all the tobacco I want, as we would say at home, fencerow to fencerow. They keep the tobacco support program in place for 3 years, and so I grow twice the amount of tobacco, get the price support, and nobody wants my tobacco, so it goes to the so-called pool or into surplus. You do that for 3 years. At the end of 3 years, it is all gone. The pool is lying there with hundreds of millions of pounds of tobacco. Then what happens? The general fund will pick up that tab. Oh, there is a provision in here that says we will pay so much to try to offset that, but it doesn't work.

And you know something that didn't happen as a result of the Freedom to Farm Act that we hear Senator LUGAR was a strong supporter of. In my State, if we lose the tobacco program, it will reduce the value of the farmland up to \$7 billion.

If you take the program away from the farmers, you have four companies that control 98 percent of tobacco, and the farmers don't have a thing to fight with, other than the program. What do you think the price of tobacco is going to do? It is going to decline rapidly, and it will make a minimum, under this bill—well, beginning the first year—a minimum average to the tobacco manufacturers of \$1 billion a year off the backs of a few farmers. All we are talking about is 124,000.

So the vote comes down to: Are you going to vote to support the farmer, or are you going to support Senator

LUGAR's bill that gives \$1 billion a year to the tobacco manufacturers?

(Mr. HAGEL assumed the Chair.)

Mr. FORD. Mr. President, it is pretty tough when you have gone to the bank and borrowed money based on the value of your property, your farm, and overnight—overnight—the value of your property is reduced several hundred dollars per acre because you have lost your tobacco program that is of value.

You go to bed tonight with a loan from the bank and your property will cover that loan, and in the morning, you have no program; the price of your property has been reduced and your mortgage is called. This is what I call a taking, Mr. President. We hear a lot about takings around here, about taking property, but you are taking the value of the land of this small farmer.

As we say down in West Kentucky where I come from, "Something about that ain't right."

What do we do? We hear a lot about the buyout and money upfront and the older people who would like to sell out. Under the LEAF Act, that occurs. Anyone who wants to buy out at \$8 a pound, the tenant, the lessee can sell. They can offer their crop for a buyout, and it will be done. It also says that one quota holder can sell to another quota holder. But it also says that if you want to continue under the present program, you can't.

All agricultural economies—and I am sure a lot of folks here understands it—agribusiness says that it takes 10 to 15 years, and leans toward the 15 years, for a community to transform from one economic aspect to the other.

We see under Senator LUGAR's amendment—which was never voted on by the committee while the hearings were going on or when we had the regular markup; it was done here on the Senate floor by checking the majority on the Commerce Committee and the majority leader putting it in. I thought I had helped the chairman, Senator HOLLINGS, and others get this bill out of the Commerce, Science and Transportation Committee and on to the Senate floor.

If you wonder how much money the Lugar amendment will take, they have submitted an amendment which is at the desk which will take 47 percent of all the money. If that amendment to this bill, which is at the desk and has not been called up yet, is adopted, I believe it is 47 percent, maybe 48 percent of all the money will go to this one project. If 40 percent of the money goes to the States, that is 88 percent of all the money. What we find is that those health programs that we want to fund have become discretionary. They are not part of the budget process; they are not part of the estimated amount coming in under this bill. They will be discretionary, and they will be subject to appropriations.

When you live with these people, having been one of them, having been a farmer, and you see them every day, it

seems a little bit ironic that we are telling them what is good for them, because this year they voted 97 and 98 percent to keep the program. Yet, we are saying to them, "You don't know what you are talking about; you don't know what you voted for; we're going to change it; we're going to do away with that program that 98 percent of the farmers said they want to keep."

We say to them, "You don't know, we know better than you do," and that is what I said earlier. One of the reasons this place isn't liked is because we get 98 percent of a group of people who say we want to keep this, and we say, "No, we know better than you do, so we're going to take it away from you."

Oh, you can go out there and get all kinds of polls. You can get the fellow who grows 600,000 pounds of tobacco a year, and he sure would like to have 4.8 million. They say under the Lugar bill you can keep growing. Sure, but at what price?

My Agriculture Department estimates that the 65,000 farm families in Kentucky will be reduced to less than 10 percent. Only the big farmers can contract with the manufacturers who will be getting \$1 billion more a year. Do you want to vote for the farmer, or do you want to vote for the tobacco manufacturers? It comes down to that.

Just think, you will be reducing farm values in my State by up to \$7 billion. I have heard a lot from the other side of the aisle and some on this side about property rights. I have talked to my home builders and others who worry about takings. Under this one amendment, if this one amendment is adopted, up to \$7 billion in farm value will be lost. That is almost one-third of the farm value in my State. Approximately \$20 billion is the assessed value of the farm property in Kentucky. So we are reducing the value of that land and the ability of that farmer to secure a loan.

It doesn't make any difference how much money you give him. Our average is about 3,000 pounds, and you want to pay it over 3 years. That is \$24,000. Then, you are going to pay tax on it. Boy, that is really going to be great. Only the large farmers are the ones who have the voice. The small farmer down there working depends on others. But Hamilton said in these Halls, meaning the House and the Senate, "The people's voice shall be heard by their immediate representative." I am that immediate representative. And I am trying to bring the voice of the small farmer to the attention of my colleagues here in the Senate.

Is this emotional for me? Of course it is. In my last few months here in the Senate, I ought to be over there taking care of constituents, packing up my papers, getting them to the university, getting ready to go home and spend some time with my family. But, no; the worst political question of my career, the toughest one I have ever had, is now in the last 6 months of my service in the U.S. Senate.

You sit on the front porch with these farmers. You sit in the kitchen and



drink coffee with them and their families. From back in June of 1997, last year, June 20, the farmers have been on a roller coaster ever since.

Let me try to describe a little better where I come from with my LEAF Act. Tobacco farmers tried to get in on the negotiations between the Attorney General, the tobacco companies, and public health groups. They were not let in the room. They were not even let in the room. I tried to find out what was going on. It was private. It was quiet. It was closed. But the White House was there. The health groups were there. The attorneys general were there. The tobacco companies were there. But the ones who are going to get hurt the most were not there. Now we are trying to hurt them even more.

The June 20 settlement did not include one dime for the tobacco farmer. But there is \$750 million in there for NASCAR and rodeos. And I didn't hear anybody say, "Take that out." No. "Take it away from the farmer. Don't take it away from NASCAR. Don't take it away from rodeos. Let them advertise at rodeos. Let them advertise at NASCAR."

I am for the Winston 500. I do not have any problem with that. But I have not heard a word in here, or from the other side, that they gave too much to NASCAR, that they gave too much to rodeos. But, boy, you sure are taking away from the farmer down there who has labored all his life and has produced a superior product.

Alben Barkley, on this floor in 1939, put in the tobacco program. It took him 3 years—1936 through 1939. Alben Barkley was a pretty good legislator. He was a mighty fine Vice President. I think he understood his people as well as anybody. And it hasn't changed. I wish I had the ability that Alben Barkley had to speak and to convince people that what I am trying to do is right.

But sitting on those front porches, sitting in the kitchens and talking to the farm families, I told them to get to work and come up with something that they felt would be acceptable. And to work they went. They developed a comprehensive plan not just for individual tobacco farms but for their communities as well. We have not thought about Russellville or Horse Cave or Glasgow or Springfield or Carrollton. They are small farm communities that depend on tobacco. And their banks depend on tobacco. Their businesses depend on tobacco. Fifty percent of their income comes from tobacco.

The average, in my State, is 25 percent is farm income. There are loans because the value of the property is there. The banker understands as long as the program is there, it gives them financial stability.

And so last October, after months and weeks of work, we introduced the Long-Term Economic Assistance for Farmers Act, what we call the LEAF Act. And, you know, even the night before I introduced that—and we all sat

around, made one change—we all shook hands and got up and left, that this is what we are going to support. And it was cosponsored by nine tobacco State Senators—myself, Senator HELMS, Senator FAIRCLOTH, Senator MCCONNELL, Senator HOLLINGS, Senator THURMOND, Senator FRIST, Senator CLELAND, and Senator COVERDELL. All of us agreed that this was in the best interest of the tobacco farmers and the communities and the welfare of our States.

Since that time, we have worked hard to broaden our consensus, including changes sought by Senators ROBB and WARNER of Virginia and their tobacco growers. We made those changes. We accepted a broader consensus. This modified version of the LEAF Act is now included in the bill before the Senate in title X. Title XV, on the other hand, was inserted into the bill at the last minute after we got to the floor. It was never debated in the Commerce Committee. It was never debated during the markup. And all of a sudden here it comes—after we had an agreement. And the chairman went and explained the bill to farmers and what was in it.

It provides buyout payments for tobacco farmers who want to leave the program. And they keep using, against this bill, that, "You take our money and you can keep on growing." Well, if you keep the program and you sell out, that reduces—you no longer can grow, you don't want to grow. It may be the widow who has the quota. It may be the elderly couple who can no longer perform. But remember this: 69 percent of all the farmers in Kentucky, 69 percent of all the quota holders in Kentucky, have another job. This is a husband, wife, and family operation; 3,000 pounds, 3,100 pounds. Instead of hiring help, they do it themselves. And that money is theirs. They buy a major appliance. They paint the house. They get a new truck, pay on the mortgage, help send the kids to school.

What are we saying to those families now? "In 36 months you're gone." Three thousand pounds is the average. That is \$24,000; \$8,000 a year. And you are going to pay tax on it. Hasn't anybody said whether there is going to be capital gains or regular taxes? If it is capital gains, it is 20 percent. So you take \$1,600 out of that right off the top. I have not heard whether it is going to be capital gains or regular taxes. Maybe some people who understand the tax program better than I do can come up here and say how great it is going to be, and they will not have to pay any.

There are buyout payments for tobacco farmers who want to leave the program. But under the Lugar amendment, the program is gone. And for 3 years you still pay them so much per pound, and they can grow all they want to. So it costs the taxpayers lots and lots of money, and nothing will go to the farmer, it will go to the pool. And then after the 3 years, there is nothing. And who owns it? Who is going to pay for it? I think I know, and I think the Senator from Indiana knows.

It reforms and maintains a tobacco-supplied management program. We have a core principle statement by about 24 health groups and the tobacco groups that they support—whatever—to reduce youth smoking. But they also support keeping the program. It maintains a tobacco-supplied management program. Without a tobacco-supplied management program, the 124,000 tobacco farm families in this country—which their average tobacco growing in various States varies, the amounts—have absolutely no bargaining power to deal with the four largest tobacco corporations.

We are getting to a point where everybody is getting down to just a small group controlling everything. Four tobacco manufacturers control 98 percent of the tobacco grown in this country. The Senator from Indiana says about 40 percent of the tobacco in cigarettes now are foreign. I think that is a little high. Of course, if you are for something it is less, and if you are against something it is higher. I find somewhere in the middle might be about right. We do have GATT and GATT limits the amount of tobacco that can be imported into this country. I know that was about 150,000 metric tons and the tobacco companies have first choice.

So when you are going up against the small group of companies that control the 98 percent of everything, you don't have much bargaining power unless you have a program. So we say as you reduce the quota based on 1995, 1996 and 1997, that we will take the difference in that as we transition out into the future. Most agricultural economists say that it takes 10 to 15 years, and closer to 15 years, to transition into a new economic stream.

So as we look here at the bill itself we are under what the bill says will go to agriculture. What the Senator from Indiana has to do with his amendment, if passed and accepted, he has to correct the bill to say he will get almost 48 percent of all money for the next 4 years, where we will only get 16. At the end of 10, we only get 4. Talk about saving money—it costs \$10 billion more. The bill is for 25 years. My amendment is for 25 years. If you want to shorten it some, that is all right. If you are willing to talk, I am willing to talk, too, but I am not willing to give up what the farmers have earned.

The Campaign for Tobacco-Free Kids—they have been very active in this—supports a continuation of the tobacco program. They said the following:

Legitimate concerns have been raised that in the absence of some sort of a program, tobacco production may, in fact, increase; that tobacco will be grown in other States that presently do not produce tobacco and the tobacco companies and the tobacco leaf dealer will gain control over the production and move to contract production, keeping tobacco farmers and their communities at risk.

The Senator from Indiana knows that. He knows that. But no, he wants to say here is the money, you get it up-front, you pay your taxes on it, you get

it over 3 years and I will only get 48 percent of all money for the next 3 years. I am not sure he can get that. When you have the marriage penalty in here, you have Senator COVERDELL and his drugs, vouchers and the veterans—we have done a lot of work here. To do everything but take care of the farmer and to try to stop underage smoking does not make sense. What is going to stop underage smoking in this act?

I think you lose control of the production of tobacco under the Lugar amendment. You have no way of controlling it except by price. When prices go down and tobacco companies make \$1 billion more a year, you will vote for the farmer; you will vote for the manufacturer. I hope you will vote for that hard-working family, hard-working, God-fearing family.

Under the LEAF Act, it requires that tobacco companies pay all the administrative costs associated with the tobacco program, assuring that no general taxpayer funds will be used for the tobacco program. Right now, the only cost to the Federal Government under the tobacco program is the administration of the program and the poor old tobacco farmer out there pays a deficit budget fee. I doubt if anybody here has ever heard of a deficit budget fee paid by a farmer who grows a legitimate crop. Last season they paid in over \$30 million, about \$32–\$34 million.

The tobacco farmer pays a deficit reduction fee before he gets his check from the warehouse. Think about that now. You have assessed him out there about everything you can assess him for and he has paid everything but the administrative fee, and now we are willing to take care of that. Somehow or another that poor tobacco farmer down there has been beat on and beat on and beat on. Somebody has got to stand up for him against the big manufacturers.

Whether Senator LUGAR knows it or not, he is playing into the hands of the tobacco manufacturers by saving them \$1 billion a year. When you take the controls off, they are then in control of how much tobacco they want and what they will pay for it. If we don't deal with this, if we want to get around GATT, I am sure that will be the next one—they want to increase the amount of imports from 150,000 metric tons to whatever so they can bring foreign tobacco in here that has no control over pesticides or anything else, no environmental control and bring those on in, so it will be 100 percent. You are going to get it coming up from Mexico, you are going to get it coming down from Canada. I understand Marlboro Lights in Mexico are around 90 cents. We have tens of thousands of cartons of cigarettes being made every month on Indian reservations. This is playing into their hands—they don't want to pay State taxes. All these things are happening, but there is no control under Senator LUGAR's amendment of the growth of tobacco.

The LEAF Act, or title X of the bill provides economic development funding to tobacco-growing States which must deal with the impact of settlement legislation. We understand that if this bill ever becomes law, and the way it is going now and what the House says and Speaker GINGRICH says, we are just flipping our lips here because it isn't going anywhere when it gets there. We are spinning our wheels. There hasn't been anything added to this piece of legislation to stop underage smoking—maybe \$1.10. But you get a \$185 pair of Nike shoes and some kind of jacket with all the designs on it and all that, and \$3 or \$4 for a pack of cigarettes, I don't think it bothers anybody too much. But then you ruin the farmer. You ruin the farmer.

So we try somehow as we reduce the use of tobacco, and hopefully we do, we just try to say to that community—and I can go down community after community and say to them that we are going to try to help you with infrastructure, with economic development, with loans for new business, to try to make up for the loss. And it all comes out of the tobacco company. It is not a taxpayer fund. It is not coming out of the general fund anyhow, but it comes out of the money developed from the tobacco companies.

One thing I found, that the love of the tobacco farmer or the farmer for his family is hard to improve upon. They are out there in the country and they get up early, work hard, go to school, come back, work hard, study.

One thing that a farm family wants is to see that their children have a good education. If we put him out of business—and 90 percent of them, my university estimates, will be—and there is no income, how do they do it? We keep the program and we say, then, that as the time goes by, and in a certain period, in a certain amount, we will give the tobacco-growing families who wish to provide our\* education assistance for their children. What is wrong with that? I don't see anything wrong with it. Others may. They say, well, you are trying to do too much. Well, if you are going to put somebody out of business and that is not his or her choice, something has to be done.

Everybody around here voted for NAFTA—I didn't, but most of them did. What do you do about dislocated workers? I had about 25,000 in my State in the textile industry, and all of those jobs have gone to Mexico after NAFTA. What do you do with 25,000 idle workers? Under the law, you try to train them and get them prepared for another job. That is what we said here. We provide assistance for dislocated workers from tobacco warehouses, processing and manufacturing facilities, who lose their jobs as a result of this tobacco legislation. What is wrong with that? We do it every place else. You say you don't want to do it for this industry. Well, not a farmer had a document, not a farmer was in on the advertising, and not a farmer did any-

thing except try to support the tobacco program.

I think that we have developed an approach that looks not just at the farmer, but at the entire community that will be impacted by this legislation. This approach is included in title X of what we call the McCain bill. I can understand the large farmers wanting their money and then being allowed to grow all they want. They will be the only ones that can contract with the manufacturers. They will be the ones that will get the big money and membership on the board of some outfit down there. Not one of them grow less than 200,000 pounds of tobacco a year, and so they get anywhere from \$1.6 million to around \$4.8 million—just those four people. So they will get around maybe \$10 million, \$11 million, or \$12 million. No wonder. Those four who raised about 1.2 million pounds are big enough. They are big enough to deal with the manufacturers. But we have just paid them a good deal of money and told them "you are out on your own." They like that. They have money. But you are going to pay it over 3 years, and they are going to have to pay tax on it, so it is going to stick them a little bit.

Title XV, on the other hand, promises tobacco farmers the same amount of money, but over 3 years instead of 9. It would allow for the unlimited and largely unregulated production of tobacco. Title XV saves tobacco companies \$1 billion per year for the next 25 years. Title XV requires somewhere between 46—I wanted to look at the amendment, and I am sure the Senator will correct me. It is 46 or 48 percent of all the money—that is in the amendment at the desk—to pay for the Lugar amendment in the next 3 years, where under the bill it says it can only have 16 percent. At the end of 9 years, we only get 4 percent. Something about that in the transition, it seems to me, ought to be done.

So let's remember that title XV is a billion dollars per year windfall for the tobacco companies. It is \$1 billion a year windfall for the tobacco companies. Are you going to vote for the farmer or the tobacco companies? I think that question is pretty clear. Each year, tobacco companies pay based on the program. Most of the time, they pay above the average. So we take the average and knock 70 cents a pound off. That is going in. You can't pay people to grow it, fertilize it, for the equipment and all that, and come out as a small farmer. So roughly one-third will be reduced. Over the course of 25 years, the Lugar amendment saves the tobacco manufacturers a minimum of \$25 billion. Do you want to take the manufacturers over the farmers? I hope not.

And the Lugar amendment takes away the money that the Leaf Act would spend to try to spur economic development, to try to give them technical advice, to go from one crop to the other, which is not in the Lugar

amendment. It takes away the education. It doesn't even talk about educating kids. We are just going to put you out of business and give you some money and let you go on your own. We are going to reduce the value of your land—in my State, \$7 billion. How is that going to reflect on the taxes that are paid in the counties and the cities and the State? Are they going to raise taxes on a smaller amount of value? You know, this thing has ripples.

I don't believe the Senator from Indiana has thought all these through. If he has, I don't believe he would be this harsh on tobacco farmers. I am sure there would be a rebuttal, but you can't rebut if you take the quota away and it reduces the value of the land. That is a taking. You go to bed with the value of the land, and you wake up and the program is gone; tomorrow the value of your land is gone. They can foreclose on you because you don't have enough value to cover your mortgage.

Mr. LUGAR. Will the Senator yield for a question?

Mr. FORD. I will be glad to yield. I wondered how long you were going to sit there and take all this.

Mr. LUGAR. I respect the Senator from Kentucky. I wanted to inquire of the Senator. The discussion is very important.

Mr. FORD. I respect the Senator from Indiana, also.

Mr. LUGAR. I wonder if the Senator planned to continue his discussion until the end of the session, or whether at some point I might seek recognition to speak.

Mr. FORD. I will be glad to give the Senator an opportunity to speak as long as he doesn't make a motion. When we get to a vote on this, I would like to have some agreement, if we could, as it relates to a vote.

Mr. LUGAR. If the Senator would consider allowing me to speak, I pledge to the Senator not to make a motion with regard to disposition of this bill during today's session.

Mr. FORD. The Senator's word is as good as gold. I have no problem with that. All I want to do is, after you get through, I imagine I will have something else to say, and then it will probably be dinnertime.

I yield the floor, Mr. President.

Mr. LUGAR addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. LUGAR. Mr. President, I hope the Senator will understand this observation. Clearly, the strongest thing going for the Ford amendment is the Senator himself. As he has pointed out, he has long service to the people of Kentucky and his arguments on behalf of farm families with whom he has visited, and clearly all Senators have affection for the distinguished senior Senator from Kentucky. It is my hope and had been my hope that I could persuade him that it is in the best interest of these farmers—the people with whom he has visited on the porches,

who really have very real needs—and that is true of any tobacco farmers in the communities—and we want to support them.

I know they are not as numerous as those in the Senator's State, but it is still very important to me. Our argument is really over what the future holds for them. I come into this business having conducted hearings, not claiming extensive knowledge like the Senator from Kentucky, but nevertheless understanding the predicament, it seems to me, of the tobacco program. I believe that it is a deteriorating and failing program. To give any other impression is not to give a very good forecast of the future. I hope the Senator from Kentucky agrees with me that, given that predicament, this particular piece of comprehensive legislation is almost a heaven-sent opportunity and has a lot to do with farmers who are tobacco farmers and those in those communities. I believe that if the opportunity passes, so will the opportunity for many of those families. That concerns both of us.

Let me just say for the record that the Senator from Kentucky mentioned that an amendment I had planned to offer at the desk would provide for 46 percent of the farmers' money coming in the first year. That is correct. Let me point out, this is 46 percent of the money dedicated to farmers, not 46 percent of all of the money in the bill.

Mr. FORD. Will the Senator yield for a question at that point?

Mr. LUGAR. Certainly.

Mr. FORD. Is that 46 percent of 16 percent?

Mr. LUGAR. Yes.

Mr. FORD. You only take 8 percent of the tobacco money.

Mr. LUGAR. No. The amount of money in the Lugar bill for farmers is about, as I recall, \$16 billion or \$17 billion. And 46 percent of that would come in the first year.

Mr. FORD. Then you have to get the money from somewhere. As I read the amendment, I say to my friend, that would take 46 percent of the money raised by the tobacco bill. So the States get 40 percent and you get 46 percent. That is 86 percent of all the money.

Mr. LUGAR. I will not argue with the Senator's arithmetic. I suggest there is even a worse predicament; namely, as the Senator has pointed out, a marriage penalty, and the drug program. Other things have been added in since we started the argument. My thought—this was at least in the working with the health community—was to try to stake out the farmers' claims before various other claims of the health community and various others that might come along. Clearly, the amounts of money in the amendment of the Senator from Kentucky in this bill will have to be expanded. And in conference they surely will be expanded. It appeared to me to stake out the farmers' interest in this way was prudent. The amendment has not been offered. The

Senator has an amendment on the floor to strike my section which is the pending business. So we may never come to that point.

Mr. FORD. I hope.

Mr. LUGAR. That was my motivation. My general logic still is about the same—that we have a very crowded situation up front. But that is not precluding either one of us from arguing for the farmers' interests up front as opposed to downstream, and a long way down the stream in the case of the Senator's amendment.

Let me just try to clarify another point that has arisen along the way; namely, that the Lugar plan would be of great benefit to cigarette companies. The distinguished Senator from Kentucky has frequently said, "Are you for the companies, or the farmers?" I am for the farmer. I have made no mistake about that for years. The distinguished Senator from Kentucky will recall that I have been attempting to wrap up the tobacco program for many years—it is not a new endeavor—because I don't believe it is good agricultural policy. But leaving that aside, the charge is made that under the Lugar plan the tobacco prices would drop dramatically and the companies would, therefore, make more profit on each pack of cigarettes. Let me try to address that as carefully as I can.

Dr. Blake Brown of North Carolina State University, one of the Nation's most respected tobacco economists, studied what would happen if cigarette prices rose \$1.50 cents a pack and the tobacco program were ended. As we know, the amendment to raise the price to \$1.50 a pack failed. It is \$1.10 a pack. So, to that extent, we have a problem with Dr. Brown's analysis. But, nevertheless, follow me if you will. He said that prices would not fall as much as opponents of the Lugar amendment assert. He projected a decline of 20 percent to 25 percent at around 35 cents to 40 cents, not the 60 cents or 70 cents claimed by some. Notwithstanding that, he said the price would fall but production would increase.

The Senator from Kentucky has made that point—and he is correct, according to Dr. Brown—that, in fact, a more efficient tobacco industry is likely to arise under the Lugar amendment. This should not be surprising.

Essentially, the tobacco program now brings about a very inefficient tobacco situation in the United States. I am not a proponent of tobacco, but I would say freedom to farm would be good for tobacco. In essence, the price will fall, more will be produced, exports will increase because price-wise—I would argue quality-wise—and it would be more competitive. Revenue is not simply price; it is price multiplied by volume. As a matter of fact, Dr. Brown estimates the total dollar value of tobacco sales would fall by just 2.8 percent, or \$74 million, a year. By contrast, the Commerce Committee bill raises about \$500 billion from the tobacco companies.

Mr. President, it is my analysis that, in fact, the tobacco companies conceivably have \$74 million of economy a year, not a billion a year that the Senator from Kentucky has mentioned. You multiply that by 25—I am asserting it is more like \$74 million perhaps, and conceivably less than that, as a matter of fact.

That is a very different ball park to argue the situation one way or another for the tobacco companies. But I would simply say that the tobacco companies are more likely to buy American tobacco under this situation. It is unlikely to lead to a GATT crisis, simply because the market works. One reason the tobacco companies do not buy as much American tobacco now is that normally the quality of much of it is not very good. The price of it is abnormally high. They have substituted purchases from abroad.

There are so many mixed motivations in this bill that some Senators might argue we do not want a more efficient tobacco industry. As a matter of fact, we want to make it as inefficient as possible, as few sales as possible of American tobacco, the least rationalization economically of it all. But you can't carry water on both shoulders on this issue.

I am suggesting that this is a good time simply to get the governmental apparatus out of it, which, in my judgment, is not very helpful either to the tobacco farmers, or the tobacco companies, or to anybody involved, and clearly it leads to a balance of trade problem for America generally.

Let me get into the health and research question again, because some Senators may be tempted to support the amendment of the Senator from Kentucky because they believe that health programs might be disturbed in the redistribution of these funds.

Let me just point out that the technical details of Senator FORD's proposal are important to know. For example, in the amendment that he has presented—and it is part of this bill now—the Ford plan costs will immediately explode by design, because payments are accelerated if the tobacco program ends. These costs could be over \$10 billion in a single year.

Why do I mention this? I mention it because I would guess, having witnessed action on the floor for several years, that in some year some Senator is going to propose the end of the tobacco program. That may not occur tonight or tomorrow. It could, if the Senate passes my amendment. But for some reason, because of sentiment for the distinguished Senator from Kentucky to continue this process, after the distinguished Senator has left the floor and left the Senate, my prediction is that some Senator will say this doesn't make sense, for the Federal Government to be prescriptive with regard to tobacco and here we are supporting tobacco in this way by governmental fiat.

So at some point in a farm bill, or without a farm bill, my guess is the

program will come to an end. The Senator has thought of that and says if that should be the case, immediately payments of all sorts come to tobacco farmers. In other words, there is a ticking time bomb there to suggest it is very expensive for anybody to try to end the tobacco program. Members need to understand that. They are buying not only a continuation of the tobacco program but a rather huge payment, if anyone should dare to tamper with the program.

The health community people need to understand that. This is not a benign amendment with regard to the health of the American people.

Let me point out, Mr. President, that the charge that we will give a \$1 billion gift to cigarette manufacturers, taking it out of the farmers' pockets, just simply does not hold water. We have cited Dr. Brown of North Carolina State before. I cite Dr. Brown again. He estimates, as we have suggested, that farmers' total revenue might decline by 15 percent. He said this decline assumed a \$1.50-a-pack price, but even at the \$1.10 we finally adopted, the increase in their loss of revenue could still be severe—maybe not 15 percent but something in that neighborhood. Keeping the current program means lower total revenues for American tobacco farmers because noncompetitive U.S. prices well encourage a continued uptrend in imports and reduce exports while domestic demand is stagnant or falling.

I made the point, Mr. President, that it is conceivable through protectionist legislation on top of this that Senators might decide to try to keep foreign tobacco out of the country, might try to amend the GATT at the World Trade Organization meetings when they come along next year. That would add, I suppose, double jeopardy to the whole situation—Federal sponsorship of tobacco, compounded by protectionist legislation enveloping even that.

That does not make sense. This is not the way the world works. It is not the way the policies of this country are headed. Why in the particular instance of tobacco is there a blind spot with regard to the successful economic operation of our country including this specific industry? In fact, I would suggest that the families who, under the Lugar amendment, will be collecting \$8 a pound for quota will use that money, many of them, to make investments and to earn money on them that are substantially more sound and more lucrative than the investments they have in tobacco. The tobacco industry is not a winner in terms of current investment either as a farmer, warehouseman or a manufacturing concern. It is not a winner because this legislation is in the Chamber and the impact of this legislation is going to be very depressing to tobacco people wherever they are.

The intent of the distinguished Senator from Kentucky and myself is to not only cushion that blow for farmers

and those communities, but it is to provide, upfront and quickly, capital for those farmers to have a pension or money to invest in other operations, agricultural or otherwise, or money for scholarships. And I share the enthusiasm of the distinguished Senator from Kentucky for education of young people in those areas where tobacco is produced, as well as elsewhere. But I would seriously question whether the educational opportunities of those students are going to be enhanced by continuation of the tobacco program, a program that will mean less income for their families annually as far as the eye can see, from an industry and a general area, that of tobacco, in which demand will be depressed, in which sales and the amount of quota given annually will be depressed and in which, one after another, these families will in fact leave the business.

I am not trying to legislate anyone out of business. I am as sensitive as the distinguished Senator from Kentucky that in a deteriorating situation people are leaving farming in general, but they are leaving tobacco farming in particular because it is particularly depressed and does not have even the liberation of freedom to farm, the ability to farm or to plant what he wants to maximize his or her production in this country.

If, in fact, we are talking about the health and welfare of tobacco farmers—and that is our intent today—and the distinguished Senator from Kentucky is correct, that we were not at the table when the attorneys general of the various States met with the tobacco companies—and, in fact, testimony before the Agriculture Committee by at least one witness was that settlement for growers was deliberately left out. It was, to quote one of them, a deal breaker. Others have said that all along they expected Congress would act, and, indeed, we are attempting to do that.

Mr. President, if we do not act or if we had not acted by bringing these amendments to the floor, I think it is clear to the tobacco farmers in my State they will be on a losing course with tobacco for the rest of their lives without any recourse or any particular funds.

Finally, Mr. President, I would suggest as to the critical issue that has been suggested; namely, is there credible evidence that farmers will receive their money, the distinguished Senator from Kentucky has pointed out that certainly my plan looks attractive to farmers who anticipate receiving \$8 per pound of quota in the first 3 years after enactment; that my plan looks attractive to farmers who want to continue on and receive transition payments comparable to those of freedom to farm for corn and beans and wheat and cotton and rice, and my plan looks attractive, as a matter of fact, to communities that receive at least modest amounts of community development funds. The Senator from Kentucky has pointed out the value of these funds.

I believe my amendment is attractive for all of these reasons, and this is why it is attractive to grower organizations in most States that have a lot of tobacco—a great deal of support, resolutions of support directly, editorial support in newspapers. It is not because people in those States necessarily favored my desire to end the tobacco program. It is because they came to a recognition the program is ending. It will be gone. This is the one opportunity in which some compensation might occur. It is an opportunity not to be missed.

Now, if it is to be ceased in terms of the family, the money upfront makes sense. It is very important to understand that and to understand why that injection of capital and expenditure and buying power into tobacco communities is important in the short run. It is important to understand why, when a conference occurs with the House, if they pass a bill, growers need to have a strong position at the table, which our bill gives them. I think it is very important, as a matter of fact, to the success of this legislation as a whole that there be a provision such as the one I have suggested and which the distinguished Senator from Kentucky has now moved to strike—that my provision be there. It is a strong reason for Senators to vote for the overall legislation.

I would say correspondingly, if in fact the tobacco program is to continue on forever, and if the expenditures the distinguished Senator from Kentucky has pointed out are very generous to his State and a few others are to be a part of that, many Senators will raise the question as to why the rest of the United States of America ought to subsidize these few States or these few counties. What equity is there, as a matter of fact, in such a transfer of money over the course of time? And Americans will clearly ask, Is it not hypocritical to maintain that entire apparatus if the point of tobacco legislation is to discourage smoking, discourage consumption, to help improve the health of the American people and the desire of young people to become committed to smoking at all.

For these reasons, I am hopeful that as Members ponder their decision—and it may be a decision they will have to ponder throughout the evening or will make at some point in the morning, because I have pledged to the distinguished Senator now to make a motion. I had indicated earlier in the afternoon I was perfectly willing for a quick vote, and that situation did not materialize.

There is no one here stopping progress. I will just simply say, at some point this has to be resolved, and I hope the Senators will resolve it in favor of the Lugar amendment, because I believe this is the best course for tobacco farmers, for tobacco communities, and for our national policy.

I thank the Chair, and I yield the floor.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Mr. President, it has been a good debate, and I have enjoyed it. I am not learned in debate. Whatever skills I might have come from experience. I have been around here a little longer than the Senator from Indiana. This is my 24th year, and I believe this is maybe his 21st or 22nd. Of course, he was mayor of Indianapolis; I believe, one of the favorite mayors at that time. He said after I leave the Senate, the tobacco program is gone. Can you believe one Senator can be that strong? The first thing I learned when I came here was that every Senator is independent. Every Senator has one vote. He controls that out here and nobody controls him. I just can't believe it, but it is in the RECORD, and I might cut it out of the RECORD and frame that statement from a Member of the other side.

I was sitting here thinking about the money and how much is available. If the Senator's amendment stays in, this amendment will have to go beyond the 16 percent. But, if you get 46 percent in the first year, that is where you need 60 percent of the first year's money. That is \$8 billion that you will have to pay out the first year. That is 60 percent. I suggest it will be close to 60 percent in the second year and the third year. If the Senator wins, he might want to change the percentage on that amendment.

The Senator says that public health groups say regulation of tobacco will be less efficient. I believe that is his statement. On the one hand, he says funding is not important; on the other hand, he says there is a ticking time bomb of explosion. I don't quite understand that money is not important. He says funding is not important but, on the other hand, there is a ticking time bomb.

Senators should know that Senator LUGAR is promoting his proposal because it would increase tobacco production. He said that—increase tobacco production, going to make it more efficient, all those good things. But he is promoting the increase in tobacco production.

Ask the public health groups what they think about that. Ask a small farmer what he thinks about that: a production increase for big farmers, fine, while the small ones are out of business. I don't believe the Senator would like it if he was back in his home in Indiana, and he has value of land—they talk about the money up front and they can make an investment, but when you lose hundreds of dollars per acre in value of your farm, I am not sure how well you come out in this, and they put them out of business. At least 90 percent of my small farmers in Kentucky are gone, and that is a conservative estimate, not a liberal estimate, but a conservative estimate.

We are getting to the point where it is very difficult for me to understand,

and I think the Senator is having a hard time defending his position when he is wanting to increase the growth of tobacco, reduce the price and save the tobacco companies a billion dollars. I say to the Senator, that is true, and it may be even more than that, because four companies control 98 percent of the growth of tobacco. We have a hard time exporting tobacco because other countries are growing it, and companies have promoted some of that. So we limit it. Like everybody else, we limit it, and it is a pretty large limit on imports, to 150,000 metric tons or more.

Somebody has to be thinking through all of this as much as we are, and those people who are thinking through this are the health groups that have been fighting so long as it relates to reducing the use of tobacco by underage children.

Something quite remarkable, I say to the Senator from Indiana, occurred on March 16 of this year. Remember that date, March 16. On that day, March 16, 16 tobacco farming groups and 24 public health groups came together to agree on a common set of core principles. You talk about health groups now. Here are 16 tobacco farm groups and 24 public health groups that came together to agree on a common set of core principles to guide the debate—to guide the debate—on tobacco legislation. Both sides and all 40 groups agreed that "a tobacco control program which limits supply and which sets a minimum purchase price is in the best interest of the public health community."

That is a pretty strong statement by the health groups, and in conjunction with the tobacco interests. According to the Campaign for Tobacco-Free Kids in a letter dated May 13, "those public health groups who signed the core principles remain committed to the principles outlined in them, including maintenance of a supply limiting tobacco program."

What we are doing here is—I believe it is under title IV of the bill, and I am sure the Senator knows what title IV is, but that limits the amount of money that can be spent for agricultural purposes under this bill. The LEAF Act is under that limit. The Senator's amendment is about three times or four times over that limit. But we are within that limit. This is approved by the health groups. Instead of cutting them off at the knees in 36 months, we give them a little more time to phaseout. They can sell out, they can buy out.

I have a list of all of the groups that signed the core principles, such as the American Heart Association, the American Cancer Society, Americans for Nonsmokers Rights, American College of Chest Physicians, Association of Schools of Public Health, the Oncology Nursing Society, Partnership for Prevention, National Hispanic Medical Association—I can go down all these groups that think keeping the program is the right thing to do and saving \$18

billion. I might say to my colleagues, saving \$18 billion for the use for research and health care and all these other things.

Mr. President, I ask unanimous consent that a list of the public health groups that signed the core principles be printed in the RECORD.

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

The following public health groups signed the "Core Principles":

American Heart Association  
American Public Health Association  
American Cancer Society  
Americans for Nonsmokers Rights  
American Association for Respiratory Care  
American College of Cardiology  
American College of Chest Physicians  
American School Health Association  
American College of Preventative Medicine  
Association of Schools of Public Health  
Interreligious Coalition on Smoking OR Health  
Campaign for Tobacco Free Kids  
Oncology Nursing Society  
Family Voices  
Partnership for Prevention  
National Hispanic Medical Association  
Coalition for Health and Agriculture Development (KY)  
Kentucky Action  
American Cancer Society (KY)  
American Heart Association (KY)  
American Lung Association (KY)  
Kentucky Dental Association (KY)  
Kentucky Medical Association  
Kentucky Parent Teachers Association  
Kentucky Society for Respiratory Care  
American Heart Association  
American Lung Association  
Kentucky Smokeless States Project  
Albermarle County (VA) Medical Society  
Virginia Public Health Association  
Georgia Public Health Association

Mr. FORD. I thank the Chair.

Mr. President, I understand that the distinguished Senator from South Carolina wishes to make a statement. And I am more than willing to yield to him.

Mr. THURMOND. Thank you.

Mr. FORD. I understand he needs about 5 minutes.

Mr. THURMOND. About 6 or 7.

Mr. FORD. Well, that is pretty close. So, Mr. President, I ask unanimous consent that the distinguished President pro tempore be recognized for what time is necessary, and that after he has completed his statement, that I be recognized.

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

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The distinguished Senator from South Carolina.

Mr. THURMOND. I wish to thank the distinguished Senator for his courtesy.

Mr. FORD. I appreciate you being a cosponsor on my LEAF Act, too.

Mr. THURMOND. Mr. President, thank you.

(The remarks of Mr. THURMOND pertaining to the introduction of S. 2176 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

Again, I wish to thank the able Senator from Kentucky.

Mr. FORD. I thank the Senator.

The PRESIDING OFFICER. Under the previous order, the Senator from Kentucky is recognized.

Mr. FORD. I do not know that there are a great deal of additional thoughts that we need to discuss. I could go down—one of the things that I want people to understand is that we are not just doing away with the tobacco quota. Oh, we are paying them some money, but the average, I don't think, is going to be much over \$20,000, divided by 3 years. And the taxes are paid.

Anywhere from 15 to 20 percent of the value of Kentucky farmland is based on the tobacco quota. In rural Kentucky, banks will not lend to farmers unless they know the value of their tobacco quota. Real estate does not sell without disclosing the amount of tobacco quota on a farm. You can't sell a farm without disclosing that. That is an important feature.

If you read the real estate section of the Kentucky newspapers, you will see the amount of tobacco quota advertised with the sale of the farmland. So if the program is done away with, then the value of the land is reduced anywhere from 15 to 20 percent, and that is up to \$7 billion. So we are not only taking away the livelihood, we are also reducing the value of the product this farmer has worked all his life to hold.

There is something here that I believe is fundamental—fairness. And under the Lugar bill, that is not fair. So this will have major, devastating consequences on the tax base in rural Kentucky—all because of the hostility of title XV toward the small tobacco farm.

The Lugar alternative is really no alternative at all when you look at what happens to that tobacco farmer. It gives him a little money, and he is out. And we reduce the value of his land. He pays big sums of tax on it. If it is 20 percent, fine, but he has to figure some way.

So, Mr. President, I do not know what the majority leader or the Democratic leader would like to do. I understand we have a joint meeting tonight, with both sides, beginning at 6:30. We are getting reasonably close to that. So in order to find out if it is all right with the Senator from Indiana, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

#### MORNING BUSINESS

Mr. LUGAR. Mr. President, I ask unanimous consent that there now be a

period for the transaction of routine morning business, with Senators permitted to speak for up to 10 minutes each.

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

#### WHITE HOUSE SIGNING CEREMONY FOR THE BULLETPROOF VEST PARTNERSHIP GRANT ACT OF 1998

Mr. CAMPBELL. Mr. President, today is a very special day for both our nation's serving law enforcement officers and myself.

At 3:00 this afternoon, Arapahoe County Sheriff Pat Sullivan and I were at the White House attending a ceremony where the President signed into law the Bulletproof Vest Partnership Grant Act of 1998. The enactment of this bill is near and dear to my heart.

During the years I served as a Deputy Sheriff in Sacramento County, California, I gained a first-hand understanding of the dangers our law enforcement officers face in the line of duty. Our brave men and women wearing a badge simply never know what life threatening dangers each new day may bring. We must do everything we can to help these officers acquire the equipment they need to stay alive while they are going about the job of protecting the American people and preserving the peace.

The Bulletproof Vest Partnership Grant Act will help get one of the most critical and effective pieces of life saving equipment, namely body armor, into the hands of thousands of cops who would not otherwise have the resources to access it. Simply put, this bill will save many, many lives. This bill will help prevent wives from becoming widows, husbands from becoming widowers, and children from being raised without their father or mother.

On this special day, it is fitting to pay a tribute to one very special law enforcement officer who was killed recently while serving in the line of duty. Officer Bruce VanderJagt was killed by a hail of bullets in Denver, Colorado in November, 1997. His untimely death left his wife, Anna Marie, without her husband, and his two-year-old daughter, Hayley Louise, without her devoted father. Officer Bruce VanderJagt is remembered for his charm, his exceptional humility, his wit and intelligence as exemplified by the two master's degrees he earned, and the courage that earned him two distinguished service crosses. He will be missed.

We must do all we can to protect law enforcement officers like Bruce VanderJagt. If even one law enforcement officer's life is saved by a bullet proof vest that would not have been available without this law, all of our hard work that went into getting this bill through Congress and today enacted into law, will have been well worth it.



## MESSAGES FROM THE HOUSE

At 12 noon, a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 2888. An act to amend the Fair Labor Standards Act of 1938 to exempt from the minimum wage recordkeeping and overtime compensation requirements certain specialized employees.

H.R. 3494. An act to amend title 18, United States Code, with respect to violent sex crimes against children, and for other purposes.

## MEASURES REFERRED

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

H.R. 2888. An act to amend the Fair Labor Standards Act of 1938 to exempt from the minimum wage recordkeeping and overtime compensation requirements certain specialized employees; to the Committee on Labor and Human Resources.

H.R. 3494. An act to amend title 18, United States Code, with respect to violent sex crimes against children, and for other purposes; to the Committee on the Judiciary.

The following bill, previously received from the House of Representatives for the concurrence of the Senate, was read the first and second times by unanimous consent and referred as indicated:

H.R. 1023. An act to provide for compassionate payments with regard to individuals with blood-clotting disorders, such as hemophilia, who contracted human immunodeficiency virus due to contaminated antihemophilic factor, and for other purposes; to the Committee on Labor and Human Resources.

## PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-460. A joint resolution adopted by the Legislature of the State of Colorado; ordered to lie on the table.

## SENATE JOINT RESOLUTION 98-005

Whereas, legislation has been introduced in the United States House of Representatives (H.R. 2625) and the United States Senate (S. 1297) to rename the Washington National Airport as the "Ronald Reagan Washington National Airport"; and

Whereas, this federal legislation is intended to honor one of the greatest and most loved presidents of the United States; and

Whereas, president Ronald Reagan left the United States and the world a legacy of prosperity and freedom; and

Whereas, naming the gateway to the nation's capital after President Ronald Reagan is a fitting tribute to his contributions to our nation and to the world; and

Whereas, this dedication should be completed in honor of President Reagan's eighty-seventh birthday on February 6, 1998; Be it

*Resolved by the Senate of the Sixty-first General Assembly of the State of Colorado, the House of Representatives concurring herein:* That we, the members of the Colorado General Assembly, encourage the President and the Congress of the United States to enact

legislation to rename the Washington National Airport as the "Ronald Reagan Washington National Airport".

*Be it further resolved* That the Secretary of the Senate transmit copies of this resolution to the President of the United States, the Vice-President of the United States, the Speaker of the United States House of Representatives, and to each member of the Colorado delegation to the Congress of the United States.

POM-461. A resolution adopted by the House of the Legislature of the Commonwealth of Massachusetts; to the Committee on Appropriations.

## RESOLUTIONS

Whereas, the Land and Water Conservation Fund, conceived in 1964 as a Federal-State partnership program, was created to expand the Nation's park and recreation system through funds received from off-shore oil leasing fees; and

Whereas, since 1995, the Land and Water Conservation Fund has not been funded, thereby denying States the opportunity to provide recreational facilities for families; and

Whereas, this lack of funding has hampered the States ability to effectively protect its valuable natural resources; and

Whereas, over \$127,000,000 could have been leveraged through the Land and Water Conservation Fund for the States of Massachusetts, Connecticut, New Hampshire, Rhode Island and Vermont had the stateside funding been available; and

Whereas, the reinstatement of this funding will directly affect the quality of life we can provide to our citizens and the protection we can give to our natural resources; therefore be it

*Resolved*, that the Massachusetts House of Representatives urges the Congress of the United States to reinstate full stateside funding of the Land and Water Conservation Fund to give States the means necessary to preserve their natural resources and open space from urban centers to coastal zones; and be it further

*Resolved*, that a copy of these resolutions be forwarded by the clerk of the House of Representatives to the presiding officer of each branch of Congress and to the Members thereof from this Commonwealth.

POM-462. A resolution adopted by the Senate of the Legislature of the State of Michigan; to the Committee on Appropriations.

## SENATE RESOLUTION NO. 172

Whereas, our country is strongly committed to equality of opportunity. An important government body working to put this commitment into action is the Equal Employment Opportunity Commission (EEOC), the nation's leading civil rights enforcement agency; and

Whereas, the EEOC currently has a backlog of 65,000 cases of discrimination to investigate to pursue justice for individual citizens victimized by unfair and illegal practices. The EEOC needs to direct its resources to these individuals, rather than to the pursuit of trying to find new instances of possible problems. It is much more prudent to handle specific cases of discrimination than to direct energies to test employers by using decoy job applicants to look for discriminatory behavior; and

Whereas, the administration's recommendation of increased spending for the EEOC is appropriate if the increased funds are targeted to address the backlog of discrimination cases that need to be investigated. The men and women victimized by discrimination deserve the protection of the EEOC and should not be made to wait longer

while resources are directed to less productive activities; now, therefore, be it

*Resolved by the Senate*, that we memorialize the Congress of the United States to increase funding to the Equal Employment Opportunity Commission to handle the backlog of individual cases; and be it further

*Resolved*, that copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM-463. A joint resolution adopted by the Legislature of the State of Alaska; to the Committee on Commerce, Science, and Transportation.

## LEGISLATIVE RESOLVE NO. 56

Whereas overcapitalization of fish harvesting capacity in the Bering Sea has resulted in highly compressed, derby-style fisheries; and

Whereas overcapitalized fisheries typically lead to excessive exploitation of a fishery resource, often resulting in a precipitous decrease in the economic yield of the fishery resource; and

Whereas the State of Alaska values sustainable fishery management principles, which include minimizing bycatch and waste, maximizing utilization of the fishery resources harvested, minimizing adverse effects of fishing gear on fish habitat, and maximizing economic returns on the public fishery resource for the benefit of Alaska communities and the citizens of the United States on the whole; and

Whereas Senator Ted Stevens of Alaska has, with the cosponsorship of Senators Murkowski, Breaux, and Hollings, introduced S. 1221, "American Fisheries Act"; and

Whereas S. 1221 would effectively limit fishing capacity in the Bering Sea fishing fleet through vessel size limitations and ownership requirements; and

Whereas S. 1221 would limit the maximum length, tonnage, and shaft horsepower of vessels engaging in domestic fisheries in the United States navigable waters and exclusive economic zone; and

Whereas S. 1221 would require that at least 75 percent of the controlling interest of a vessel engaged in the fisheries in the United States navigable waters and exclusive economic zone be owned by citizens of the United States; and

Whereas S. 1221 would correct a loophole in the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 that allowed vessels that were rebuilt in foreign shipyards to enter the fisheries off Alaska; and

Whereas S. 1221 would permanently prohibit federal loan guarantees for any vessel intended for use as a fishing vessel that does not meet size, tonnage, horsepower, and domestic ownership criteria; and

Whereas S. 1221 would effectively promote further Americanization of the fisheries of the United States;

*Be it resolved*, That the Alaska State Legislature supports those provisions of S. 1221, the "American Fisheries Act," that would reduce the fishing capacity of the Bering Sea fishing fleet and promote the Americanization of the fisheries of the United States; and be it

*Further Resolved*, That the Alaska State Legislature respectfully requests the Congress to pass S. 1221.

Copies of this resolution shall be sent to the Honorable Al Gore, Jr., Vice-President of the United States and President of the U.S. Senate; the Honorable Strom Thurmond, President Pro Tempore of the U.S. Senate; the Honorable Newt Gingrich, Speaker of the U.S. House of Representatives; and to the

Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

POM-464. A concurrent resolution adopted by the Legislature of the State of Hawaii; to the Committee on Commerce, Science, and Transportation.

#### HOUSE CONCURRENT RESOLUTION 149

Whereas, in February 1997, the Federal Aviation Administration announced an initiative to demonstrate, validate, and deploy an air traffic management system in response to recommendations made by the White House Commission on Aviation Safety and Security, a plan known as Flight 2000, to accelerate the National Airspace System modernization, and is scheduled for demonstration in the year 2000 with deployment in 2005; and

Whereas, Flight 2000, a five-year program projected to cost \$400,000,000, will employ new technology, advanced communications, navigation, surveillance, and air traffic management capabilities to provide improved safety, security, capacity, and efficiency at affordable costs and will involve the integration of navigation satellites, digital communications, weather processors, cockpit displays, and air traffic control and flight planning tools; and

Whereas, Hawaii and Alaska, due to their geographic isolation, fixed quantity of aircraft operating exclusively in their respective areas, and relatively low cost of equipment, have been initially selected as demonstration sites that offer a controlled environment allowing a full scale evaluation involving all classes of aviation operators and all categories of airspace; and

Whereas, Hawaii's favorable weather, prominent topographic features, and need for few ground stations for support, offer the simplest, lowest risk, least costly, and safest evaluation site ideally suited to test Flight 2000 for intercity travel for improvement in services to pilots, to evaluate safety benefits and navigation systems reliability; and

Whereas, both sites are essential to evaluate different aspects of Flight 2000's total system capabilities; and

Whereas, the Oakland Air Route Traffic Control Center will also be involved in Flight 2000 in evaluating oceanic airspace operational improvements between Hawaii and the transition to domestic airspace; and

Whereas, as a test site, the Federal Aviation Administration will fund the upgrade of Hawaii's air traffic management infrastructure and the test aircraft equipment to provide the necessary communications, navigation, and surveillance equipment including the purchase, installation, and repair of aircraft avionics and multi-functional display equipment; and

Whereas, the Flight 2000 plan has been delayed by one year because federal funding did not materialize for fiscal year 1998 and there are indications that budget constraints may necessitate reducing the cost of Flight 2000 and placing the project back to its projected schedule by diminishing Hawaii's role as a test site and to conduct the evaluation exclusively in Alaska and in Oakland; and

Whereas, Hawaii has a key role in Flight 2000 in accelerating the operational deployment of technology to the rest of the nation and the world, toward increased flight safety and efficiency into the twenty-first century; and

Whereas, Hawaii and its citizens virtually depend on air transportation for the State's economic well-being, and Hawaii needs modern and efficient aviation systems to progress and develop its full resource potential; now, therefore, be it

*Resolved* by the House of Representatives of the Nineteenth Legislature of the State of Hawaii, Regular Session of 1998, the Senate concurring, that the Federal Aviation Administration, the U.S. Senate Committee on Commerce, Science and Transportation and the U.S. House Committee on Transportation and Infrastructure promote actions to ensure that Hawaii remains a test site in the Flight 2000 demonstration project; and

*Be it further resolved*, That Hawaii's congressional delegation is strongly urged to assist the Federal Aviation Administration and the Senate and House committees in their efforts to promote Hawaii as a test site; and

*Be it further resolved*, That certified copies of this concurrent Resolution be transmitted to the Federal Aviation Administration, the U.S. Senate Committee on Commerce, Science and Transportation, the U.S. House Committee on Transportation and Infrastructure and Hawaii's congressional delegation.

POM-465. A joint resolution adopted by the Legislature of the State of Alaska; to the Committee on Energy and Natural Resources.

#### HOUSE JOINT RESOLUTION 39

Whereas the Antiquities Act of 1906 (16 U.S.C. 431-433) grants authority to the President of the United States to establish national monuments; and

Whereas the Antiquities Act was intended to preserve only historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest; and

Whereas the Antiquities Act has been misused repeatedly to set aside enormous parcels of real property; and

Whereas the establishment in 1906 of the Grand Staircase-Escalante National Monument in southern Utah set aside 1,700,000 acres of land, despite the objections of public officials in the State of Utah, making it the largest national monument in the continental United States; and

Whereas this designation clearly violates the spirit and letter of the Antiquities Act that requires monument lands to "be confined to the smallest area" necessary to preserve and protect historical areas or objects; and

Whereas the creation of the Grand Staircase-Escalante National Monument has resulted in the loss of significant economic resources for the public schools and the taxpayers of the State of Utah; and

Whereas the power to establish national monuments can be checked only in limited circumstances; and

Whereas, in 1950, the State of Wyoming obtained statutory relief from the further establishment of national monuments without the express authorization of the Congress (16 U.S.C. 431a); be it

*Resolved*, That the Alaska State Legislature respectfully requests that the United States Congress enact legislation prohibiting the President of the United States from further extending or establishing national monuments without the express authorization of the Congress; and be it further

*Resolved*, That the Alaska State Legislature encourages the Governor to take action to encourage the federal government to provide the state with statutory relief from the establishment of national monuments in Alaska.

Copies of this resolution shall be sent to the Honorable Bill Clinton, President of the United States; the Honorable Al Gore, Jr., Vice-President of the United States and President of the U.S. Senate; the Honorable Strom Thurmond, President Pro Tempore of the U.S. Senate; the Honorable Trent Lott,

Majority Leader of the U.S. Senate; the Honorable Thomas Daschle, Minority Leader of the U.S. Senate; the Honorable Newt Gingrich, Speaker of the U.S. House of Representatives; the Honorable Dick Armey, Majority Leader of the U.S. House of Representatives; the Honorable Richard A. Gephardt, Minority Leader of the U.S. House of Representatives; the Honorable Orin Hatch and the Honorable Robert Bennett, U.S. Senators of the Utah delegation; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

POM-466. A joint resolution adopted by the Legislature of the State of Alaska; to the Committee on Energy and Natural Resources.

#### HOUSE JOINT RESOLUTION 49

Whereas the Clinton Administration has directed the United States Department of Agriculture to establish an interim policy regarding roadless areas in national forests; and

Whereas the United States Department of Agriculture, Forest Service, is considering a proposed two-year moratorium on the building of roads in those roadless areas; and

Whereas the National Forest Management Act of 1976 requires that amendments to a forest plan be done in accordance with regulations that, among other things, allow the public to participate in the development, review, and revision of land management plans for national forests such as the Tongass National Forest and the Chugach National Forest; and

Whereas the Chugach National Forest land management plan revision was initiated in April of 1997, and this plan revision process is the appropriate venue for addressing road building and roadless area issues in the Chugach National Forest; and

Whereas, after an extensive public process, the Tongass Land Management Plan has already considered the management of roadless areas on the Tongass National Forest; and

Whereas the application of such a moratorium to the Tongass National Forest would be a unilateral amendment to the Tongass Land Management Plan, which the Forest Service has just revised at a cost to taxpayers exceeding \$13,000,000; and

Whereas, under the Tongass Land Management Plan, the United States Department of Agriculture, Forest Service, plans to offer an average of only 200,000,000 board feet of timber annually, which is far below the 300,000,000 board feet needed for the timber industry as determined by the Governor's Timber Task Force; and

Whereas the proposed moratorium could eliminate the timber industry that remains in Southeast Alaska by reducing the allowable sale quantity on the Tongass National Forest to nearly zero; and

Whereas application of the proposed moratorium in the state also violates the spirit of the "no more" provision of the Alaska National Interest Lands Conservation Act (ANILCA), which prohibits federal agencies from establishing new wilderness areas in the state without an act of Congress; be it

*Resolved*, That the Alaska State Legislature opposes any moratorium on the development of the roadless areas of national forests that overrides the forest planning process provided for by the National Forest Management Act of 1976, which allows full public participation in decisions affecting the multiple use of national forest lands; and be it further

*Resolved*, That the Alaska State Legislature opposes any moratorium, restriction, or

unilateral amendment to the Tongass Land Management Plan and the Chugach Land Management Plan that overrides the forest planning process required by the National Forest Management Act of 1976, which allows full public participation in decisions affecting the multiple use of national forest lands.

Copies of this resolution shall be sent to the Honorable Bill Clinton, President of the United States; the Honorable Al Gore, Jr., Vice-President of the United States and President of the U.S. Senate; the Honorable Dan Glickman, Secretary of Agriculture; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Dan Young, U.S. Representative, members of the Alaska delegation in Congress.

POM-467. A joint resolution adopted by the Legislature of the State of Colorado; to the Committee on Energy and Natural Resources.

#### HOUSE JOINT RESOLUTION 98-1039

Whereas, In 1997, the United States Bureau of Land Management (BLM) initiated in Colorado a wilderness reinventory of public lands beginning in western Colorado and including lands in Moffat, Mesa, Rio Blanco, Garfield, Montrose, Eagle, Delta, Fremont, Teller, El Paso, Chaffee, Montezuma, Hinsdale, Pitkin, San Miguel, Dolores, Conejos, and Gunnison counties; and

Whereas, To date, six areas in western Colorado have been reinventoried by the BLM for roadless or wilderness designation potential and are being managed to protect the potential, but not necessarily identified, wilderness values as the review process proceeds; and

Whereas, By managing lands as de facto wilderness areas, the BLM has determined to hold oil and gas leasing in abeyance and to limit other discretionary multiple uses on such lands until Congress determines whether the areas qualify for wilderness designation under the federal "Wilderness Act"; and

Whereas, Numerous questions have been raised regarding the BLM's authority to re-inventory these lands for wilderness designation, and what, if any, meaningful public review has or will occur; and

Whereas, All Colorado BLM lands were reviewed under the initial wilderness study process as directed under the wilderness provisions of Section 603 of the federal "Land Policy Management Act" (FLPMA) and officially completed in November 1980, and after numerous opportunities for public input and comment, including public hearings, over 800,000 acres were designated Wilderness Study Areas, only then to be managed as wilderness under the interim wilderness management guidelines, with 400,000 acres subsequently recommended to the President for designation as wilderness; and

Whereas, Under Section 603 of FLPMA, the BLM completed the wilderness study and made its recommendations to the President in 1991 and the President submitted his recommendations for wilderness to Congress in 1993; and

Whereas, The lands currently selected for wilderness reinventory in 1997 were rejected by the BLM in the 1980's as not meeting wilderness criteria; and

Whereas, The BLM appears to be reinterpreting its roadless criteria in order to increase the amount of land eligible for consideration for wilderness designation by re-evaluating approximately one million acres of land even though such land did not previously meet wilderness criteria and no significant new information has been presented to the BLM on these land issues; and

Whereas, The BLM is continuing to re-inventory such lands prematurely before

Congress has acted on the President's recommendations; and

Whereas, The BLM is holding in abeyance multiple use activities on lands included as part of the reinventory resulting in detrimental economic impacts to the citizens of Colorado; now, therefore, be it

*Resolved by the House of Representatives of the Sixty-first General Assembly of the State of Colorado, the Senate concurring herein:*

That we, the members of the Colorado General Assembly, hereby request:

(1) That BLM lands continue to be managed to allow for multiple uses in accordance with existing resource management plans until such time as plan amendments have been lawfully adopted; and

(2) That the United States Congress place a moratorium on any further funding to the BLM for the purpose of carrying out such roadless or wilderness reinventories until Congress acts on the President's 1993 recommendations.

*Be it further resolved.* That copies of this Joint Resolution be transmitted to the President of the United States, the United States Secretary of the Interior, the Director of the United States Bureau of Land Management, the Bureau of Land Management's Colorado State Director the President of the United States Senate the Speaker of the United States House of Representatives, and to each member of Colorado's delegation in the United States Congress.

POM-468. A joint resolution adopted by the Legislature of the State of Alaska; to the Committee on Environment and Public Works.

#### SENATE JOINT RESOLUTION 15

Whereas the federal Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) substantially revamped the federal-aid highway program and the federal transportation program; and

Whereas ISTEA gave more flexibility to state and local governments to apply innovative solutions to the transportation problems that they face; and

Whereas ISTEA has shifted the focus of the federal surface transportation program toward preservation of highway and transit systems, increased efficiency of existing transportation networks, and integration of transportation modes to enhance efficiency of the transportation system; and

Whereas the states and regional and local governments have invested time and energy in making ISTEA work and this investment should not be lost by significantly altering the programs initiated by ISTEA; and

Whereas the ISTEA programs can be strengthened by allowing greater flexibility between programs and within programs, by allowing greater flexibility to address maintenance needs, by reducing time-consuming federal reviews, mandates, and sanctions, and by allowing self-certification at the state level; and

Whereas the Federal Highway Administration has adopted a regulation requiring that a major investment study be undertaken by metropolitan planning organizations whenever the need for a major metropolitan transportation investment is identified; and

Whereas the major investment study requirement overlaps and duplicates planning and project development processes that are already in place under requirements for long-range planning and congestion management systems; and

Whereas Congress should retain the critical role of the federal government to help fund highway, bridge, ferry, and transit projects and to focus the national transportation policy on mobility, connectivity, integrity, safety, and economic competitiveness; and

Whereas the state of Alaska receives money under ISTEA for construction and improvement of roads, highways, and the marine highway system and for bridge replacement and rehabilitation, state and metropolitan transportation planning, transit programs, highway safety programs, and enforcement of truck and bus safety requirements; and

Whereas the state also receives assistance under ISTEA for transportation projects to alleviate air pollution in two areas of the state where air quality does not meet national ambient air quality standards; and

Whereas 4,300 miles, or about 32 percent of the total mileage, of roads in the state are eligible for federal assistance under ISTEA; and

Whereas the State of Alaska has relied heavily on federal assistance to support construction and improvement of the surface transportation system in the state; and

Whereas continued federal assistance is essential to the establishment of the surface transportation system in the state; and

Whereas the existing surface transportation system in Alaska needs significant repair and maintenance in order to remain a safe and efficient system; and

Whereas surface transportation in Alaska is subject to extreme Arctic and sub-Arctic climate and soil conditions; and

Whereas the State of Alaska cannot maintain or expand the surface transportation system in Alaska without continued federal assistance; and

Whereas the funding authorizations for federal assistance and transportation programs under ISTEA expired September 30, 1997; be it

*Resolved,* That the Alaska State Legislature respectfully requests the Congress to reauthorize the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) as soon as possible; and be it further

*Resolved,* That the Alaska State Legislature respectfully requests the Congress to authorize increased funding for surface transportation projects under ISTEA, if possible, but, in any case, to maintain the current levels of funding available under ISTEA; and be it further

*Resolved,* That the Alaska State Legislature respectfully requests the Congress to allow for a portion of the enhancement set aside funds to be used to maintain or improve pioneer access trails and historical roadways; and be it further

*Resolved,* That the Alaska State Legislature respectfully requests the Congress to allow for a portion of the enhancement set aside funds to be used to maintain trails and other facilities that are constructed under that program; and be it further

*Resolved,* That the Alaska State Legislature respectfully requests the Congress to authorize greater use of ISTEA funds for maintenance and repair of existing roads and highways; and be it further

*Resolved,* That the Alaska State Legislature respectfully requests the Congress to eliminate the requirement for major investment studies under 23 C.F.R. 450.318 as part of the reauthorization of ISTEA; and be it further

*Resolved,* That the Alaska State Legislature respectfully requests the Congress to authorize greater flexibility in the construction of low volume roads suited to Alaska's remoteness and sub-Arctic and Arctic environment.

Copies of this resolution shall be sent to the Honorable Al Gore, Jr., Vice-President of the United States and President of the U.S. Senate; the Honorable Newt Gingrich, Speaker of the U.S. House of Representatives; the Honorable John McCain, Chair, Committee on Commerce, Science, and

Transportation, U.S. Senate; and the Honorable Bud Shuster, Chair, Committee on Transportation and Infrastructure, U.S. House of Representatives; the Honorable Rodney E. Slater, Secretary, U.S. Department of Transportation; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

POM-469. A concurrent resolution adopted by the Legislature of the State of Hawaii; to the Committee on Environment and Public Works.

#### SENATE CONCURRENT RESOLUTION 161

Whereas, a safe and efficient highway system is essential to the nation's international competitiveness, key to domestic productivity, and vital to our quality of life; and

Whereas, Hawaii has critical highway investment needs that cannot be addressed with current financial resources. The Federal Highway Administration rates 313 miles of Hawaii's most important roads in either poor or mediocre condition and judges 51 per cent of our bridges to be deficient; and

Whereas, the current level of federal funding for the nation's highway system is inadequate to meet rehabilitation needs, to protect the safety of the traveling public, to begin solving congestion and rural access problems, to conduct adequate transportation research, and to keep the United States competitive in a global economy; and

Whereas, the federal highway program is financed by dedicated user fees collected from motorists to improve the highway system and deposited into the federal Highway Trust Fund. The Taxpayer Relief Act of 1997 transferred all federal motor fuel taxes into the Highway Trust Fund but provided no mechanism to ensure the funds are spent; and

Whereas, the 1998 congressional budget would constrain federal highway spending well below the level of highway tax receipts, allowing the Highway Trust Fund's cash balance to grow from just over \$22 billion today to more than \$70 billion by 2003; and

Whereas, Hawaii and other states will be prohibited from obligating any federal highway funds after April 30, 1998, unless Congress and the President enact new highway legislation by that date; and

Whereas, without federal highway funds, many states will be forced to delay life-saving safety improvements, congestion relief projects, and other road and bridge improvements; now, therefore, be it

*Resolved by the Senate of the Nineteenth Legislature of the State of Hawaii, Regular Session of 1998, the House of Representatives concurring,* That the United States Congress enact legislation reauthorizing the federal highway program by May 1, 1998; and be it further

*Resolved,* That the reauthorization bill should fund the federal highway program at the highest level that the user-financed Highway Trust Fund will support; and be it further

*Resolved* That certified copies of this Concurrent Resolution be transmitted to the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, and Hawaii's congressional delegation.

POM-470. A joint resolution adopted by the Legislature of the State of Colorado; to the Committee on Environment and Public Works.

#### SENATE JOINT MEMORIAL 98-001

Whereas, in 1996, the Congress of the United States enacted Public Law 95-104,

which amended title 4 of the United States Code to limit state taxation of certain pension income; and

Whereas, section 1(a) of Public Law 95-104, codified at 4 U.S.C. sec. 114, prohibits states from imposing an income tax on any retirement payments made by an employer of such state to an individual who has terminated employment in and who is not a resident of such state; and

Whereas, severance payments and termination payments made by an employer to a nonresidential individual are not accorded the same tax treatment as retirement income under 4 U.S.C. sec. 114 and are therefore subject to the income tax of the state where the employer making such severance payments and termination payments is located; and

Whereas, the result of this inconsistent tax treatment of similar retirement payments is that severance payments and termination payments may be taxable to the employee in both the state of the employee's former residence and the state in which the employee currently resides; and

Whereas, subjecting severance payments and termination payments to different tax treatment than other retirement payments and income results in inconsistent and inequitable treatment of severance payments and termination payments to taxpayers that have relocated to another state after terminating their employment; and

Whereas, the enactment of federal legislation that prohibits a state from imposing an income tax on severance payments and termination payments to an individual that is not a resident of that state will result in the tax treatment of such payments that is consistent with the tax treatment of other retirement income; now, therefore, be it

*Resolved by the Senate of the Sixty-first General Assembly of the State of Colorado, the House of Representatives concurring herein.* That the Congress of the United States is hereby memorialized to adopt legislation amending 4 U.S.C. sec. 114 to include severance payments and termination payments within the retirement income of a nonresidential individual upon which states may not impose income tax.

*Be It Further Resolved,* That copies of this Joint Memorial be sent to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of Colorado's congressional delegation.

POM-471. A resolution adopted by the Senate of the Legislature of the State of Michigan, to the Committee on Finance.

Whereas, there is a proposal under discussion promoting a new special tax on sport utility vehicles (SUVs). Media reports indicate that environmental groups are advocating a new federal excise tax on these popular vehicles as a means of raising revenue for conservation purposes. The campaign is centered on the need to preserve threatened natural resources; and

Whereas, while the need for responsible actions on the environment is inarguable, the link to new taxes on sport utility vehicles is clearly invalid. Contrary to the belief of some, sport utility vehicles are used for off-road driving by only a very small percentage of owners. The image of all of these vehicles damaging the environment through off-road use is inaccurate. The proposed new tax is, instead, unfairly targeted to penalize a certain segment of the market and take advantage of the popularity of SUVs. In Michigan, people using vehicles for off-road purposes already finance outdoors recreation through a licensing program; and

Whereas, special purpose taxes that are not based on clear logic and fairness serve to

erode public confidence in government. The idea of taxing a certain category of vehicles—used almost entirely in the same manner as automobiles of any size or description—based on misconceptions and inaccuracies is wrong; now, therefore, be it

*Resolved by the Senate,* That we memorialize the Congress of the United States to refrain from imposing any special taxes on sport utility vehicles; and be it further

*Resolved,* That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM-472. A resolution adopted by the House of the Legislature of the State of Michigan; to the Committee on Finance.

#### HOUSE RESOLUTION NO. 12

Whereas, the North American Free Trade Agreement (NAFTA) enabling legislation was approved by the United States House of Representatives by a vote of 234-200 on November 17, 1993, and by the United States Senate, 61-38, on November 20, 1993; and

Whereas, NAFTA enabling legislation was signed into law by President Clinton on December 8, 1993; and

Whereas, NAFTA is a 20,000-page, multilateral trade agreement between the United States, Canada, and Mexico; and

Whereas, multilateral managed trade agreements like NAFTA are exporting middle-class jobs from Michigan to Third World countries like Mexico; and

Whereas, the Mexican peso collapsed in a financial crisis following NAFTA's approval; and

Whereas, NAFTA's supporters engineered a \$50 billion dollar bailout of the Mexican peso paid for by American taxpayers; and

Whereas, the bailout of the peso enriched wealthy owners of peso-dominated debt instruments at the expense of middle-class American taxpayers; and

Whereas, Argentina and Chile have experienced financial instability and currency devaluations in the last decade; and

Whereas, lacking a sound monetary system, the potential for financial instability persists in other Latin American countries like Argentina and Chile under a multilateral managed trade agreement; and

Whereas, working families believe that expanding trade is good for a healthy economy, but American workers have learned from the NAFTA experience that, without protections, job loss, wage reductions, and a weaker voice in the workplace are the result; and

Whereas, as the country continues to remove barriers to trade through new agreements, those agreements must protect worker rights, labor standards, and environmental quality in all countries that are a party to the agreement; and

Whereas, any grant of trade negotiating authority to the administration that gives up Congress's ability to make changes in trade agreements submitted for its approval must also contain strong provisions for addressing worker rights, labor standards, and environmental protection. These provisions must be part of the core agreement and must be subject to the same dispute settlement procedures available to other covered issues; now, therefore, be it

*Resolved by the House of Representatives,* That we memorialize the Congress of the United States to oppose extension of the North American Free Trade Agreement (NAFTA) to other Latin American countries; and be it further

*Resolved,* That a copy of this resolution be transmitted to the President of the United States Senate, the Speaker of the United

States House of Representatives and members of the Michigan congressional delegation.

POM-473. A joint resolution adopted by the Legislature of the State of Tennessee; to the Committee on Finance.

#### SENATE JOINT RESOLUTION NO. 705

Whereas, the State of Tennessee is almost entirely within the service area of the Tennessee Valley Authority ("TVA"), and, with one exception, all electric power in Tennessee is generated by the TVA and distributed by public power companies or electric cooperatives; and

Whereas, the TVA has provided electric power to the State of Tennessee and to the Tennessee Valley since its inception in 1933; and

Whereas, in the last few years, considerable interest has arisen in the deregulation of the sale of electricity in the United States; and

Whereas, each state, including Tennessee, has unique electric power supply sources and demand requirements that cannot readily be accommodated by a federally mandated national time period for full competition; and

Whereas, wholesale or retail electric power competition in the Tennessee Valley is possibly completely dependent upon congressional decision with regard to the TVA; and

Whereas, the General Assembly of the State of Tennessee has created a special study committee for the review of issues arising from the possible deregulation of the electric power industry in Tennessee; and

Whereas, the Electric Deregulation Study Committee has devoted many hours over the last year to the study of the potential impact of the deregulation of the electric power industry in Tennessee; and

Whereas, it has become clear to the members of the Electric Deregulation Study Committee that the federal government does not have the knowledge or resources necessary to determine completely the particular needs of the consumers of electric power in the State of Tennessee; now, therefore,

*Be it Resolved by the Senate of the One-Hundredth General Assembly of the State of Tennessee, the House of Representatives Concurring,* That the members of this General Assembly strongly urge the Congress of the United States not to take action to mandate competition in the retail or wholesale of electricity without special and careful consideration of the interests of the people of the Tennessee Valley.

*Be it further resolved,* That the timing for deregulation be left to the General Assembly of the State of Tennessee, consistent with the congressional action necessary to allow competition in the Tennessee Valley.

*Be it further resolved,* That an appropriate copy of this resolution be prepared for presentation to the President of the United States Senate, the Speaker of the United States House of Representatives, each United States Senator and each United States Representative representing the State of Tennessee, the Secretary of the United States Department of Energy and to the President and Vice President of the United States.

POM-474. A resolution adopted by the Senate of the Legislature of the State of Tennessee; to the Committee on Finance.

#### SENATE RESOLUTION NO. 148

Whereas, maintaining patient access to affordable, quality health care is of paramount concern to the well-being of all Americans; and

Whereas, recently proposed regulations by members of Congress to implement the 1993 amendments to the "Stark" law as they affect the provision of chemotherapy in the physician office setting pose a serious threat to the health of cancer patients in this country; and

Whereas, these proposed regulations, if enacted, would reduce chemotherapy reimbursement to acquisition costs, while failing to adequately pay for other activities needed to provide and support patient chemotherapy in outpatient settings; and

Whereas, such regulations would make it financially impossible to treat cancer patients in offices; in addition, significant concerns exist as to how the Health Care Financing Administration would implement Ambulatory Patient Categories and whether the Administration would attempt to severely limit chemotherapy reimbursements in hospitals; and

Whereas, the administration of outpatient chemotherapy in physician office settings is a safer, more convenient and more cost-effective method for patients to receive their chemotherapy treatments; and

Whereas, many of these patients will suffer needlessly if forced to travel long distances to treatment sites rather than being able to utilize the services of their local physicians; and

Whereas, these amendments, if adopted, would threaten the very existence of community cancer care as we know it, not to mention its impact on community oncology in offices, clinics, groups and hospitals, which strive to ensure that cancer patients receive the quality care they deserve; and

Whereas, although the oncology community and Congress agreed in the Balanced Budget Act to set reimbursement for physician-administered chemotherapy and supportive therapies at AWP minus 5%, the HCFA has advocated such amendments to the Stark II regulations within days of the congressional agreement's implementation, without waiting to determine the impact of the agreement; and

Whereas, with 70% of all chemotherapy being delivered outside hospital settings in physician offices and clinics, most of these locations would be forced to close if these amendments were adopted, resulting in the dismissal of oncology nursing staff that patients rely on to accurately deliver chemotherapy, and the loss of quality control in the mixing of chemotherapy and supervision of its administration by trained physicians and nurses; and

Whereas, while the HCFA believes that eliminating the margin on chemotherapy in office settings will create a major windfall, the proposed amendments to the Stark II regulations will only serve to harm those persons in greatest need of medical assistance; now, therefore, be it

*Resolved by the Senate of the One-Hundredth General Assembly of the State of Tennessee,* That we respectfully urge the Congress of the United States to address this important issue by not adopting the proposed amendments to the Stark II regulations.

*Be it further resolved,* That appropriate copies of this resolution be transmitted forthwith to the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, and to each member of the Tennessee Congressional Delegation.

POM-475. A joint resolution adopted by the Legislature of the State of Colorado; to the Committee on Foreign Relations.

#### SENATE JOINT RESOLUTION 98-023

Whereas, the United States is a signatory to the 1992 United Nations Framework Convention on Global Climate Change ("FCCC"); and

Whereas, a proposed protocol to expand the scope of the FCCC was negotiated in December 1997 in Kyoto, Japan ("Kyoto Protocol"), potentially requiring the United States to reduce emissions of greenhouse gases by 7 percent from 1990 levels during the period 2008 to 2012, with potentially larger emission reductions thereafter; and

Whereas, President William J. Clinton pledged on October 22, 1997, "That the United States not assume binding obligations (in Kyoto) unless key developing nations meaningfully participate in this effort"; and

Whereas, on July 25, 1997, the United States Senate adopted Senate Resolution No. 98 by a vote of 95-0, expressing the sense of the Senate that "The United States should not be a signatory to any protocol or other agreement regarding the Framework Convention on Climate Change . . . which would require the advice and consent of the Senate to ratification, and which would mandate new commitments to mitigate greenhouse gas emissions for the developed country parties unless the protocol or other agreement also mandates specific scheduled legally binding commitments within the same compliance period to mitigate greenhouse gas emissions for developing country parties."; and

Whereas, developing nations are exempt from greenhouse gas emission limitation requirements in the FCCC, and refused in the Kyoto negotiations to accept any new commitments for greenhouse gas emission limitations through the Kyoto Protocol; and

Whereas, emissions of greenhouse gases such as carbon dioxide are caused primarily by the combustion of oil, coal, and natural gas fuels by industries, automobiles, homes, and other use of energy; and

Whereas, the United States relies on carbon-based fossil fuels for more than ninety percent of its total energy supply; and

Whereas, achieving the emission reductions proposed by the Kyoto Protocol would require an approximately thirty-eight percent reduction in projected United States carbon emissions during the period 2008 to 2012; and

Whereas, developing countries exempt from emission limitations under the Kyoto Protocol are expected to increase their rates of fossil fuel use over the next two decades, and to surpass the United States and other industrialized countries in total emissions of greenhouse gases; and

Whereas, studies prepared by the economic forecasting group WEFA, Inc., estimate that legally binding requirements for the reduction of United States greenhouse gases below 1990 emission levels would result in the loss of more than 29,500 Colorado jobs, with the unemployment rate approaching five percent in 2010, while subjecting Colorado's citizens to higher energy, housing, medical, and food costs that would reduce Colorado tax revenue by \$420 million; and

Whereas, the failure to provide for commitments by developing countries in the Kyoto Protocol creates an unfair competitive imbalance between industrial and developing nations, potentially leading to the transfer of jobs and industrial development from the United States to developing countries; and

Whereas, increased emissions of greenhouse gases by developing countries would offset any environmental benefits associated with emissions reductions achieved by the United States and by other industrial nations; now, therefore, be it

*Resolved by the Senate of the Sixty-first General Assembly of the State of Colorado, the House of Representatives concurring herein:*

(1) That we, the members of the General Assembly, strongly urge the President of the United States not to sign the Kyoto Protocol to the FCCC;

(2) That, if the President does sign the Kyoto Protocol, we strongly urge the United States Senate not to ratify the treaty; and

(3) That we request that no federal or state agency take any action to initiate strategies

to reduce greenhouse gases as required by the Kyoto Protocol until it is revised to include specific scheduled commitments for developing countries to mitigate greenhouse gas emissions within the same compliance period required for developed countries.

*Be it further resolved*, That copies of this Resolution be transmitted to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and to each member of Colorado's delegation in the United States Congress.

POM-476. A concurrent resolution adopted by the Legislature of the State of Hawaii; to the Committee on Governmental Affairs.

STATE OF HAWAII,  
STATE CAPITOL,

Honolulu, Hawaii, May 15, 1998.

Hon. ALBERT GORE, JR.  
Vice President, Old Executive Office Building,  
Washington, DC.

DEAR MR. VICE PRESIDENT: I have the honor to transmit herewith Senate Concurrent Resolution No. 172, S.D. 1, which was adopted on April 16, 1998 by the Senate of the Nineteenth Legislature of the State of Hawaii, Regular Session of 1998.

Sincerely yours,

PAUL T. KAWAGUCHI,  
Clerk of the Senate.

Enclosure.

#### SENATE CONCURRENT RESOLUTION 172

Whereas, in a period of resource constraints, citizens still want to improve Hawaii's quality of life; and

Whereas, Hawaii's citizens have come together to adopt benchmarks representing public goals, and indicators of progress towards meeting those goals; and

Whereas, formation of performance partnerships with the federal government, local government, and the private sector offer the possibility of achieving results through collaborative means without additional state funds; and

Whereas, performance management requires measuring progress towards benchmarks on a regular systematic basis; and

Whereas, partners should be rewarded for success evidenced by both high performance and improved performance; and

Whereas, the federal government is exploring rewarding additional funds as an incentive to states that make improvement; and

Whereas, the federal government is exploring rewarding high performing states with additional flexibility or reduced matching requirements; and

Whereas, the Office of the Governor has invited the National Performance Review, under the direction of Vice President Al Gore, to explore mutual goals for reinventing government and improving intergovernmental service delivery; and

Whereas, National Performance Review staff visited Hawaii in November 1997 and met with community-government partnerships, legislators, and groups of concerned citizens that support a shift to measuring performance results to chart progress towards public goals; now, therefore, be it

*Resolved by the Senate of the nineteenth Legislature of the State of Hawaii, Regular Session of 1998, the House of Representatives concurring*, That the Office of the Governor is requested to proceed with discussions which may lead to a letter of agreement with the National Performance Review committing both the state and federal governments to explore reducing barriers to reinventing government by shifting to performance management and performance partnerships to achieve public goals; and be it further

*Resolved*, That the federal government be requested to assign a liaison from the Na-

tional Performance Review to assist Hawaii in creating performance partnerships with communities, the non-profit sector, and the business community to improve results on achieving public goals, such as the Good Beginnings Alliance, the proposed Waipahu partnership and partnership efforts in other communities; and be it further

*Resolved*, That a steering committee composed of representatives nominated by the Legislature, the Hawaii Community Services Council's Ke Ala Hoku project, the Hawaii Business Roundtable, The Chamber of Commerce of Hawaii, and persons with experience in management, re-engineering of service delivery, fiscal, and governance systems, and assessment be convened to advise the governor on the goals of the National Performance Review partnership; and be it further

*Resolved*, That the steering committee is requested to develop plans for the following:

(1) A results measurement system which provides regular reports on progress towards achieving outcomes to policy makers and the public;

(2) A performance partnership development mechanism which convenes the stakeholders in achieving individual benchmarks to develop new program, fiscal, and governance strategies; and be it further

*Resolved*, That the Governor is requested to report on the progress made in developing performance management mechanisms with the assistance of the National Performance Review twenty days prior to the start of the 1999 Legislative Session; and be it further

*Resolved*, That certified copies of this Concurrent Resolution be transmitted to the Governor, Vice President Al Gore, the National Performance Review, the Aloha United Way Board of Directors, the Hawaii Community Services Council, the Hawaii Community Foundation, the Hawaii Business Roundtable, and The Chamber of Commerce of Hawaii.

POM-477. A concurrent resolution adopted by the Legislature of the State of Arizona; to the Committee on the Judiciary.

#### HOUSE CONCURRENT MEMORIAL 2009

Whereas, criminal defendants are afforded numerous federal rights and procedural protections; and

Whereas, victims of crime are not afforded any federal rights or protections; and

Whereas, the people of this state believe in the individual rights and liberties of all persons and have amended the Constitution of Arizona to provide crime victims with rights.

*Wherefore your memorialist, the House of Representatives of the State of Arizona, the Senate concurring, prays:*

1. That the Congress of the United States propose to the people an amendment to the Constitution of the United States that provides rights to crime victims and that embodies the following principles:

(a) The right to be informed of and not excluded from any public proceedings relating to the crime.

(b) The right to be heard regarding any release from custody and to consideration for the safety of the victim in determining any release.

(c) The right to be heard regarding the acceptance of any negotiated plea or sentence.

(d) The right to receive notice of release or escape.

(e) The right to a trial that is free from unreasonable delay.

(f) The right to restitution.

(g) The right to receive notice of victims' rights.

2. That any amendment to the Constitution of the United States to establish rights

for crime victims grant standing to victims of crime to assert all rights established by the Constitution.

3. That the state legislature have the power to implement and enforce the rights in the Arizona criminal justice system.

4. That the Secretary of State of the State of Arizona transmit copies of this Memorial to the President of the United States Senate, the Speaker of the United States House of Representatives and each Member of Congress from the State of Arizona.

POM-478. A joint resolution adopted by the Legislature of the State of California; to the Committee on the Judiciary.

#### ASSEMBLY JOINT RESOLUTION NO. 66

Whereas, during World War II, the United States government orchestrated, financed, and directed the mass arrest and deportation of 2,264 men, women, and children of Japanese ancestry from various Latin American countries to United States internment camps, according to a 1983 Congressional report; and

Whereas, the United States government carried out this program to use these civilians in prisoner exchanges for Americans held by the Japanese during the war; and

Whereas, twelve Latin American governments—Bolivia, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Panama, and Peru—supported this mass arrest and deportation; and

Whereas, in violation of basic human rights, the United States abducted those persons without charges, hearings, or any kind of due process and forcibly transported them to Immigration and Naturalization Service detention facilities in a country and culture foreign to them, far away from their homes; and

Whereas, over 860 Japanese Latin Americans were sent to Japan in prisoner-of-war exchanges, while about 1,400 remained incarcerated in United States internment camps until the end of the war; and

Whereas, Congress passed the Civil Liberties Act of 1988 (50 U.S.C. Sec. 1989 et seq.), which provided an official apology and restitution to Japanese American internees; and

Whereas, The Japanese Latin American internees and their families seek the same official apology and restitution provided the Japanese American internees; and

Whereas, the Japanese Latin American internees and their families seek the United States government's acknowledgment of this tragic and largely unknown experience; and

Whereas, a federal class action lawsuit was filed on August 28, 1996, challenging the denial of redress to the Japanese Latin American internees and their families under the Civil Liberties Act of 1988; and

Whereas, more than 80 Members of Congress from across the country have publicly expressed their support for redress for the Japanese Latin American internees; now, therefore, be it

*Resolved by the Assembly and Senate of the State of California, jointly*, That the Legislature of the State of California supports the granting of an official apology and restitution to World War II Japanese Latin American internees pursuant to federal law; and be it further

*Resolved*, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

POM-479. A concurrent resolution adopted by the Legislature of the State of Oklahoma; to the Committee on the Judiciary.



Whereas, separation of powers is fundamental to the United States Constitution and the power of the federal government is strictly limited; and

Whereas, under the United States Constitution, the states are to determine public policy; and

Whereas, it is the duty of the judiciary to interpret the law, not to create law; and

Whereas, federal district courts, with the acquiescence of the United States Supreme Court, continue to order states to levy or increase taxes to comply with the federal courts' interpretation of federal law; and

Whereas, the federal courts have strayed from the intent of our founding fathers and the United States Constitution through inappropriate judicial tax mandates; and

Whereas, these mandates by way of judicial decision have forced state governments to serve as the mere administrative arm of the federal government; and

Whereas, these court actions violate the United States Constitution and the legislative process; and

Whereas, the time has come for the people of this great nation and their duly elected representatives in state government to reaffirm, in no uncertain terms, that the authority to tax under the United States Constitution is retained by the people who, by their consent alone, do delegate such power to tax explicitly to themselves or those duly elected representatives being directly responsible and accountable to those who have elected them; and

Whereas, several states have petitioned the United States Congress to propose an amendment to the United States Constitution; and

Whereas, the amendment was previously introduced in the United States Congress; and

Whereas, the amendment seeks to prevent federal courts from levying or increasing taxes without representation of the people and against the people's wishes: Now, therefore, be it

*Resolved by the Senate of the 2nd session of the 46th Oklahoma Legislature, the House of Representatives concurring therein,* That the United States Congress prepare and submit to the several states an amendment to the United States Constitution to add a new article providing as follows:

"Neither the Supreme Court nor any inferior court of the United States shall have the power to instruct or order a state or a political subdivision thereof, or an official of such a state or political subdivision, to levy or increase taxes."

That the Secretary of State is hereby directed to distribute copies of this resolution to the President and Vice President of the United States, the Presiding Officer in each house of the legislature in each of the states of the Union, the Speaker of the United States House of Representatives, the Majority Leader of the United States Senate and to each member of the States of Oklahoma Congressional Delegation.

POM-480. A resolution adopted by the Legislature of the Commonwealth of Pennsylvania; to the Committee on Labor and Human Resources.

#### HOUSE RESOLUTION NO. 443

Whereas, it is estimated that 26,800 new cases of ovarian cancer developed in the United States in 1997; and

Whereas, ovarian cancer caused approximately 14,200 deaths in 1997; and

Whereas, ovarian cancer ranks second among gynecological cancers in the number of new cases each year and causes more deaths than any other cancer of the female reproductive system; and

Whereas, approximately 78% of ovarian cancer patients survive longer than one year

after diagnosis and more than 46% of these patients survive longer than five years after diagnosis; and

Whereas, if diagnosed and treated before the cancer spreads outside of the ovary, the five-year survival rate is 92%, but approximately only 24% of all cases of ovarian cancer is detected at this stage; and

Whereas, ovarian cancer research is desperately needed to serve as encouragement to more women to undergo screening tests earlier as well as to reduce the medical costs associated with later discovery; and

Whereas, H.R. 953 in the House of Representatives of the United States, to be known as the Ovarian Cancer Research and Information Amendments of 1997, would authorize \$90 million to conduct ovarian cancer research; therefore be it

*Resolved,* That the House of Representatives of the Commonwealth of Pennsylvania memorialize the President of the United States and the Congress of the United States to enact H.R. 953, the Ovarian Cancer Research and Information Amendments of 1997; and be it further

*Resolved,* That a copy of this resolution be transmitted to the President of the United States, to the presiding officers of each house of Congress and to each member of Congress from Pennsylvania.

#### INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. ALLARD (for himself, Mr. BROWNBACK, and Mr. DEWINE):

S. 2170. A bill to amend the Internal Revenue Code of 1986 to eliminate the temporary increase in unemployment tax; to the Committee on Finance.

By Mr. BUMPERS:

S. 2171. A bill to extend the deadline under the Federal Power Act applicable to the construction of a hydroelectric project in the State of Arkansas; to the Committee on Energy and Natural Resources.

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

S. 2172. A bill to authorize the National Fish and Wildlife Foundation to establish a whale conservation fund, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. BOND:

S. 2173. A bill to amend the Rehabilitation Act of 1973 to provide for research and development of assistance technology and universally designed technology, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. ABRAHAM:

S. 2174. A bill to amend the Wagner-Peyser Act to clarify that nothing in that Act shall prohibit a State from using individuals other than merit-staffed of civil service employees of the State (or any political subdivision thereof) in providing employment services under that Act; to the Committee on Labor and Human Resources.

By Mr. CRAIG:

S. 2175. A bill to safeguard the privacy of certain identification records and name checks, and for other purposes; to the Committee on the Judiciary.

By Mr. THOMPSON (for himself, Mr. BYRD, Mr. THURMOND, Mr. LOTT, and Mr. ROTH):

S. 2176. A bill to amend sections 3345 through 3349 of title 5, United States Code (commonly referred to as the "Vacancies Act") to clarify statutory requirements relat-

ing to vacancies in and appointments to certain Federal offices, and for other purposes; to the Committee on Governmental Affairs.

By Mr. INOUE:

S. 2177. A bill to express the sense of the Congress that the President should award a Presidential unit citation to the final crew of the U.S.S. INDIANAPOLIS, which was sunk on July 30, 1945; to the Committee on Armed Services.

By Mr. KOHL (for himself and Mr. D'AMATO):

S. 2178. A bill to amend the National Housing Act to authorize the Secretary of Housing and Urban Development to insure mortgages for the acquisition, construction, or substantial rehabilitation of child care and development facilities and to establish the Children's Development Commission to certify such facilities for such insurance, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Ms. MOSELEY-BRAUN:

S. 2179. A bill to amend the International Emergency Economic Powers Act to clarify the conditions under which export controls may be imposed on agricultural products; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. LOTT (for himself and Mr. DASCHLE):

S. 2180. A bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to clarify liability under that Act for certain recycling transactions; to the Committee on Environment and Public Works.

#### SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Ms. MOSELEY-BRAUN (for herself and Mr. DURBIN):

S. Res. 249. A resolution to congratulate the Chicago Bulls on winning the 1998 National Basketball Association Championship; considered and agreed to.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ALLARD (for himself, Mr. BROWNBACK, and Mr. DEWINE):

S. 2170. A bill to amend the Internal Revenue Code of 1986 to eliminate the temporary increase in unemployment tax; to the Committee on Finance.

#### LEGISLATION TO REPEAL TEMPORARY UNEMPLOYMENT TAX

Mr. ALLARD. Mr. President, today I introduce legislation to repeal the "temporary" 0.2 percent Federal Unemployment Tax (FUTA) surtax.

The "temporary" surtax was enacted by Congress in 1976 to repay the general fund of the Treasury for funds borrowed by the unemployment trust fund. While the borrowings were repaid in 1987, Congress has continued to extend the surtax in tax bill after tax bill.

Since 1987, Congress has used extension of the surtax to help pay for tax packages. In fact, the surtax was most recently extended to help pay for the 1997 tax bill.

This is unfair to small business which has been told repeatedly that the surtax was temporary and would be

repealed when it was no longer needed to finance the unemployment tax system.

The reason for the FUTA surtax no longer exists. The economy is experiencing the highest level of employment in decades, and all state unemployment funds have surpluses.

It is inappropriate for the government to continue to raise surplus unemployment taxes and use those surpluses for purposes totally unrelated to the unemployment tax system.

The FUTA surtax hits small businesses hardest because they are often labor intensive. Any payroll tax is added directly to the employer's payroll costs, and payroll taxes must be paid whether the business has a profit or loss.

Mr. President, prior to my election to the House of Representatives in 1990, I ran a small business. I am well aware of payroll taxes and the burden that they can place on a business.

The unemployment surtax was in place when I ran my small business.

I suspect that my view of the surtax is similar to the view of most small business owners. It is one thing to have a surtax when unemployment is high. It is totally unjustified when unemployment is at the lowest level in three decades.

What really upsets small business owners is the fact that the government is breaking its commitment that the surtax would be temporary. This is not the way the federal government should do business.

Repeal of the 0.2 percent surtax will reduce the tax burden on employers and workers by \$6 billion over the next five years.

Lower payroll taxes mean higher wages for workers. While the employer appears to fully pay the unemployment surtax and other payroll taxes, the economic evidence is strong that the cost of payroll taxes is passed on to workers in form of lower wages.

Consistent tax relief will help to ensure that our economy remains the

strongest and most competitive in the world. Low taxes reduce unemployment and help ensure that future surtaxes are unnecessary.

Mr. President, I ask that the text of the bill be printed in the RECORD along with several charts showing the level of State Unemployment System Reserves from 1991–1997.

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

S. 2170

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

# SECTION 1. REPEAL OF TEMPORARY UNEMPLOYMENT TAX.

Section 3301 of the Internal Revenue Code of 1986 (relating to rate of unemployment tax) is amended—

(1) by striking “2007” in paragraph (1) and inserting “1998”; and

(2) by striking “2008” in paragraph (2) and inserting “1999”.

## STATE UNEMPLOYMENT COMPENSATION SYSTEM RESERVES AND RATIO OF RESERVES TO TOTAL WAGES BY STATE AND YEAR, 1991–1995

State	Net reserves as of Dec. 31 of each year (thousands)					Ratio of year-end reserves to total wages (percent)				
	1995	1994	1993	1992	1991	1995	1994	1993	1992	1991
Alabama	\$534,470	\$551,842	\$570,118	\$550,280	\$585,725	1.61	1.77	1.94	1.96	2.24
Alaska	201,017	210,563	227,911	232,320	243,155	3.56	3.81	4.32	4.57	4.98
Arizona	534,640	432,449	368,782	372,423	437,667	1.48	1.33	1.26	1.36	1.71
Arkansas	200,866	169,795	134,432	81,340	103,629	1.12	1.02	0.87	0.55	0.76
California	2,104,220	2,092,695	2,450,402	2,786,713	4,190,197	0.68	0.72	0.87	0.99	1.52
Colorado	480,582	434,482	390,435	339,246	312,036	1.22	1.21	1.15	1.10	1.09
Connecticut	116,692	3,311	1,062	(653,215)	(353,767)	0.27	0.01	0.00	0.00	0.00
Delaware	271,807	244,013	225,943	218,719	223,685	3.24	3.14	3.05	3.04	3.20
District of Columbia	68,636	41,141	5,937	(19,286)	12,465	0.57	0.35	0.05	0.00	0.12
Florida	1,806,432	1,621,614	1,505,570	1,443,603	1,691,814	1.53	1.47	1.45	1.47	1.84
Georgia	1,453,118	1,281,507	1,094,999	965,870	962,324	2.03	1.95	1.79	1.68	1.81
Hawaii	213,496	232,859	310,155	362,123	420,991	2.07	2.26	3.01	3.57	4.39
Idaho	243,090	245,096	247,823	240,141	243,573	2.88	3.14	3.49	3.67	4.09
Illinois	1,629,210	1,247,066	851,918	847,622	1,172,283	1.22	0.99	0.71	0.74	1.08
Indiana	1,228,070	1,132,343	1,024,658	941,632	899,139	2.16	2.11	2.05	1.99	2.02
Iowa	723,149	708,450	655,066	615,474	594,626	3.10	3.23	3.20	3.16	3.27
Kansas	704,008	735,717	658,053	605,827	571,904	2.77	3.20	3.03	2.89	2.91
Kentucky	470,826	425,682	402,311	364,287	357,940	1.61	1.57	1.57	1.49	1.58
Louisiana	1,003,378	868,892	689,382	600,917	559,975	3.15	2.92	2.47	2.22	2.15
Maine	95,289	74,621	51,403	35,108	77,553	1.06	0.87	0.62	0.44	1.01
Maryland	605,415	408,994	219,071	145,839	224,970	1.36	0.96	0.54	0.37	0.59
Massachusetts	527,273	184,933	(115,987)	(379,918)	(234,742)	0.70	0.26	0.00	0.00	0.00
Michigan	1,497,688	866,906	364,530	(72,492)	(166,509)	1.45	0.90	0.42	0.00	0.00
Minnesota	459,621	369,776	257,584	224,091	309,473	0.94	0.80	0.59	0.54	0.80
Mississippi	551,318	490,392	410,259	345,352	348,593	3.19	2.98	2.74	2.48	2.69
Missouri	196,933	118,466	(7,749)	3,101	199,473	0.40	0.26	0.00	0.01	0.30
Montana	122,242	110,910	104,415	96,370	91,119	2.08	1.95	1.91	1.87	1.91
Nebraska	194,283	188,365	171,938	160,713	146,184	1.45	1.51	1.49	1.46	1.42
Nevada	297,866	289,804	238,398	233,667	295,919	1.69	1.70	1.68	1.79	2.46
New Hampshire	250,884	211,580	164,455	129,582	127,995	2.25	2.06	1.71	1.38	1.46
New Jersey	1,987,790	1,947,033	1,965,236	2,439,970	2,564,278	2.06	2.12	2.23	2.86	3.16
New Mexico	354,874	317,264	271,194	238,999	220,932	3.25	3.13	2.91	2.77	2.73
New York	248,978	190,467	129,409	213,914	1,191,450	0.12	0.10	0.07	0.12	0.69
North Carolina	1,531,117	1,555,329	1,514,674	1,387,170	1,373,719	2.27	2.49	2.60	2.52	2.70
North Dakota	57,415	58,641	56,267	50,306	50,914	1.41	1.55	1.59	1.51	1.64
Ohio	1,600,533	1,166,837	845,054	602,464	647,410	1.46	1.13	0.88	0.65	0.74
Oklahoma	521,683	474,866	437,800	418,907	426,398	2.32	2.21	2.13	2.10	2.24
Oregon	905,985	994,533	1,096,695	1,054,524	1,043,810	3.21	3.86	4.63	4.71	4.98
Pennsylvania	1,914,777	1,518,999	1,105,425	807,828	1,155,988	1.78	1.48	1.12	0.84	1.26
Puerto Rico	634,291	674,663	730,873	749,255	750,020	6.71	7.54	8.39	9.05	9.64
Rhode Island	110,086	119,262	119,294	104,498	143,617	1.33	1.51	1.56	1.41	2.03
South Carolina	556,650	502,237	467,494	433,442	455,097	1.84	1.79	1.77	1.73	1.92
South Dakota	51,622	51,208	49,773	50,416	49,701	1.09	1.16	1.23	1.34	1.45
Tennessee	822,821	747,477	672,261	603,130	612,653	1.66	1.62	1.58	1.50	1.67
Texas	584,866	480,322	445,633	586,472	942,734	0.34	0.30	0.30	0.41	0.69
Utah	468,030	411,411	366,524	342,146	327,893	2.93	2.86	2.82	2.83	2.96
Vermont	206,720	195,418	183,025	180,730	192,675	4.51	4.51	4.37	4.49	5.05
Virginia	788,787	658,588	553,441	506,641	591,166	1.27	1.13	1.01	0.97	1.19
Virgin Islands	40,064	40,843	51,575	47,416	43,241	6.86	6.67	6.60	7.32	7.31
Washington	1,417,701	1,565,417	1,743,146	1,766,006	1,707,604	2.93	3.45	4.05	4.18	4.40
West Virginia	164,036	161,671	154,512	140,517	157,124	1.44	1.47	1.49	1.38	1.62
Wisconsin	1,503,641	1,400,119	1,241,918	1,194,553	1,171,822	3.06	3.03	2.87	2.90	3.07
Wyoming	142,310	136,755	127,332	109,826	98,952	4.22	4.15	4.08	3.71	3.48
Total	35,403,296	31,343,551	28,187,816	27,111,772	31,494,605	1.40	1.32	1.25	1.25	1.49

Difference between detail and totals due to rounding 1995 data subject to revision. Ratio of reserves to wages not calculated for States with negative balances.

Source: U.S. Department of Labor. Prepared by the National Foundation for U.C. & W.C., June 1997.

## FINANCIAL INFORMATION BY STATE FOR CY96.4, 1996

State	Revenue (12 mos) (in thousands)	TF Balance (in thousands)	Mos. in TF	Total loans (in thousands)	Loans/cov. employee
United States	\$23,009,990	\$38,631,922	21.3	\$0	\$0.00

## FINANCIAL INFORMATION BY STATE FOR CY96.4, 1996—Continued

State	Revenue (12 mos) (in thousands)	TF Balance (in thousands)	Mos. in TF	Total loans (in thousands)	Loans/cov. employee
Alabama	134,029	483,472	27.3	0	0.00
Alaska	109,089	194,188	19.8	0	0.00
Arizona	223,143	627,059	46.3	0	0.00
Arkansas	169,670	202,784	13.0	0	0.00
California	3,590,823	2,877,452	11.7	0	0.00
Colorado	187,897	510,956	32.5	0	0.00
Connecticut	592,538	277,861	7.4	0	0.00
Delaware	68,409	258,468	31.9	0	0.00
Dist. of Colum.	133,380	99,368	12.2	0	0.00
Florida	677,796	1,947,557	35.2	0	0.00
Georgia	382,294	1,634,073	67.0	0	0.00
Hawaii	179,540	211,267	13.3	0	0.00
Idaho	105,900	266,228	32.1	0	0.00
Illinois	1,199,050	1,638,560	15.2	0	0.00
Indiana	238,343	1,273,086	58.0	0	0.00
Iowa	133,905	718,845	45.9	0	0.00
Kansas	42,487	651,074	52.6	0	0.00
Kentucky	234,997	501,304	25.7	0	0.00
Louisiana	204,469	1,131,052	94.7	0	0.00
Maine	122,601	112,122	12.5	0	0.00
Maryland	421,722	690,786	22.9	0	0.00
Massachusetts	1,130,136	914,631	14.0	0	0.00
Michigan	1,233,803	1,830,928	21.8	0	0.00
Minnesota	386,523	513,033	16.4	0	0.00
Mississippi	99,520	553,222	50.0	0	0.00
Missouri	381,576	307,507	12.8	0	0.00
Montana	58,841	125,900	24.9	0	0.00
Nebraska	41,748	195,210	44.8	0	0.00
Nevada	177,064	348,278	28.6	0	0.00
New Hampshire	41,781	268,011	91.7	0	0.00
New Jersey	1,448,896	2,028,818	18.1	0	0.00
New Mexico	85,729	385,531	59.6	0	0.00
New York	2,211,440	470,400	2.8	0	0.00
North Carolina	113,075	1,335,565	39.6	0	0.00
North Dakota	24,364	50,072	19.1	0	0.00
Ohio	781,640	1,750,968	28.8	0	0.00
Oklahoma	128,728	563,895	64.3	0	0.00
Oregon	384,046	941,419	28.9	0	0.00
Pennsylvania	1,612,406	2,031,947	14.9	0	0.00
Puerto Rico	149,262	595,703	31.8	0	0.00
Rhode Island	184,004	116,240	7.4	0	0.00
South Carolina	208,829	603,410	36.2	0	0.00
South Dakota	12,291	49,542	39.9	0	0.00
Tennessee	284,220	826,526	30.8	0	0.00
Texas	1,014,460	642,233	7.7	0	0.00
Utah	96,262	523,880	89.2	0	0.00
Vermont	48,595	218,259	49.5	0	0.00
Virginia	260,890	897,198	55.4	0	0.00
Virgin Islands	9,345	42,069	51.5	0	0.00
Washington	644,606	1,332,508	19.7	0	0.00
West Virginia	130,182	157,345	12.8	0	0.00
Wisconsin	445,248	1,556,922	37.2	0	0.00
Wyoming	28,401	147,087	54.0	0	0.00

## FINANCIAL INFORMATION BY STATE FOR CYQ, 1997

State	Revenues, last 12 months (in thousands)	TF balance (in thousands)	TF as percent of total wages <sup>1</sup>
Alabama	\$140,978	\$451,425	1.21
Alaska	131,645	202,416	3.46
Arizona	224,651	741,050	1.70
Arkansas	183,101	204,319	1.03
California	3,367,845	3,737,815	1.05
Colorado	198,748	574,413	1.22
Connecticut	637,125	532,692	1.06
Delaware	75,692	279,173	2.86
District of Col.	132,481	135,627	0.94
Florida	685,668	2,090,222	1.55
Georgia	350,964	1,797,102	2.13
Hawaii	186,510	216,658	2.04
Idaho	99,412	280,382	3.00
Illinois	1,226,328	1,742,968	1.16
Indiana	268,016	1,362,463	2.15
Iowa	144,156	727,327	2.79
Kansas	46,633	606,735	2.16
Kentucky	269,075	571,366	1.71
Louisiana	213,963	1,275,668	3.55
Maine	118,089	136,019	1.35
Maryland	349,967	720,552	1.42
Massachusetts	1,222,144	1,446,164	1.64
Michigan	1,184,719	2,222,714	1.93
Minnesota	398,707	564,628	0.98
Mississippi	166,992	563,901	2.95
Missouri	381,802	417,706	0.75
Montana	65,306	135,604	2.11
Nebraska	57,932	205,727	1.33
Nevada	224,837	387,888	1.79
New Hampshire	26,426	278,296	2.16
New Jersey	1,459,837	2,384,916	2.21
New Mexico	99,244	431,159	3.61
New York	2,402,806	990,176	0.43
North Carolina	253,942	1,301,184	1.67
North Dakota	76,246	38,057	0.83
Ohio	719,622	1,874,943	1.53
Oklahoma	107,585	608,942	2.36
Oregon	462,961	1,068,843	3.13
Pennsylvania	1,587,542	2,253,703	1.87
Puerto Rico	203,816	586,659	5.30
Rhode Island	248,423	160,044	1.78
South Carolina	219,733	687,060	2.02
South Dakota	14,186	48,939	0.91
Tennessee	296,749	847,842	1.52
Texas	1,014,596	706,577	0.35
Utah	97,876	572,849	2.97

## FINANCIAL INFORMATION BY STATE FOR CYQ, 1997—Continued

State	Revenues, last 12 months (in thousands)	TF balance (in thousands)	TF as percent of total wages <sup>1</sup>
Vermont	50,047	233,537	4.59
Virgin Islands	7,693	45,434	6.82
Virginia	222,448	979,376	1.35
Washington	810,440	1,447,195	2.42
West Virginia	139,030	165,917	1.37
Wisconsin	475,595	1,632,214	2.95
Wyoming	31,217	158,573	4.26
United States	23,731,544	43,833,157	1.51

<sup>1</sup> Based on estimated wages for the most recent 12 months.

By Mr. BOND:

S. 2173. A bill to amend the Rehabilitation Act of 1973 to provide for research and development of assistance technology and universally designed technology, and for other purposes; to the Committee on Labor and Human Resources.

#### ASSISTIVE AND UNIVERSALLY DESIGNED TECHNOLOGY IMPROVEMENT ACT FOR INDIVIDUALS WITH DISABILITIES

Mr. BOND. Mr. President, today I am introducing a bill which will improve assistive and universally designed technology research and development and increase access to this technology for all Americans with disabilities.

Assistive and universally designed technology provides a disabled individual the means to function better in the workplace or the home. Assistive and universally designed technology is

technology that aids the millions of Americans with physical or mental disabilities. For example, assistive technology can mean a computer that can be used by an individual with Cerebral Palsy, a hearing aid for an aging individual or enhanced voice recognition for someone with Multiple Sclerosis, while universally designed technology can mean closed captioning for the deaf or for patrons in crowded restaurants and accessibility ramps for individuals in wheelchairs or mothers with strollers.

A year ago my office was approached by a small business owner and Missouri's United Cerebral Palsy asking for support for testing of a breakthrough in Voice Recognition technology. During my search to find an appropriate place for funding for this voice recognition technology, my staff and I became familiar with the overall government efforts in this area.

There are many significant problems in the federal government's efforts in assistive technology research and development. My findings were validated by a recent report from the National Academy of Sciences' Institute of Medicine, "Enabling America: Assessing the Role of Rehabilitation Science and Engineering," which stressed that the federal government's efforts in this area are lacking awareness, funding, and coordination.

My distinguished colleague in the House, Congresswoman CONNIE MORELLA, Chairwoman of the House Science's Subcommittee on Technology, joins me today in introducing the Assistive and Universally Designed Technology Improvement Act for Individuals with Disabilities.

The Act provides federally supported incentives in all areas of assistive and universally designed technology, including need identification, research and development, product evaluation, technology transfer, and commercialization. These incentives achieve the goal of improving the quality, functional capability, distribution, and affordability of this essential technology.

This legislation does several things.

First, the bill includes an improved peer review process at the National Institute on Disability Research and Rehabilitation (NIDRR) at the Department of Education. This provision requires standing peer review panels and clarifies the evaluation of applications for funding of assistive and universally designed technology. These improvements provide more assistive and universally designed technology products to the marketplace, increase small business involvement in research and development, and assure research and development efforts cover all disability groups including persons with physical and mental disabilities as well as the aging and rural technology users.

Second, the legislation augments technology transfer through improving the role of the Interagency Committee on Disability Research (ICDR) by increasing its authority, accountability and ability to coordinate. Provisions are included for increased usage of the Federal labs to improve coordination with all Federal agencies involved in assistive and universally designed technology research and development and for providing public and private sector partnerships for assistive and universally designed technology research and development.

Third, to increase the market for assistive technology, the bill clarifies Title III of the Tech Act for the Microloan program. This microloan program assists disabled persons in obtaining assistive and universally designed technology.

Fourth, funds are authorized for the Interagency Committee on Disability Research to hire staff and for operating costs associated with issuing surveys and reports. Additionally, \$10 million in funds are authorized for the National Institute on Disability Research and Rehabilitation to provide for assistive and universally designed technology research and development.

Finally, to increase access to assistive and universally designed technology, tax incentives are included to provide businesses a tax credit for the development of assistive technology, to expand the architectural and transportation barrier removal deduction to include communication barriers, and to

expand the work opportunity credit to include expenses incurred in the acquisition of technology to facilitate the employment of any individual with a disability.

These tax incentives and micro loans will assist individuals with disabilities to obtain assistive and universally designed technology in order to improve their quality of life, to secure and maintain employment, and to assist small businesses in complying with Americans with Disabilities Act requirements, which in effect, results in lessened financial burdens on society.

As technology increasingly plays a role in the lives of all persons in the United States, in the conduct of business, in the functioning of government, in the fostering of communication, in the transforming of employment, and in the provision of education, it also greatly impacts the lives of the more than 50 million individuals with disabilities in the United States.

An agenda, including support for universal design, represents the only effective means for guaranteeing the benefits of technology to all persons in the United States, regardless of disability or age, in addition to assuring for United States industry the continued growth in markets that will warrant continued high levels of innovation and research.

This legislation has the support of many organizations, including: The Missouri Assistive Technology Advisory Council, the United Cerebral Palsy Association, the Rehabilitation Engineering and Assistive Technology Society of North America, the National Easter Seal Society, and the Association of Tech Act Projects.

The bill also has broad bipartisan and bicameral support. My colleagues, Senator JEFFORDS, Senator HARKIN, Senator GRASSLEY, and Congresswoman CONNIE MORELLA have been very helpful in my efforts to improve the role of the federal government in assistive and universally designed technology.

Let me conclude by taking special note of the help of the National and Missouri United Cerebral Palsy, as well as the Missouri Assistive Technology Project, the Federal Laboratory Consortium, and the numerous assistive and universally designed technology and disability community advocate organizations, for their assistance in developing and advocating this legislation.

Mr. President, I ask unanimous consent that the bill, the amendment I submit today, and letters of support be printed in the RECORD.

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

S. 2173

*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 "Assistive and Universally Designed Technology Improvement Act for Individuals with Disabilities".

#### SEC. 2. FINDINGS.

Congress finds the following:

(1) The area of assistive technology is greatly overlooked by the Federal Government and the private sector. While assistive technology's importance spans age and disability classifications, assistive technology does not maintain the recognition in the Federal Government necessary to provide important assistance for research and development programs or to individuals with disabilities. The private sector lacks adequate incentives to produce assistive technology, and end-users lack adequate resources to acquire assistive technology.

(2) As technology has come to play an increasingly important role in the lives of all persons in the United States, in the conduct of business, in the functioning of government, in the fostering of communication, in the conduct of commerce, in the transformation of employment, and in the provision of education, technology's impact upon the lives of the more than 50,000,000 individuals with disabilities in the United States has been comparable to technology's impact upon the remainder of our Nation's citizens. No development in mainstream technology can be imagined that will not have profound implications for individuals with disabilities.

(3) In a technological environment, the line of demarcation between assistive and mainstream technology becomes ever more difficult to draw, and the decisions made by the designers of mainstream equipment and services will increasingly determine whether and to what extent the equipment and services can be accessed and used by individuals with disabilities.

(4) A commitment to assistive technology, while remaining important, cannot alone ensure access to technology and communications networks by individuals with disabilities. An agenda, including support for universal design, represents the only effective means for guaranteeing the benefits of technology to all persons in the United States, regardless of disability or age, and for assuring for United States industry the continued growth in markets that will warrant continued high levels of innovation and research.

(5) The Federal Government needs to make improvements to peer review processes that affect assistive technology research and development.

(6) There are insufficient links between federally funded assistive technology research and development programs and the private sector entities responsible for translating research and development into significant new products in the marketplace for end-users.

(7) The Federal Government does not provide assistive technology that is universally designed and targets older and rural assistive technology end-users.

(8) The Federal Government does not coordinate all Federal assistive technology research and development.

(9) Small businesses, which provide many innovative ideas for assistive technology and provide the vast majority of research and development efforts that lead to viable commercial assistive technology products, are not utilized in Federal assistive technology research and development efforts to the extent that small businesses may play a key role in assistive technology research and development. In addition, small businesses lack access to the resources of the Federal laboratories and would benefit from partnerships with the Federal laboratories.

(10) Many more individuals with disabilities could secure and maintain employment and move from income supports to competitive work if given the ability to purchase assistive technology. Tax incentives for businesses to purchase assistive technology for

their employees, and micro loans for individuals to purchase assistive technology, help individuals with disabilities improve their quality of life. Such incentives and loans lead to more productive lives, while lessening the financial burdens on society.

### SEC. 3. PURPOSE.

The purposes of this Act are—

(1) to improve the quality, functional capability, distribution, and affordability of assistive technology and universally designed technology, through federally supported incentives for all the participants in need identification, research and development, product evaluation, technology transfer, and commercialization, for such technologies, to enhance quality of life and ability to obtain employment for all individuals with disabilities;

(2) to clarify the role of the National Institute on Disability and Rehabilitation Research at the Department of Education so as to provide for better peer reviews;

(3) to improve coordination of Federal assistive technology research and development by strengthening the Interagency Committee on Disability Research;

(4) to prioritize assistive technology research, development, and dissemination efforts to match the needs of the underserved assistive technology end-users such as older and rural end-users;

(5) to increase the use of universal design in the commercial development of standard products;

(6) to incorporate the principles of universal design in the development of assistive technology;

(7) to increase usage of the Small Business Innovative Research Program as defined in section 9(e) of the Small Business Act (15 U.S.C. 638(e));

(8) to improve coordination between the Federal laboratories and the members of the Interagency Committee on Disability Research;

(9) to improve the transfer of technology from mission-oriented applications in Federal laboratories to assistive technology applications in research and development programs, and to transfer prototype assistive technology products from federally sponsored programs to the private sector;

(10) to increase the availability of assistive technology products and universally designed technology products in the marketplace for the end-users; and

(11) to create tax incentives and micro loans to assist individuals with disabilities to obtain assistive technology and universally designed technology in order to improve their quality of life and to secure and maintain employment.

### SEC. 4. PEER REVIEW PROCESS.

Title II of the Rehabilitation Act of 1973 (29 U.S.C. 761a et seq.) is amended by adding at the end the following:

#### “SEC. 206. PEER REVIEW PROCESS.

##### “(a) PEER REVIEW PANELS.—

##### “(1) COMPOSITION.—

“(A) IN GENERAL.—The Director shall establish a peer review process, involving peer review panels composed of members appointed by the Director, for the review of applications for grants, contracts, or cooperative agreements under this title for research and development of assistive technology and universally designed technology.

“(B) DURATION.—The members of such a peer review panel shall serve for terms of 3 years, except that the members initially appointed may serve for shorter terms.

“(C) MEMBER TERMS.—Members of a peer review panel shall serve staggered terms so as to provide for institutional memory and experience at all times.

##### “(D) SELECTION AND APPOINTMENT.—

“(i) IN GENERAL.—Members of peer review panels shall be selected and appointed based upon their training and experience in relevant scientific or technical fields, taking into account, among other factors—

“(I) the level of formal scientific or technical education completed or experience acquired by an individual;

“(II) the extent to which the individual has engaged in relevant research, the capacities (such as principal investigator or assistant) in which the individual has so engaged, and the quality of such research;

“(III) the recognition of the individual, as reflected by awards and other honors received from scientific and professional organizations outside the Department of Education; and

“(IV) the need for a panel to include experts from various areas or specializations within the fields of assistive technology and universally designed technology.

“(ii) SPECIAL RULES.—To the extent practicable, the peer review panels shall have, collectively, a significant number of members who are individuals with disabilities, and the members of the panels shall reflect the population of the United States as a whole in terms of gender, race, and ethnicity.

“(E) OFFICERS AND EMPLOYEES OF THE FEDERAL GOVERNMENT.—Not more than ¼ of the members of any peer review panel may be officers or employees of the Federal Government. For purposes of the preceding sentence, an individual who is a member of a peer review panel shall not, by virtue of such service, be considered to be an officer or employee of the Federal Government.

##### “(2) CONFLICT OF INTEREST.—

“(A) IN GENERAL.—No member of a peer review panel may participate in or be present during any review by the peer review panel of an application for a grant, contract, or cooperative agreement, in which, to the member's knowledge, any of the following has a financial interest:

“(i) The member of the panel or the member's spouse, parent, child, or business partner.

“(ii) Any organization with which the member or the member's spouse, parent, child, or business partner is negotiating or has any arrangement concerning employment or any other similar association.

“(B) DISQUALIFIED PANEL.—In the event any member of a peer review panel or the member's spouse, parent, child, or business partner is currently, or is expected to be, the principal investigator or a member of the staff responsible for carrying out any research or development activities described in an application for a grant, contract, or cooperative agreement, the Secretary shall disqualify the panel from reviewing the application and ensure that the review will be conducted by another peer review panel with the expertise to conduct the review. If there is no other panel with the requisite expertise, the Secretary shall ensure that the review will be conducted by an ad hoc panel of members of the peer review panels, not more than 50 percent of whom may be from the disqualified panel.

“(C) PROHIBITION.—No member of a peer review panel may participate in or be present during any review under this title of a specific application for a grant, contract, or cooperative agreement for an activity for which the member has had or is expected to have any other responsibility or involvement (either before or after the grant, contract, or cooperative agreement was awarded for the activity) as an officer or employee of the Federal Government.

“(3) AVAILABILITY OF INFORMATION.—Transcripts, minutes, and other documents made available to or prepared for or by a peer re-

view panel shall be available for public inspection and copying to the extent provided in section 552 of title 5, United States Code (commonly known as the ‘Freedom of Information Act’), the Federal Advisory Committee Act (5 U.S.C. App.), and section 552a of title 5, United States Code (commonly known as the ‘Privacy Act of 1974’).

“(4) EVALUATION OF APPLICATION.—A peer review panel shall—

“(A) evaluate applications for grants, contracts, or cooperative agreements under this title with respect to research and development of assistive technology and universally designed technology to assure duplication of such research and development does not occur across Federal departments and agencies; and

“(B) evaluate the applications with respect to meeting immediate needs for research and development of assistive technology and universally designed technology in the disabled community (as identified in data collected by the Interagency Committee on Disability Research), through criteria that will ensure the effectiveness of the priorities of the Interagency Committee for such research and development.

“(5) APPLICATION REVIEW CRITERIA.—In carrying out a review of an application for a grant, contract, or cooperative agreement with respect to research and development of assistive technology or universally designed technology under this section, the peer review panel, among other factors, shall take into account—

“(A) the need for research and development of assistive technology and universally designed technology that facilitates individuals with disabilities obtaining employment;

“(B) the need to allocate amounts of assistance through grants, contracts, or cooperative agreements for research and development of assistive technology and universally designed technology in a manner proportionate to need for assistive technology and universally designed technology, and proportionate to the population of disability groups, including individuals with physical disabilities, individuals with cognitive disabilities, older individuals with disabilities, and rural assistive technology and universally designed technology end-users;

“(C) the significance and originality from a scientific or technical standpoint of the goals of the proposed research and development;

“(D) the adequacy of the methodology proposed to carry out the research and development;

“(E) the qualifications and experience of the proposed principal investigator and staff for the research and development;

“(F) the reasonable availability of resources necessary to the research and development;

“(G) the reasonableness of the proposed budget and the duration in relation to the proposed research and development;

“(H) if an application involves activities that may have an adverse effect upon humans, animals, or the environment, the adequacy of the proposed means for protecting against or minimizing such effects;

“(I) the extent to which appropriate measures will be taken to advance the cause of universal design through proposed assistive technology research and development, including the extent to which the applicant has reviewed a variety of existing measures (as of the date of the review) on the part of the designers and producers of assistive technology and the providers of related services to produce universally designed technology;

“(J) the extent to which efforts shall be made to include small businesses in the proposed research and development of assistive

technology or universally designed technology through increased usage of the Small Business Innovative Research Program as defined in section 9(e) of the Small Business Act (15 U.S.C. 638(e));

“(K) the extent to which the proposed research and development of assistive technology or universally designed technology will result in the production of actual products for the marketplace for assistive technology or universally designed technology end-users;

“(L) the extent to which the applicant identifies secondary benefits or applications of the assistive technology or universally designed technology involved, or agrees to make matching contributions (in cash or in kind, fairly evaluated) toward the cost of the research and development, in partnership with representatives of industry, government, and educational institutions; and

“(M) the extent to which proposed research and development of universally designed technology will result in a change in design of standard products, so that the products are more usable by a broad range of individuals with disabilities or older individuals.

“(6) COMPENSATION.—Each member of a peer review panel who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the panel. All members of the panel who are officers or employees of the Federal Government shall serve without compensation in addition to compensation received for their services as officers or employees of the Federal Government.

“(7) TRAVEL EXPENSES.—The members of the panel shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the panel.

“(8) TERMINATION.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the peer review panels.

#### “SEC. 207. DEFINITIONS.

“In this title:

“(1) ASSISTIVE TECHNOLOGY.—The term ‘assistive technology’ means technology designed to be utilized in an assistive technology device or assistive technology service.

“(2) ASSISTIVE TECHNOLOGY AND UNIVERSALLY DESIGNED TECHNOLOGY END-USER.—The term ‘assistive technology and universally designed technology end-user’ means any individual with a disability who uses assistive technology or universally designed technology to improve the quality of life of the individual or to obtain employment, including an individual with a physical disability, a cognitive disability, or a sensory disability, or an older individual.

“(3) TECHNOLOGY TRANSFER.—The term ‘technology transfer’ means the transmittal of developed ideas, products, and techniques—

“(A) from a research environment to an environment of practical application; or

“(B) from application in a prototype invention to mass production in a commercial product.

“(4) UNIVERSAL DESIGN.—The term ‘universal design’ means the design, development, fabrication, marketing, and technical support of products, services, and environments designed to be usable, to the greatest extent possible, by the largest number of persons, including individuals with disabilities and individuals without disabilities. No

product, service, or environment shall be considered to have a universal design if use of the product, service, or environment is substantially limited or prevented by reason of—

“(A) a disability related to hearing, vision, learning, strength, reach, or movement; or

“(B) the existence of any other limitation of a major life function.”.

#### SEC. 5. TECHNOLOGY TRANSFER.

(a) AMENDMENTS TO PROVISIONS RELATING TO THE INTERAGENCY COMMITTEE ON DISABILITY RESEARCH.—Section 203 of the Rehabilitation Act of 1973 (29 U.S.C. 761b) is amended—

(1) in subsection (a), by adding at the end the following:

“(3) Each member of the Committee shall attend all meetings of the Committee or delegate the responsibility for attending the meetings to a designee with the authority to commit the department or agency represented to participate in a joint project, the authority to comment on issues on behalf of the department or agency, and the expertise to participate in Committee discussions.”;

(2) in subsection (b)—

(A) by inserting “(1)” before “After receiving”; and

(B) by adding at the end the following:

“(2) The Committee shall—

“(A) monitor the range of research and development of assistive technology and universally designed technology carried out by the Federal departments and agencies represented on the Committee;

“(B) ensure that the highest quality research and development of assistive technology and universally designed technology (through methods such as peer review) is carried out by the departments and agencies;

“(C) identify and establish clear research priorities for research and development of assistive technology and universally designed technology that will benefit individuals with disabilities, and permit joint ventures concerning research and development of assistive technology and universally designed technology among the department needs and agencies;

“(D) ensure interagency collaboration and joint research activities and reduce unnecessary duplication of effort by the departments and agencies;

“(E) develop effective technology transfer activities for the departments and agencies, including activities resulting from increased supply of assistive technology and universally designed technology or increased demand of assistive technology and universally designed technology end-users;

“(F) help establish and maintain the use of consistent definitions and terminologies among the departments and agencies, which definitions shall contribute to the production of comparable research and to the development of reliable statistical data across departments and agencies;

“(G) optimize the productivity of the departments and agencies through resource sharing and other cost-saving activities;

“(H) identify gaps in needed research and development and make efforts to ensure that the gaps are filled by a Federal department or agency represented on the Committee; and

“(I) collaborate with member agencies on specific projects that need additional funding beyond the capacity of 1 Federal department or agency represented on the Committee.”;

(3) by redesignating subsection (c) as subsection (d);

(4) by inserting after subsection (b) the following:

“(c)(1) The Director shall establish special task forces and subcommittees of the Committee for research and development of assistive technology and universally designed

technology, including task forces and subcommittees related to medical rehabilitation, technology (including universal design), and the employment of individuals with disabilities.

“(2) The Director shall appoint 2 full-time staff members to assist the Director in the operation of the Committee.”;

(5) in subsection (d) (as redesignated by paragraph (3))—

(A) by inserting “(1)” before “The Committee”; and

(B) by adding at the end the following:

“(2) The Director shall issue a biannual report announcing the availability of the grants, contracts, or cooperative agreements made available through Federal departments and agencies represented on the Committee for research and development of assistive technology and universally designed technology.

“(3) The Director shall submit to the Commissioner for inclusion in the annual report to Congress described in section 13—

“(A) the results and an analysis of the activities conducted under grants, contracts, or cooperative agreements awarded by departments and agencies represented on the Interagency Committee on Disability Research for research and development of assistive technology and universally designed technology;

“(B) a detailed summary of the activities and the effectiveness of the Committee in expanding research opportunities that lead to direct development of assistive technology devices and assistive technology services; and

“(C) results of periodic surveys of manufacturers and suppliers of assistive technology and universally designed technology, and of assistive technology and universally designed technology end-users.”.

(b) AMENDMENTS TO THE STEVENSON-WYDLER TECHNOLOGY INNOVATION ACT OF 1980.—Section 11(e) of the Stevenson-Wylder Technology Innovation Act of 1980 (15 U.S.C. 3710(e)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (I), by striking “and” after the semicolon;

(B) in subparagraph (J), by striking the period and inserting “; and”; and

(C) by adding at the end the following:

“(K) develop and disseminate, including through accessible electronic formats, to all Federal, State, and local agencies and instrumentalities involved in assistive technology and universally designed technology, in order to maximize research and development of assistive technology and universally designed technology, information that indicates—

“(i) the extent of all activities undertaken by the Federal laboratories in the previous year having an intended or a recognized potential impact upon individuals with disabilities;

“(ii) the degree to which ongoing or projected activities of the Federal laboratories are expected to have an impact upon the available range of, or applications for, assistive technology and universally designed technology;

“(iii) the extent to which expert resources within the Consortium are made available or can be accessed for the purpose of meeting needs related to assistive technology and universally designed technology in the communities where the Federal laboratories operate; and

“(iv) the extent to which each Federal laboratory has attempted to involve, and succeeded in involving, individuals with disabilities in the development of priorities, plans, and prototypes with respect to assistive



technology and universally designed technology.”; and

(2) by adding at the end the following:

“(8)(A) The Director of the National Institute on Disability and Rehabilitation Research shall participate annually in the national meeting and interagency meeting of the Consortium.

“(B) The Director, in collaboration with other members of the Interagency Committee on Disability Research, where appropriate, shall coordinate the activities of the Federal laboratories, with respect to research and development of assistive technology and universally designed technology.

“(C) In conjunction with members of the Interagency Committee on Disability Research, the Director shall utilize the resources of the Consortium to identify potential public and private sector partners for research and development collaboration regarding assistive technology and universally designed technology.

“(9) In this section:

“(A) The terms ‘individual with a disability’ and ‘individuals with disabilities’ have the meanings given the terms in section 3 of the Technology-Related Assistance for Individuals With Disabilities Act of 1988 (29 U.S.C. 2202).

“(B) The terms ‘universal design’ and ‘assistive technology’ have the meaning given the term in section 207 of the Rehabilitation Act of 1973.”.

#### SEC. 6. MICRO LOANS.

(a) TERRITORIES.—Section 301 of the Technology-Related Assistance for Individuals With Disabilities Act of 1988 (29 U.S.C. 2281) is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a) the following:

“(b) AWARD BASIS.—The Secretary shall award grants to States under this section on the basis of the population of the States.”.

(b) MECHANISMS.—Subsection (d) of section 301 of the Technology-Related Assistance for Individuals With Disabilities Act of 1988 (as redesignated by subsection (a)(1)) is amended to read as follows:

“(c) MECHANISMS.—

“(1) IN GENERAL.—The alternative financing mechanisms shall include—

“(A) an interest buy-down loan program;

“(B) a revolving loan fund program; or

“(C) a loan guarantee program.

“(2) REQUIREMENTS.—Each program described in paragraph (1) shall—

“(A) provide assistance for assistive technology devices, assistive technology services, and universally designed technology products and services; and

“(B) maximize consumer participation in all aspects of the program.

“(3) DEFINITIONS.—

“(A) INTEREST BUY-DOWN LOAN PROGRAM.—The term ‘interest buy-down loan program’ means a loan program that involves an organization, using the organization’s funds, to reduce the interest rate of a loan made by a lending institution to a borrower.

“(B) LOAN GUARANTEE PROGRAM.—The term ‘loan guarantee program’ means a loan program that provides loans that are backed by a promise or guarantee that, if there is a default on a loan made under the program, the loan will be paid back.

“(C) REVOLVING LOAN FUND PROGRAM.—The term ‘revolving loan fund program’ means a loan program in which individuals borrow money from a loan fund, loan repayments are dedicated to the recapitalization of the loan fund, and the repayments are used to make additional loans.”.

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 308(a) of the Technology-Related As-

sistance for Individuals With Disabilities Act of 1988 (29 U.S.C. 2288(a)) is amended by striking “this title” and all that follows and inserting “this title, such sums as may be necessary for each of fiscal years 1999 through 2001.”.

#### SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

Section 201(a) of the Rehabilitation Act of 1973 (29 U.S.C. 761(a)) is amended to read as follows:

“(a) There are authorized to be appropriated—

“(1) such sums as may be necessary for each of fiscal years 1999 through 2001, for the purpose of providing for the expenses of the National Institute on Disability and Rehabilitation Research under section 202, which—

“(A) shall include the expenses of the Interagency Committee on Disability Research under section 203, the Rehabilitation Research Advisory Council under section 205, and the peer review panels under section 206; and

“(B) shall not include the expenses of such Institute to carry out section 204; and

“(2)(A) such sums as may be necessary for each of fiscal years 1999 through 2001 to carry out section 204, including providing financial assistance for research and development on assistive technology and universally designed technology at the level of assistance provided for fiscal year 1998; and

“(B) \$10,000,000 for each of fiscal years 1999 through 2001, to provide, under section 204, such financial assistance (in addition to the level of assistance provided for fiscal year 1998).”.

#### AMENDMENT NO. 2708

At the end of the bill add the following:

#### SEC. 8. TAX INCENTIVES FOR ASSISTIVE TECHNOLOGY.

(a) ASSISTIVE TECHNOLOGY DEVELOPMENT BUSINESS TAX CREDIT.—

(1) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by adding at the end the following:

##### “SEC. 45D. CREDIT FOR ASSISTIVE TECHNOLOGY.

“(a) GENERAL RULE.—For purposes of section 38, the assistive technology credit of any taxpayer for any taxable year is an amount equal to so much of the qualified assistive technology expenses paid or incurred by the taxpayer during such year as does not exceed \$100,000.

“(b) QUALIFIED ASSISTIVE TECHNOLOGY EXPENSES.—For purposes of this section—

“(1) IN GENERAL.—The term ‘qualified assistive technology expenses’ means expenses for the design, development, and fabrication of assistive technology devices.

“(2) ASSISTIVE TECHNOLOGY DEVICE.—The term ‘assistive technology device’ means any item, piece of equipment, or product system, including any item acquired commercially off the shelf and modified or customized by the taxpayer, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

“(3) INDIVIDUALS WITH DISABILITIES.—The term ‘individuals with disabilities’ has the meaning given the term by section 3 of the Technology Related Assistance for Individuals With Disabilities Act of 1988 (29 U.S.C. 2202).

“(c) NO DOUBLE BENEFIT.—Any amount taken into account under section 41 may not be taken into account under this section.

“(d) TERMINATION.—This section shall not apply to any amount paid or incurred after December 31, 2003.”.

(2) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) of the Internal Revenue Code of 1986 (relating to current year business credit)

is amended by striking “plus” at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting “, plus”, and by adding at the end the following:

“(13) the assistive technology credit determined under section 45D(a).”.

(3) TRANSITIONAL RULE.—Section 39(d) of the Internal Revenue Code of 1986 (relating to transitional rules) is amended by adding at the end the following:

“(9) NO CARRYBACK OF SECTION 45D CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the assistive technology credit determined under section 45D(a) may be carried back to a taxable year ending before January 1, 1999.”.

(4) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

“Sec. 45D. Credit for assistive technology.”.

(5) EVALUATION OF EFFECTIVENESS OF CREDIT.—The Secretary of the Treasury shall evaluate the effectiveness of the assistive technology credit under section 45D of the Internal Revenue Code of 1986, as added by this subsection, and report to the Congress the results of such evaluation not later than January 1, 2003.

(b) EXPANSION OF ARCHITECTURAL AND TRANSPORTATION BARRIER REMOVAL DEDUCTION.—

(1) IN GENERAL.—Section 190 of the Internal Revenue Code of 1986 is amended—

(A) by inserting “and qualified communications barrier removal expenses” after “removal expenses” in subsections (a)(1),

(B) by adding at the end of subsection (b) the following:

“(4) QUALIFIED COMMUNICATIONS BARRIER REMOVAL EXPENSES.—

“(A) IN GENERAL.—The term ‘qualified communications barrier removal expense’ means a communications barrier removal expense with respect to which the taxpayer establishes, to the satisfaction of the Secretary, that the resulting removal of any such barrier meets the standards promulgated by the Secretary and set forth in regulations prescribed by the Secretary. Such term shall not include the costs of general communications system upgrades or periodic replacements that do not heighten accessibility as the primary purpose and result of such replacements.

“(B) COMMUNICATIONS BARRIER REMOVAL EXPENSES.—The term ‘communications barrier removal expense’ means an expenditure for the purpose of identifying and implementing alternative technologies or strategies to remove those features of the physical, information-processing, telecommunications equipment or other technologies that limit the ability of handicap individuals to obtain, process, retrieve, or disseminate information that nonhandicapped individuals in the same or similar setting would ordinarily be expected and be able to obtain, retrieve, manipulate, or disseminate.”, and

(C) by striking “and transportation” in the heading and inserting “, transportation, and communications”.

(2) CONFORMING AMENDMENT.—The item relating to section 190 in the table of sections for part VI of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by striking “and transportation” and inserting “, transportation, and communications”.

(c) EXPANSION OF WORK OPPORTUNITY CREDIT.—Section 51(c) of the Internal Revenue Code of 1986 (defining wages) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following:

“(4) ASSISTIVE TECHNOLOGY EXPENSES.—

“(A) IN GENERAL.—The term ‘wages’ includes expenses incurred in the acquisition and use of technology—

“(i) to facilitate the employment of any individual, including a vocational rehabilitation referral; or

“(ii) to provide a reasonable accommodation for any employee who is a qualified individual with a disability, as such terms are defined in section 101 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111).

“(B) REGULATIONS.—The Secretary shall by regulation provide rules for allocating expenses described in subparagraph (A) among individuals employed by the employer.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

ASSOCIATION OF TECH ACT PROJECTS,  
Springfield, IL, June 5, 1998.

Hon. CHRISTOPHER S. BOND,  
U.S. Senate, Russell Building, Washington, DC.

DEAR SENATOR BOND: On behalf of the Association of Technology Act Projects (ATAP), we are writing to express our sincere appreciation for your interest in making new and emerging technologies available to people with disabilities throughout the nation.

“The Assistive and Universally Designed Technology Improvement Act for Individuals with Disabilities”, the legislation you are introducing today, would expand federal support for much needed research and development in this field. ATAP looks forward to working closely with you and your staff as this legislation is considered by the Senate Committee on Labor and Human Resources. We believe the projects funded under the Tech Act that have enjoyed federal support, provide a critical linkage among consumers and service providers. ATAP members share your belief in the power of technology to improve the functional capabilities of individuals with disabilities.

ATAP congratulates you on the introduction of this important legislation and offers our support to your effort to expand the federal investment in assistive technology research and development.

Sincerely,

DEBORAH V. BUCK,  
ATAP Co-Chair.  
LYNNE CLEVELAND,  
ATAP Co-Chair.

UNITED CEREBRAL  
PALSY ASSOCIATIONS,  
Washington, DC, June 8, 1998.

DEAR SENATOR BOND: On behalf of United Cerebral Palsy Associations and our 151 affiliates, we strongly endorse the Assistive and Universally Designed Technology Improvement Act for Individuals with Disabilities (UCPA) with general reservation around the legislative directive on peer review which was expressed in our June 5 comments. In particular, we applaud your interest in micro tax incentives for assistive technology, and AT research, development, and dissemination.

UCPA has enjoyed working with your staff through this process. Thank you for the opportunity to comment on the legislation. UCPA believes that this bill will complement the anticipated assistive technology bill expected out of the Senate Labor and Human Resources Committee. UCPA looks forward to working with you and your staff in this effort to bring assistive technology to the forefront.

Sincerely,

PETER KEISER,  
Chair, Community Services Committee.

NATIONAL EASTER SEAL SOCIETY,  
OFFICE OF PUBLIC AFFAIRS,  
Washington, DC, June 9, 1998.

Hon. CHRISTOPHER S. BOND,  
U.S. Senate, Russell Building,  
Washington, DC

DEAR SENATOR BOND: On behalf of National Easter Seals, I would like to thank you for the opportunity to review the “Assistive and Universally Designed Technology Improvement Act for Individuals with Disabilities.” Your leadership in addressing the serious issue of access to assistive technology for people with disabilities is greatly appreciated and we look forward to working with you on furthering the aims of the bill as it moves through the Senate Labor and Human Resources committee.

Particularly notable are your efforts to develop a national loan fund to assure that more people with disabilities have access to the technologies they need to reach goals of equality, dignity and independence. There is a growing population of people with disabilities who may not qualify for federal support, but nonetheless need some assistance in purchasing, maintaining and upgrading their assistive technology.

The proposals in your bill will serve to improve the quality of life for people with disabilities. Your leadership and enthusiasm are greatly appreciated, and Easter Seals looks forward to working with you on this initiative and in the future.

Sincerely,

JENNIFER DEXTER,  
Government Relations Specialist.

By Mr. CRAIG:

S. 2175. A bill to safeguard the privacy of certain identification records and name checks, and for other purposes; to the Committee on the Judiciary.

FIREARMS OWNER PRIVACY ACT OF 1998

Mr. CRAIG. Mr. President, I rise to introduce the Firearms Owner Privacy Act of 1998. This bill is aimed at safeguarding the privacy of law-abiding citizens who choose to purchase firearms and therefore undergo the instant background check mandated by the Brady Act.

As many of my colleagues know, the National Instant Criminal Background Check System (NICS) is scheduled to go online on November 30, 1998. After that date, federally-licensed firearms dealers are required to contact NICS before they sell any handgun or long gun, so that a records check can be performed to determine whether the purchaser is prohibited by law from receiving the firearm.

A unique identification number will be assigned by the NICS to each search request in order to identify the transaction. That number is to be kept by the dealer. However, if the sale is approved—that is, if the purchaser is not disqualified from purchasing the firearm—all other records pertaining to that sale are to be destroyed.

This only makes sense. The Brady Act was never aimed at generating records concerning legal firearms sales. It was promoted as a law enforcement tool—a tool to prevent illegal gun sales and prosecute convicted felons or other disqualified persons who attempt to obtain firearms illegally.

More important, Senators who participated in the debate on the Brady

bill will remember the concerns that were raised about the federal government retaining records of approved, legal transactions. Simply put, keeping those records is tantamount to registering firearms—something that is far from acceptable to most Americans, not to mention most members of Congress and certainly to this Senator. The federal government has no legitimate reason for keeping track of which Americans own guns. On the contrary, history teaches us that gun registration schemes have been used to pave the way for gun confiscation. It is not unreasonable for citizens to be skeptical of the government's self-restraint—indeed, that is why our Founders built checks and balances into our system of government in the first place.

In fashioning the Brady Act, Congress did not rely on government promises not to compile information on law-abiding gun purchasers. Instead, the law expressly prohibits the federal government from using NICS to establish any system for registering firearms, firearm owners, or transactions involving firearms. It also prevents a de facto registration system by specifically prohibiting the federal government from recording or keeping the records generated by the instant background check.

Again and again during debate on this measure, members of the House and Senate raised concerns about the privacy interests of law-abiding citizens. Again and again, we were assured that these prohibitions would prevent the Brady Act from establishing or promoting any kind of gun registration for law-abiding citizens. Clearly, one of the keys to passing the Brady bill was the absolute assurance that the privacy of law-abiding citizens would be respected, and records of their firearms transactions would be destroyed.

It is worth noting that since enactment of the Brady law, the concern over its potential for promoting gun registration has continued to boil. Like many of our colleagues, I continue to hear from people in my state and around the nation who do not believe this Administration—no friend to law-abiding gun owners—can resist the opportunity to mis-use and abuse the records generated during these background checks.

Mr. President, the Administration just turned up the heat on those boiling fears. Now that we are within months of putting NICS on line, federal agencies are beginning to release the details of how the system is expected to work. My telephones are beginning to ring as firearms dealers, gun collectors, and sportspeople have an opportunity to read the fine print. Among the proposals that concern them the most is that the agency operating NICS intends to keep records of approved firearms transactions for eighteen months.

That's right. The federal government proposes to keep records of legal, approved transactions for a year and a half.

The agency has explained that it needs to keep the records for auditing purposes, to make sure the system is working properly and not being abused. Mr. President, why in the world do they need a year and a half for that purpose? Furthermore, the longer these records sit around, the more potential there is for abuse. How can the agency justify allowing its own administrative convenience to outweigh the serious privacy and civil liberties concerns raised against retaining such records?

Let's not forget that under the current, interim system, records of an approved transaction are destroyed within twenty days. The NICS system is supposed to speed up the entire background check process so that the average contact will take minutes. Even if additional time is required because of problems with the check, the transaction is allowed to go forward within a mere three days, if the dealer does not receive a disapproval. The acceleration in every other part of the NICS system makes this records retention proposal even more incredible.

I am wholly unconvinced that the agency has any legitimate purpose for retaining the records of lawful purchases by qualified citizens as it has proposed. The bill I am introducing today, the Firearms Owner Privacy Act of 1998, simply reinforces the decision that this Congress originally made on this critical issue. It would require information generated by the system on approved, lawful purchases to be destroyed within twenty-four hours. An individual who knowingly retained or transferred that information after that time would face criminal penalties of up to \$250,000 or up to ten years' imprisonment.

My bill also deals with transactions that are disapproved because a would-be purchaser is prohibited by federal or state law from receiving a firearm. For those transactions, the bill would permit the agency to retain the records for five years. If a criminal prosecution has been commenced against the purchaser, there would be no restriction at all on the agency's retention of the records. These provisions are aimed at insuring that if our law enforcement agencies intend to pursue a disapproved sale, they have ample opportunity to do so. However, the usefulness of these records past five years is very questionable.

Mr. President, I believe my bill imposes reasonable, workable limits that conform to Congressional intent. If someone knows a legitimate reason why the federal government should keep these records longer than my bill allows, I am certainly willing to listen to their arguments. To date, however, the explanations from the Administration have been unpersuasive at best.

Let me point out that a similar effort to limit the retention of these records

is underway in the other body, headed by Representative BOB BARR. I hope my colleagues will join me in this effort to protect the privacy and civil liberties of law-abiding citizens.

I ask unanimous consent that a copy of the Firearms Owner Privacy Act of 1998 be printed in the RECORD.

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

S. 2175

*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 "Firearms Owner Privacy Act of 1998".

#### SEC. 2. UNLAWFUL RETENTION OF FIREARMS TRANSFER INFORMATION.

(a) IN GENERAL.—Chapter 93 of title 18, United States Code, is amended by adding at the end the following:

##### "§ 1925. Unlawful retention of federal firearms transfer information

(a) DEFINITIONS.—In this section—

"(1) the term 'firearm' has the same meaning as in section 921(a);

"(2) the term 'instant check information'—

"(A) means any information—

"(i) provided to the instant check system about an individual seeking to obtain a firearm; or

"(ii) derived from any information provided as described in clause (i); and

"(B) does not include any unique identification number provided by the instant check system pursuant to section 922(t)(1)(B)(i), or the date on which that number is provided; and

"(3) the term 'instant check system' means the national instant criminal background check system established under section 103 of the Brady Handgun Violence Prevention Act (18 U.S.C. 922 note).

"(b) PROHIBITIONS AND PENALTIES.—

"(1) INFORMATION RELATING TO INDIVIDUALS NOT PROHIBITED FROM RECEIVING A FIREARM.—Whoever, being an officer, employee, contractor, consultant, or agent of the United States, including a State or local employee or officer acting on behalf of the United States, in that capacity—

"(A) receives instant check information, in any form or through any medium, about an individual who is determined, through the use of the instant check system, not to be prohibited by subsection (g) or (n) of section 922, or by State law, from receiving a firearm; and

"(B) knowingly retains or transfers to another person that information after the 24-hour period beginning with such receipt;

shall be fined not more than \$250,000, imprisoned not more than 10 years, or both.

"(2) INFORMATION RELATING TO INDIVIDUALS PROHIBITED BY LAW FROM RECEIVING A FIREARM.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), whoever, being an officer, employee, contractor, consultant, or agent of the United States, including a State or local employee or officer acting on behalf of the United States, in that capacity—

"(i) receives instant check information, in any form or through any medium, about an individual who is prohibited by Federal or State law from receiving a firearm; and

"(ii) knowingly retains or transfers to another person that information after the 5-year period beginning with such receipt;

shall be fined not more than \$250,000, imprisoned not more than 10 years, or both.

"(B) INAPPLICABILITY TO INFORMATION RELATING TO CERTAIN INDIVIDUALS.—Subpara-

graph (A) does not apply to any information about an individual if a criminal prosecution has been commenced against the individual on the basis of that information."

(b) CLERICAL AMENDMENT.—The analysis for chapter 93 of title 18, United States Code, is amended by adding at the end the following:

"1925. Unlawful retention of Federal firearms transfer information."

#### SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall take effect on November 30, 1998.

By Mr. THOMPSON (for himself, Mr. BYRD, Mr. THURMOND, Mr. LOTT, and Mr. ROTH):

S. 2176. A bill to amend sections 3345 through 3349 of title 5, United States Code (commonly referred to as the "Vacancies Act" to clarify statutory requirements relating to vacancies in and appointments to certain Federal offices, and for other purposes; to the Committee on Governmental Affairs.

FEDERAL VACANCIES REFORM ACT OF 1998

Mr. THOMPSON. Mr. President, on behalf of myself and a bipartisan group of senators, I introduce today the Federal Vacancies Reform Act of 1998. This legislation is needed to preserve one of the Senate's most important powers: the duty to advise and consent on presidential nominees.

The Framers of the Constitution established a procedure for the appointment of all government officers: they were to be nominated by the President and confirmed by the Senate, unless Congress decided that the appointment of specified inferior officers was to be made by the President alone, the courts, or by department heads. The First Congress, however, recognized that vacancies would arise in executive positions, and enacted legislation providing for officials to temporarily exercise the powers of an office even without Senate confirmation. The law was adopted essentially in its current form in 1868, and was last amended in 1988. As amended, the first assistant or another Senate-confirmed individual can serve for 120 days after the vacancy, and, in addition, may serve beyond those 120 days if the President submits a nomination for that office to the Senate within those 120 days.

Unfortunately, the Vacancies Act is honored more in the breach than in the observance. For the past 25 years, administrations of both parties have claimed that the Justice Department is exempt from the Vacancies Act. And since the Reagan Administration, other departments, at the behest of the Justice Department, make the same argument, purportedly based on the authority of the heads of each of the executive departments to delegate their authority to other department personnel. Following this argument to its logical end, none of the departments is bound by the Vacancies Act, so that the act is a dead letter.

Certainly, this Administration has conducted itself as if the Vacancies Act applies to none of the departments. Each department has at least one temporary officer who has served more

than 120 days before any nomination was sent to the Senate. Of the 320 executive department advise and consent positions, 64 are held by temporary officials. Of the 64, 43 have served longer than 120 days before any nomination was submitted to the Congress. The Commerce Department is the worst offender in number and in degree. For instance, the acting head of the Census Bureau is neither the first assistant nor a person who has been confirmed by the Senate, a mind-boggling violation of the law. Nor has a nomination been made, although the prior Census chief announced her departure more than five months ago.

The government's important functions should be carried out by permanent officials. That means that the President must submit nominations and the Senate needs to provide its advice and consent. This administration seems not to want to subject its appointees to such scrutiny. Acting on that desire is unconstitutional and a violation of the Vacancies Act as well. The Appointments Clause is not a technical nicety. As the Supreme Court has stated, the Appointments Clause is designed to keep the Executive and Legislative Branches within their appropriate spheres, so as to better preserve individual liberty.

The Governmental Affairs Committee recently held an oversight hearing on the Vacancies Act. In that hearing, it became apparent that the Administration was regularly acting in violation of the law, but faced no consequence for its actions. The Committee also heard testimony from Senators BYRD and THURMOND, who had each introduced bills designed to ensure compliance with the Vacancies Act through clarifying the scope of agencies covered and providing an enforcement mechanism. Our colleagues owe a debt of gratitude to Senators BYRD and THURMOND for raising these important issues and offering solutions to address them.

I have found the approaches in the Byrd and Thurmond bills to have contributed importantly to the drafting of the legislation I introduce today. It is extremely important to ensure that the Vacancy Act period run from the date of the vacancy, to clarify that it covers all departments, and to impose a sanction for noncompliance. Subsequent to the introduction of the Byrd and Thurmond bills, the United States Court of Appeals for the District of Columbia Circuit issued a decision on the meaning of the Vacancies Act, approving the four year service of an acting head of the Office of Thrift Supervision as appointed by the departing head of the agency. Overruling several portions of that decision have become a priority.

The legislation I introduce today provides that in the event of a vacancy in a position in an executive agency requiring the advice and consent of the Senate, the officer's first assistant is allowed to perform the functions and

duties of the office on an acting basis, for up to 150 days. Under current law, the period is 120 days, but the vicissitudes of the modern vetting process appear to require that the time be lengthened, to my regret. Alternatively, the President may direct another person who has already received Senate confirmation to serve as the acting official for 150 days. To prevent these restrictions from being gamed, the bill provides that the acting officer must have been the first assistant for 180 of the 365 days preceding the vacancy.

The length of temporary service can be extended beyond the 150 days if the President submits a nomination to the Senate for the vacant position. If the nomination is withdrawn, or if the Senate rejects or returns it, the acting official can serve only for 150 days after that event.

The bill makes clear that the Vacancies Act applies to all offices in executive agencies for which appointment is required to be made by the President by and with the advice and consent of the President. Nonetheless, we do not write on a clean slate. There are a number of laws already on the books that provide a process by which persons can serve as acting officers when particular offices are vacant. In most instances, these officials can serve until a successor is confirmed, without regard to the Vacancies Act. The bill preserves those specific statutes, but, to clearly reject the position of the Justice Department, it expressly repudiates the contention that a law authorizing the head of a department to delegate or reassign duties among other officers is a statute that provides for the temporary filling of a specific office. For the future, Congress will have to expressly provide that it is superseding the Vacancies Act if it wishes to override the Vacancies Act as to the temporary filling of advise and consent provisions.

The bill also establishes a second enforcement mechanism. If a nominee is not submitted to the Senate within 150 days of the vacancy, then the office is vacant until a nominee is submitted. While the routine functions of the office would be allowed to continue, those functions and duties that are specified to be performed by that official could only be performed by the head of the department. In fact, no specified duty of the officeholder that existed by regulation for the 180 days preceding the vacancy could be diminished in an effort to avoid the bill's vacant office provisions. However, if the President submits a nomination at any point after the 150 days, the acting officer would again be allowed to serve while the nomination was pending in the Senate, until confirmation, or until 150 days after the rejection, withdrawal, or return of the nomination. Actions taken by any acting official in violation of these provisions would be of no effect, and no one would be permitted to ratify the actions of the acting official that were taken in violation of the vacant office provisions.

Enforcement is further enhanced by requiring each executive agency to report to the Comptroller General the existence of vacancies, the names of persons serving as acting officers and when such service began, the name of any nominee and when such nomination was submitted to the Senate, and the final disposition of the nomination. The Comptroller General will then notify the Congress, the President, and the Office of Personnel Management when the 150 day limitations have been reached.

Mr. President, the Framers established a system for appointing important officials in which the President and the Senate would each play a role. Not only did the Framers wish to ensure that more than one person's wisdom was brought to the appointment process, but that the President, in selecting nominees, would be aware that they would face scrutiny. When a vacancy occurs in such an office, it is important to establish a process that permits the routine operation of the government to continue, but that will not allow the evasion of the Senate's constitutional authority to advise and consent to nominations. I am pleased that a number of my colleagues are joining with me to formulate a structure that will achieve these ends. I look forward to the Senate's passage of this legislation in the near future.

I ask unanimous consent that the bill be printed in the RECORD.

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

S. 2176

*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 Vacancies Reform Act of 1998".

#### **SEC. 2. FEDERAL VACANCIES AND APPOINTMENTS.**

(a) IN GENERAL.—Chapter 33 of title 5, United States Code, is amended by striking sections 3345 through 3349 and inserting the following:

##### **"§ 3345. Acting officer**

"(a) If an officer of an Executive agency (including the Executive Office of the President, and other than the General Accounting Office) whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate, dies, resigns, or is otherwise unable to perform the functions and duties of the office—

"(1) the first assistant of such officer shall perform the functions and duties of the office temporarily in an acting capacity, subject to the time limitations of section 3346; or

"(2) notwithstanding paragraph (1), the President (and only the President) may direct a person who serves in an office for which appointment is required to be made by the President, by and with the advice and consent of the Senate, to perform the functions and duties of the office temporarily in an acting capacity, subject to the time limitations of section 3346.

"(b) Notwithstanding section 3346(a)(2), a person may not serve as an acting officer for an office under this section, if—

"(1) on the date of the death, resignation, or beginning of inability to serve of the applicable officer, such person serves in the position of first assistant to such officer;

“(2) during the 365-day period preceding such date, such person served in the position of first assistant to such officer for less than 180 days; and

“(3) the President submits a nomination of such person to the Senate for appointment to such office.

“(c) With respect to the office of the Attorney General of the United States, the provisions of section 508 of title 28 shall be applicable.

#### “§ 3346. Time limitation

“(a) The person serving as an acting officer as described under section 3345 may serve in the office—

“(1) for no longer than 150 days beginning on the date the vacancy occurs; or

“(2) subject to subsection (b), once a first or second nomination for the office is submitted to the Senate, for the period that the nomination is pending in the Senate.

“(b)(1) If the first nomination for the office is rejected by the Senate, withdrawn, or returned to the President by the Senate, the person may continue to serve as the acting officer for no more than 150 days after the date of such rejection, withdrawal, or return.

“(2) If a second nomination for the office (of a different person than first nominated in the case of a rejection or withdrawal) is submitted to the Senate during the 150-day period after the rejection, withdrawal, or return of the first nomination, the person serving as the acting officer may continue to serve—

“(A) until the second nomination is confirmed; or

“(B) for no more than 150 days after the second nomination is rejected, withdrawn, or returned.

“(c) If a person begins serving as an acting officer during an adjournment of the Congress sine die, the 150-day period under subsection (a) shall begin on the date that the Senate first reconvenes.

#### “§ 3347. Application

“(a) Sections 3345 and 3346 are applicable to any office of an Executive agency (including the Executive Office of the President, and other than the General Accounting Office) for which appointment is required to be made by the President, by and with the advice and consent of the Senate, unless—

“(1) another statutory provision expressly provides that such provision supersedes sections 3345 and 3346;

“(2) a statutory provision in effect on the date of enactment of the Federal Vacancies Reform Act of 1998 expressly authorizes the President, or the head of an Executive department, to designate an officer to perform the functions and duties of a specified office temporarily in an acting capacity; or

“(3) the President makes an appointment to fill a vacancy in such office during the recess of the Senate pursuant to clause 3 of section 2 of article II of the United States Constitution.

“(b) Any statutory provision providing general authority to the head of an Executive agency (including the Executive Office of the President, and other than the General Accounting Office) to delegate duties to, or to reassign duties among, officers or employees of such Executive agency, is not a statutory provision to which subsection (a)(2) applies.

#### “§ 3348. Vacant office

“(a) In this section—

“(1) the term ‘action’ includes any agency action as defined under section 551(13); and

“(2) the term ‘function or duty’ means any function or duty of the applicable office that—

“(A)(i) is established by statute; and

“(ii) is required by statute to be performed by the applicable officer (and only that officer); or

“(B)(i)(I) is established by regulation; and

“(II) is required by such regulation to be performed by the applicable officer (and only that officer); and

“(ii) includes a function or duty to which clause (i) (I) and (II) applies, and the applicable regulation is in effect at any time during the 180-day period preceding the date on which the vacancy occurs, notwithstanding any regulation that—

“(I) is issued on or after the date occurring 180 days before the date on which the vacancy occurs; and

“(II) limits any function or duty required to be performed by the applicable officer (and only that officer).

“(b) Subject to section 3347 and subsection (c)—

“(1) if the President does not submit a first nomination to the Senate to fill a vacant office within 150 days after the date on which a vacancy occurs—

“(A) the office shall remain vacant until the President submits a first nomination to the Senate; and

“(B) in the case of an office other than the office of the head of an Executive agency (including the Executive Office of the President, and other than the General Accounting Office), only the head of such Executive agency may perform any function or duty of such office, until a nomination is made in accordance with subparagraph (A);

“(2) if the President does not submit a second nomination to the Senate within 150 days after the date of the rejection, withdrawal, or return of the first nomination—

“(A) the office shall remain vacant until the President submits a second nomination to the Senate; and

“(B) in the case of an office other than the office of the head of an Executive agency (including the Executive Office of the President, and other than the General Accounting Office), only the head of such Executive agency may perform any function or duty of such office, until a nomination is made in accordance with subparagraph (A); and

“(3) if an office is vacant after 150 days after the rejection, withdrawal, or return of the second nomination—

“(A) the office shall remain vacant until a person is appointed by the President, by and with the advice and consent of the Senate; and

“(B) in the case of an office other than the office of the head of an Executive agency (including the Executive Office of the President, and other than the General Accounting Office), only the head of such Executive agency may perform any function or duty of such office, until an appointment is made in accordance with subparagraph (A).

“(c) If the last day of any 150-day period under subsection (b) is a day on which the Senate is not in session, the first day the Senate is next in session and receiving nominations shall be deemed to be the last day of such period.

“(d)(1) Except as provided under paragraphs (1)(B), (2)(B), and (3)(B) of subsection (b), an action shall have no force or effect if such action—

“(A)(i) is taken by any person who fills a vacancy in violation of subsection (b); and

“(ii) is the performance of a function or duty of such vacant office; or

“(B)(i) is taken by a person who is not filling a vacant office; and

“(ii) is the performance of a function or duty of such vacant office.

“(2) An action that has no force or effect under paragraph (1) may not be ratified.

“(d) This section shall not apply to—

“(1) the General Counsel of the National Labor Relations Board;

“(2) the General Counsel of the Federal Labor Relations Authority; or

“(3) any Inspector General appointed by the President, by and with the advice and consent of the Senate.

#### “§ 3349. Reporting of vacancies

“(a) The head of each Executive agency (including the Executive Office of the President, and other than the General Accounting Office) shall submit to the Comptroller General of the United States and to each House of Congress—

“(1) notification of a vacancy and the date such vacancy occurred immediately upon the occurrence of the vacancy;

“(2) the name of any person serving in an acting capacity and the date such service began immediately upon the designation;

“(3) the name of any person nominated to the Senate to fill the vacancy and the date such nomination is submitted immediately upon the submission of the nomination; and

“(4) the date of a rejection, withdrawal, or return of any nomination immediately upon such rejection, withdrawal, or return.

“(b) If the Comptroller General of the United States makes a determination that an officer is serving longer than the 150-day period including the applicable exceptions to such period under section 3346, the Comptroller General shall report such determination to—

“(1) the Committee on Governmental Affairs of the Senate;

“(2) the Committee on Government Reform and Oversight of the House of Representatives;

“(3) the Committees on Appropriations of the Senate and House of Representatives;

“(4) the appropriate committees of jurisdiction of the Senate and House of Representatives;

“(5) the President; and

“(6) the Office of Personnel Management.

#### “§ 3349a. Presidential inaugural transitions

“(a) In this section, the term ‘transitional inauguration day’ means the date on which any person swears or affirms the oath of office as President, if such person is not the President on the date preceding the date of swearing or affirming such oath of office.

“(b) With respect to any vacancy that exists during the 60-day period beginning on a transitional inauguration day, the 150-day period under section 3346 or 3348 shall be deemed to—

“(1) begin on the later of—

“(A) the date following such transitional inauguration day; or

“(B) the date the vacancy occurs; and

“(2) be a period of 180 days.

#### “§ 3349b. Holdover provisions relating to certain independent establishments

“With respect to any independent establishment for which a single officer is the head of the establishment, sections 3345 through 3349a shall not be construed to affect any statute that authorizes a person to continue to serve in any office—

“(1) after the expiration of the term for which such person is appointed; and

“(2) until a successor is appointed or a specified period of time has expired.

#### “§ 3349c. Exclusion of certain officers

“Sections 3345 through 3349b shall not apply to—

“(1) any member who is appointed by the President, by and with the advice and consent of the Senate to any board, commission, or similar entity that—

“(A) is composed of multiple members; and

“(B) governs an independent establishment or Government corporation; or

“(2) any commissioner of the Federal Energy Regulatory Commission.”

(b) TECHNICAL AND CONFORMING AMENDMENT.—

(1) TABLE OF SECTIONS.—The table of sections for chapter 33 of title 5, United States

Code, is amended by striking the matter relating to subchapter III and inserting the following:

“SUBCHAPTER III—DETAILS,  
VACANCIES, AND APPOINTMENTS

“3341. Details; within Executive or military departments.

“[3342. Repealed.]

“3343. Details; to international organizations.

“3344. Details; administrative law judges.

“3345. Acting officer.

“3346. Time limitation.

“3347. Application.

“3348. Vacant office.

“3349. Reporting of vacancies.

“3349a. Presidential inaugural transitions.

“3349b. Holdover provisions relating to certain independent establishments.

“3349c. Exclusion of certain officers.”.

(2) SUBCHAPTER HEADING.—The subchapter heading for subchapter III of chapter 33 of title 5, United States Code, is amended to read as follows:

“SUBCHAPTER III—DETAILS,  
VACANCIES, AND APPOINTMENTS”.

SEC. 3. EFFECTIVE DATE AND APPLICATION.

(a) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect on the date of enactment of this Act.

(b) APPLICATION.—This Act shall apply to any office that—

(1) becomes vacant after the date of enactment of this Act; or

(2) is vacant on such date, except sections 3345 through 3349 of title 5, United States Code (as amended by this Act), shall apply as though such office first became vacant on such date.

Mr. THURMOND. Mr. President, I rise today as an original cosponsor of the Federal Vacancies Reform Act. This legislation is essential to help preserve and strengthen the advice and consent role of the Senate as mandated in the Constitution.

One of the greatest fears of the Founders was the accumulation of too much power in one source, and the separation of powers among the three branches of Government is one of the keys to the success of our great democratic government. An excellent example of the separation of powers is the requirement in Article II, Section 2 of the Constitution that the President receive the advice and consent of the Senate for the appointment of officers of the United States. As Chief Justice Rehnquist wrote for the Supreme Court a few years ago, “The Clause is a bulwark against one branch aggrandizing its power at the expense of another branch.”

The Vacancies Act is central to the Appointments Clause because it places limits on the amount of time that the President can appoint someone to an advice and consent position in an acting capacity without sending a nomination to the Senate. However, for many years, the executive branch has failed to comply with the letter of the law. The Vacancies Act has no method of enforcement, so the executive branch just ignores it. When confronted with the act, the Attorney General makes very weak legal arrangements about its inapplicability.

This is what the Attorney General did over one year ago when I raised the Vacancies Act at an oversight hearing. At the time, almost all of the top positions at the Justice Department were being filled in an acting capacity. I exchanged letters with her about the Vacancies Act, and detailed the fallacy in her argument. It was to no avail.

I became convinced that legislation to rewrite the vacancies law and provide some remedy for violating it was the only way to get the executive branch to properly respect the advice and consent role of the Senate. Senator LOTT and I introduced legislation earlier this year, and I testified about it before the Governmental Affairs Committee.

I detailed for the Committee some prominent examples of how the Act was being ignored. President Clinton allowed the Criminal Division of the Justice Department to languish for over two and one half years before making an appointment. The Government had an Acting Solicitor General for an entire term of the Supreme Court. Most recently, the President installed an Acting Chief of the Civil Rights Division in blatant disregard of the Judiciary Committee's decision not to support his controversial choice.

However, let me be clear. This bill is not about any one President or any one nominee. It is about preserving the institutional role of the Senate. A Republican President has no more right to ignore the appointments process than a Democrat President.

Today, Senator THOMPSON, Senator BYRD, Senator LOT, and I are introducing a bipartisan bill to address the problem. It gives the President 150 days to send a nomination rather than the current 120 days. If he does not comply, the office must remain vacant and the actions of any person acting in that office after that time are null and void, until a nominee is forwarded to the Senate. The bill also clarifies the application of the Vacancies Act to reject the Attorney General's flawed interpretation.

Mr. President, we must act to preserve the advice and consent role of the Senate. As the Supreme Court has stated, “The structural interests protected by the Appointments Clause are not those of any one branch of Government but of the entire Republic.” Reforming the vacancies law is essential in this regard. Let us reaffirm the separation of powers for the sake of the Senate and the entire Republic.

By Mr. INOUE:

S. 2177. A bill to express the sense of the Congress that the President should award a Presidential unit citation to the final crew of the U.S.S. *Indianapolis*, which was sunk on July 30, 1945; to the Committee on Armed Services.

PRESIDENTIAL UNIT CITATION TO THE USS  
INDIANAPOLIS

• Mr. INOUE. Mr. President, today I am introducing a Sense of the Congress bill which calls upon the President to

award a Presidential Unit Citation to the final crew of the U.S.S. *Indianapolis* (CA-35) that recognizes the courage, fortitude, and heroism displayed by the crew in the face of tremendous hardship and adversity after their ship was torpedoed and sunk on July 30, 1945.●

By Mr. KOHL (for himself and D'AMATO):

S. 2178. A bill to amend the National Housing Act to authorize the Secretary of Housing and Urban Development to insure mortgages for the acquisition, construction, or substantial rehabilitation of child care and development facilities and to establish the Children's Development Commission to certify such facilities for such insurance, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

CHILDREN'S DEVELOPMENT COMMISSION ACT

• Mr. KOHL. Mr. President, today I introduce the Children's Development Commission Act. I am pleased to be joined in this by my friend, Senator D'AMATO. He brings to this endeavor a deep understanding of the nation's capital markets and a deep concern for the well being of this country's children. In the House of Representatives, Representatives MALONEY and BAKER have already introduced a companion measure, H.R. 3637.

Our legislation is designed to address the credit market's failure to provide sufficient long term financing for the building and renovation of child care centers, after-school care programs, infant care, and family child care homes. Because the profit margin in such centers is very low, and the perceived risk is great, lenders are often unwilling to lend to child care operations. This is true despite the fact that an overwhelming number of studies show a shortage in the supply of quality child care—especially in urban areas, in low income areas, and for certain types of care (infant care, school age care, off-hour care).

The Children's Development Commission Act creates a loan guarantee program through HUD to provide insurance to lenders willing to put up money for child care center mortgages, leases, or renovations. The program is modeled closely on the successful Section 232 HUD program that provides mortgage insurance for elder-care facilities.

The bill also creates a “Children's Development Commission” or “Kiddie Mac” which: (1) certifies child care development facilities eligible for guaranteed financing; (2) establishes the standards necessary to make such certification; (3) makes small purpose loans to child care facilities for reconstruction and renovation; (4) develops a plan to offer low cost liability and fire insurance to child care providers; and (5) creates a research foundation to support research into child care supply issues, fund pilot programs for improving child care, and publishes material for those interested in getting mortgage insurance through HUD.



Congress will make one \$10 million appropriation to fund the Kiddie Mac's incorporation and its micro-loan program; after that, a stock offering will fund Kiddie Mac until its financial activities and fee collection make it self-financing.

The need, and the will, to take this sort of step to increase the supply of quality child care is evident. When I ran for Congress in 1988, I talked about the importance of child care. At best, I received a polite smile of interest, and then the discussion would move on to the pressing issues of the day—the environment, the budget deficit, health care.

Today, child care is being discussed earnestly at dinner tables across the nation and in Committee rooms all over the Capitol. Almost everyone has a personal story about trying to secure good child care, about trying to help an employee find good child care, about the terrible shortage of quality child care in their town or city.

We have always talked about the necessities of life as being food, clothing and shelter. I think it is time we add a fourth—quality child care. It is necessary to give our children the strong start they need. It is necessary if we are going to take advantage of the tremendous ability to learn in the first three years of life.

And quality child care is necessary in order for the growing number of families in which both parents work, for the growing number of single parent families to be able to earn a living, and for businesses that want to attract and retain productive, happy employees.

Unfortunately, by every measure and in every state, quality child care is in short supply. And in most areas of the country, the sweeping welfare reform we passed last year has exacerbated existing shortages. In my State of Wisconsin, the State's welfare reform plan will generate the need for 8000 new child care slots in Milwaukee County alone. And in New York City, by the year 2001, there will be 30,000 more children who need child care than there are child care spaces for them.

The shortage is not just one of child care slots, but of quality child care slots. One major study showed that seven out of ten child care centers provide mediocre care, while one in eight is so inadequate that the health and safety of the children are threatened. Another survey found that more than half of parents with children in child care worry weekly about whether their children are well-served in their current arrangements.

Kiddie Mac will help address these shortfalls in several ways. It will lower the costs of those setting up child care facilities, home child care, or preschools. By guaranteeing child care facility mortgages and leases, Kiddie Mac lowers the start-up costs to facilities allowing them to pass the savings on to teachers in the form of higher salaries and parents in the form of lower fees. Kiddie Mac will also provide

loan guarantees to facilities that want to upgrade and providing micro-loans for small repairs related to licensing. This will allow existing centers and homes, even very small ones, to bring their facilities up to—and beyond—code.

Kiddie Mac is a market-based, small-government approach to moving capital toward a very wise investment in quality child care. Kiddie Mac's services will be available to any organization who can show they will provide quality child care: businesses, nonprofits, churches or synagogues, family home providers, or after-school programs. Decisions as to how much and how the care will be provided are left where they belong: with the local providers, with local communities, and with the parents.

Mr. President, I ask unanimous consent that the text of the Children's Development Act be included in the RECORD.

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

S. 2178

*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 "Children's Development Commission Act".

#### SEC. 2. CONGRESSIONAL FINDINGS.

Congress finds the following:

(1) The need for quality nursery schools, both full-time and part-time child care centers and after-school programs, after school programs, neighborhood-run mothers-day-out programs, and family child care providers has grown among working parents, and parents who stay at home, who want their children to have access to early childhood education.

(2) All parents should have access to safe, stimulating, and educational early childhood education programs for their children, whether such programs are carried out in a child care center, a part-time nursery school (including a nursery school operated by a religious organization), or a certified child care provider's home.

(3) The number of available enrollment opportunities for children to receive quality child care services is not meeting the demand for such services.

(4) In 1995 there were about 21,000,000 children less than 6 years of age, of whom 31 percent were participating in center-based child care services and 14 percent were receiving child care in homes. Between 1992 and 2005 the participation of women 24 to 54 years of age in the labor force is projected to increase from 75 percent to 83 percent.

(5) In States that have set up a mechanism to provide capital improvements for child care facilities, the demand for services of such facilities still has not been met.

(6) The United States is behind other western, industrialized countries when it comes to providing child care services. In France, almost 100 percent of all children 3 to 5 years of age attend nursery school. In Germany this number is 65 to 70 percent. In Japan 90 percent of such children attend some form of preschool care. In all of these countries early childhood care has proven to increase children's development and performance.

#### SEC. 3. INSURANCE FOR MORTGAGES ON NEW AND REHABILITATED CHILD CARE AND DEVELOPMENT FACILITIES.

Title II of the National Housing Act (12 U.S.C. 1707 et seq.) is amended by adding at the end the following:

##### "MORTGAGE INSURANCE FOR CHILD CARE AND DEVELOPMENT FACILITIES

"SEC. 257. (a) PURPOSE.—The purpose of this section is to facilitate and assist in the provision and development of licensed child care and development facilities.

"(b) GENERAL INSURANCE AUTHORITY.—The Secretary may insure mortgages (including advances on such mortgages during construction) in accordance with the provisions of this section and upon such terms and conditions as the Secretary may prescribe and may make commitments for insurance of such mortgages before the date of their execution or disbursement thereon.

"(c) ELIGIBLE MORTGAGES.—To carry out the purpose of this section, the Secretary may insure any mortgage that covers a new child care and development facility, including a new addition to an existing child care and development facility (regardless of whether the existing facility is being rehabilitated), or a substantially rehabilitated child care and development facility, including equipment to be used in the operation of the facility, subject to the following conditions:

"(1) APPROVED MORTGAGOR.—The mortgage shall be executed by a mortgagor approved by the Secretary. The Secretary may, in the discretion of the Secretary, require any such mortgagor to be regulated or restricted as to charges and methods of financing and, if the mortgagor is a corporate entity, as to capital structure and rate of return. As an aid to the regulation or restriction of any mortgagor with respect to any of the foregoing matters, the Secretary may make such contracts with and acquire for not more than \$100 such stock or interest in such mortgagor as the Secretary may consider necessary. Any stock or interest so purchased shall be paid for out of the General Insurance Fund, and shall be redeemed by the mortgagor at par upon the termination of all obligations of the Secretary under the insurance.

"(2) PRINCIPAL OBLIGATION.—The mortgage shall involve a principal obligation in an amount not to exceed 90 percent of the estimated value of the property or project, or 95 percent of the estimated value of the property or project in the case of a mortgagor that is a private nonprofit corporation or association (as such term is defined pursuant to section 221(d)(3)), including—

"(A) equipment to be used in the operation of the facility when the proposed improvements are completed and the equipment is installed; or

"(B) a solar energy system (as defined in subparagraph (3) of the last paragraph of section 2(a)) or residential energy conservation measures (as defined in subparagraphs (A) through (G) and (I) of section 210(11) of the National Energy Conservation Policy Act), in cases in which the Secretary determines that such measures are in addition to those required under the minimum property standards and will be cost-effective over the life of the measure.

"(3) AMORTIZATION AND INTEREST.—The mortgage shall—

"(A) provide for complete amortization by periodic payments under such terms as the Secretary shall prescribe;

"(B) have a maturity satisfactory to the Secretary, but in no event longer than 25 years; and

"(C) bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee, and the Secretary shall not issue any

regulations or establish any terms or conditions that interfere with the ability of the mortgagor and mortgagee to determine the interest rate.

“(d) **CERTIFICATION BY CHILDREN’S DEVELOPMENT COMMISSION.**—The Secretary may not insure a mortgage under this section unless the Children’s Development Commission established under section 258 certifies that the facility is in compliance, or will be in compliance not later than 12 months after such certification, with—

“(1) any laws, standards, and requirements applicable to such facilities under the laws of the State, municipality, or other unit of general local government in which the facility is or is to be located; and

“(2) after the effective date of the standards and requirements established under section 258(c)(2), such standards and requirements.

“(e) **RELEASE.**—The Secretary may consent to the release of a part or parts of the mortgaged property or project from the lien of any mortgage insured under this section upon such terms and conditions as the Secretary may prescribe.

“(f) **MORTGAGE INSURANCE TERMS.**—The provisions of subsections (d), (e), (g), (h), (i), (j), (k), (l), and (n) of section 207 shall apply to mortgages insured under this section, except that all references in such subsections to section 207 shall be considered, for purposes of mortgage insurance under this section, to refer to this section.

“(g) **MORTGAGE INSURANCE FOR FIRE SAFETY EQUIPMENT LOANS.**—

“(1) **AUTHORITY.**—The Secretary may, upon such terms and condition as the Secretary may prescribe, make commitments to insure and insure loans made by financial institutions or other approved mortgagees to child care and development facilities to provide for the purchase and installation of fire safety equipment necessary for compliance with the 1967 edition of the Life Safety Code of the National Fire Protection Association (or any subsequent edition specified by the Secretary of Health and Human Services).

“(2) **LOAN REQUIREMENTS.**—To be eligible for insurance under this subsection a loan shall—

“(A) not exceed the Secretary’s estimate of the reasonable cost of the equipment fully installed;

“(B) bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee;

“(C) have a maturity satisfactory to the Secretary;

“(D) be made by a financial institution or other mortgagee approved by the Secretary as eligible for insurance under section 2 or a mortgagee approved under section 203(b)(1);

“(E) comply with other such terms, conditions, and restrictions as the Secretary may prescribe; and

“(F) be made with respect to a child care and development facility that complies with the requirement under subsection (d).

“(3) **INSURANCE REQUIREMENTS.**—The provisions of paragraphs (5), (6), (7), (9), and (10) of section 220(h) shall apply to loans insured under this subsection, except that all references in such paragraphs to home improvement loans shall be considered, for purposes of this subsection, to refer to loans under this subsection. The provisions of subsections (c), (d), and (h) of section 2 shall apply to loans insured under this subsection, except that all references in such subsections to ‘this section’ or ‘this title’ shall be considered, for purposes of this subsection, to refer to this subsection.

“(h) **SCHEDULES AND DEADLINES.**—The Secretary shall establish schedules and deadlines for the processing and approval (or provision of notice of disapproval) of applica-

tions for mortgage insurance under this section.

“(i) **DEFINITIONS.**—For the purposes of this section, the following definitions shall apply:

“(1) **CHILD CARE AND DEVELOPMENT FACILITY.**—The term ‘child care and development facility’ means a public facility, proprietary facility, or facility of a private nonprofit corporation or association that—

“(A) has as its purpose the care and development of children less than 12 years of age; and

“(B) is licensed or regulated by the State in which it is located (or, if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located).

The term does not include facilities for school-age children primarily for use during normal school hours. The term includes facilities for training individuals to provide child care and development services.

“(2) **EQUIPMENT.**—The term ‘equipment’ includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, and any other items necessary for the functioning of a particular facility as a child care and development facility, including necessary furniture. Such term includes books, curricular, and program materials.

“(3) **MORTGAGE; FIRST MORTGAGE; MORTGAGEE.**—The term ‘mortgage’ means a first mortgage on real estate in fee simple, or on the interest of either the lessor or lessee thereof under a lease having a period of not less than 7 years to run beyond the maturity date of the mortgage. The term ‘first mortgage’ means such classes of first liens as are commonly given to secure advances (including advances during construction) on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located, together with the credit instrument or instruments (if any) secured thereby, and any mortgage may be in the form of one or more trust mortgages or mortgage indentures or deeds of trust, securing notes, bonds, or other credit instruments, and, by the same instrument or by a separate instrument, may create a security interest in initial equipment, whether or not attached to the realty. The term ‘mortgagor’ has the meaning given the term in section 207(a).

“(j) **LIMITATION ON INSURANCE AUTHORITY.**—

“(1) **TERMINATION.**—No mortgage may be insured under this section or section 223(h) after September 30, 2005, except pursuant to a commitment to insure issued on or before such date.

“(2) **AGGREGATE PRINCIPAL AMOUNT LIMITATION.**—The aggregate principal amount of mortgages for which the Secretary enters into commitments to insure under this section or section 223(h) on or before the date under paragraph (1) may not exceed \$2,000,000,000. If, upon the date under paragraph (1), the aggregate insurance authority provided under this paragraph has not been fully used, the Secretary of the Treasury shall submit a report to Congress evaluating the need for continued mortgage insurance under this section.”

“(k) **REGULATIONS.**—The Secretary shall issue any regulations necessary to carry out this section. In issuing such regulations, the Secretary shall consult with the Secretary of Health and Human Services with respect to any aspects of the regulations regarding child care and development facilities.”

#### **SEC. 4. INSURANCE FOR MORTGAGES FOR ACQUISITION OR REFINANCING DEBT OF EXISTING CHILD CARE AND DEVELOPMENT FACILITIES.**

Section 223 of the National Housing Act (12 U.S.C. 1715n) is amended by adding at the end the following:

“(h) **MORTGAGE INSURANCE FOR PURCHASE OR REFINANCING OF EXISTING CHILD CARE AND DEVELOPMENT FACILITIES.**—

“(1) **AUTHORITY.**—Notwithstanding any other provision of this Act, the Secretary may insure under any section of this title a mortgage executed in connection with the purchase or refinancing of an existing child care and development facility, the purchase of a structure to serve as a child care and development facility, or the refinancing of existing debt of an existing child care and development facility.

“(2) **PURCHASE OF EXISTING FACILITIES AND STRUCTURES.**—In the case of the purchase under this subsection of an existing child care and development facility or purchase of an existing structure to serve as such a facility, the Secretary shall prescribe any terms and conditions that the Secretary considers necessary to ensure that—

“(A) the facility or structure purchased continues to be used as a child care and development facility; and

“(B) the facility complies with the same requirements applicable under subsections (d) and (e) of section 257 to facilities having mortgages insured under such section.

“(3) **REFINANCING OF EXISTING FACILITIES.**—In the case of refinancing of an existing child care and development facility, the Secretary shall prescribe any terms and conditions that the Secretary considers necessary to ensure that—

“(A) the refinancing is used to lower the monthly debt service costs (taking into account any fees or charges connected with such refinancing) of the existing facility;

“(B) the proceeds of any refinancing will be employed only to retire the existing indebtedness and pay the necessary cost of refinancing on the existing facility;

“(C) the existing facility is economically viable; and

“(D) the facility complies with the same requirements applicable under section 257(d) to facilities having mortgages insured under such section.

“(4) **DEFINITIONS.**—For purposes of this subsection, the terms defined in section 257(i) shall have the same meanings as provided under such section.

“(5) **LIMITATION ON INSURANCE AUTHORITY.**—The authority of the Secretary to enter into commitments to insure mortgages under this subsection is subject to the limitations under section 257(j).”

#### **SEC. 5. CHILDREN’S DEVELOPMENT COMMISSION.**

Title II of the National Housing Act (12 U.S.C. 1707 et seq.) is amended by adding at the end (after section 257, as added by section 3 of this Act) the following:

“**CHILDREN’S DEVELOPMENT COMMISSION**

“**SEC. 258. (a) ESTABLISHMENT.**—There is hereby established a commission to be known as the Children’s Development Commission.

“(b) **MEMBERSHIP.**—

“(1) **APPOINTMENT.**—The Commission shall be composed of 7 members appointed by the President, not later than the expiration of the 3-month period beginning upon the enactment of this section, by and with the advice and consent of the Senate, as follows:

“(A) 1 member shall be appointed from among 3 individuals recommended by the Secretary of Housing and Urban Development or the Secretary’s designee.

“(B) 1 member shall be appointed from among 3 individuals recommended by the Secretary of Health and Human Services or the Secretary’s designee.

“(C) 1 member shall be appointed from among 3 individuals recommended by the Secretary of the Treasury or the Secretary’s designee.

“(D) 4 members shall be appointed from among 12 individuals recommended jointly by the Speaker of the House of Representatives, the Majority Leader of the Senate, Minority Leader of the House of Representatives, the Minority Leader of the Senate.

“(2) QUALIFICATIONS OF CONGRESSIONALLY RECOMMENDED MEMBERS.—Of the members appointed under paragraph (1)(D)—

“(A) each shall be an individual who actively participates or is employed in the field of child care and has academic, licensing, or other credentials relating to such participation or employment; and

“(B) not more than 2 may be of the same political party.

“(3) TERMS.—Each appointed member of the Commission shall serve for a term of 3 years.

“(4) VACANCIES.—Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has taken office. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

“(5) CHAIRPERSON.—The chairperson of the Commission shall be designated by the President at the time of appointment.

“(6) QUORUM.—A majority of the members of the Commission shall constitute a quorum for the transaction of business.

“(7) VOTING.—Each member of the Commission shall be entitled to 1 vote, which shall be equal to the vote of every other member of the Commission.

“(8) PROHIBITION ON ADDITIONAL PAY.—Members of the Commission shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Commission.

“(c) FUNCTIONS.—The Commission shall carry out the following functions:

“(1) CERTIFICATION OF COMPLIANCE.—The Commission shall collect such information and make such determinations as may be necessary to determine, for purposes of section 257(d), whether child care and development facilities comply, or will be in compliance within 12 months, with—

“(A) any laws, standards, and requirements applicable to such facilities under the laws of the State, municipality, or other unit of general local government in which the facility is or is to be located, and

“(B) after the effective date of the standards and requirements established under paragraph (2), such standards and requirements,

and shall issue certifications of such compliance.

“(2) ESTABLISHMENT OF STANDARDS.—

“(A) STUDY.—Not later than 12 months after the date on which appointment of initial membership of the Commission is completed, the Commission, in consultation with the Secretary of Housing and Urban Development and the Secretary of Health and Human Services, shall conduct a study to determine the laws, standards, and requirements referred to in paragraph (1)(A) that are applicable in each State. Taking into consideration the findings of the study, the Secretary shall establish standards and requirements regarding child care and development facilities that are designed to ensure that mortgage insurance is provided under section 257 and section 223(h) only for safe, clean, and healthy facilities that provide appropriate care and development services for children.

“(B) PUBLICATION.—The Commission shall issue regulations providing for the standards

and requirements established under subparagraph (A) to take effect, for purposes of sections 257(d)(2) and 223(h)(2)(B) and paragraph (1)(B) of this section, not later than 18 months after the date of enactment of this section.

“(3) SMALL PURPOSE LOANS.—The Commission shall, to the extent amounts are made available for such purpose pursuant to subsection (i) and qualified requests are received, make loans, directly or indirectly to providers of child care and development facilities for reconstruction or renovation of such facilities, subject to the following requirements:

“(A) Loans under this paragraph shall be made only for such facilities that are financially and operationally viable, as determined under standards and guidelines to be established by the Commission.

“(B) The aggregate amount of loans made under this paragraph to a single borrower may not exceed \$50,000.

“(C) A loan made under this paragraph may not have a term to maturity exceeding 7 years.

“(D) Loans under this paragraph shall bear interest at rates and be made under such other conditions and terms as the Commission shall provide.

“(4) NOTIFICATION.—The Commission shall take such actions as may be necessary to publicize the availability of the programs for mortgage insurance under sections 257 and 223(h) and loans under paragraph (3) of this subsection in a manner that ensures that information concerning such programs will be available to child care providers throughout the United States.

“(5) LIABILITY INSURANCE.—Not later than 12 months after the date on which appointment of initial membership of the Commission is completed, the Commission shall establish standards and guidelines, applicable to mortgage insurance under sections 257 and 223(h) and loans under paragraph (3) of this subsection, requiring child care providers operating child care and development facilities assisted under such provisions to obtain and maintain liability insurance in such amounts and subject to such requirements as the Commission considers appropriate.

“(6) RESEARCH FOUNDATION.—Not later than 12 months after the date of enactment of this section, the Commission shall submit a report to Congress recommending a plan for establishing and funding a foundation that is an entity independent of the Commission (but which maintains association with the Commission), the purpose of which shall be—

“(A) to support research relating to child care and development facilities;

“(B) to fund pilot programs to test innovative methods for improving child care; and

“(C) to engage in activities and publish materials to assist persons interested in mortgage insurance under sections 257 and 223(h) and other assistance provided by the Commission.

“(d) NONDISCRIMINATION REQUIREMENT.—

“(1) IN GENERAL.—The Commission may not certify under subsection (c)(1) or carry out any activities of the Commission with respect to any child care and development facility if the provider of the facility discriminates on account of race, color, religion (subject to paragraph (2)), national origin, sex (to the extent provided in title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.)), or handicapping condition.

“(2) FACILITIES OF RELIGIOUS ORGANIZATIONS.—The prohibition with respect to religion shall not apply to a child care and development facility which is controlled by or which is closely identified with the tenets of a particular religious organization if the application of this subsection would not be

consistent with the religious tenets of such organization.

“(3) CERTIFICATION.—As a condition of certification under subsection (c)(1) and eligibility for a loan under subsection (c)(3), the provider of a child care and development facility shall certify to the Commission that the provider does not discriminate, as required by the provisions of paragraph (1) of this subsection.

“(e) POWERS.—

“(1) ASSISTANCE FROM FEDERAL AGENCIES.—The Commission may secure directly from any department or agency of the Federal Government such information as the Commission may require for carrying out its functions. Upon request of the Commission, any such department or agency shall furnish such information.

“(2) ASSISTANCE FROM GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.

“(3) ASSISTANCE FROM DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.—Upon the request of the Commission, the Secretary of Housing and Urban Development shall, to the extent possible and subject to the discretion of the Secretary, detail any of the personnel of the Department of Housing and Urban Development, on a nonreimbursable basis, to assist the Commission in carrying out its functions under this section.

“(4) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other Federal agencies.

“(f) STAFF.—

“(1) EXECUTIVE DIRECTOR.—The Commission shall appoint an executive director of the Board, who shall be compensated at a rate fixed by the Commission, but which shall not exceed the rate established for level I of the Executive Schedule under title 5, United States Code.

“(2) OTHER PERSONNEL.—In addition to the executive director, the Commission may appoint and fix the compensation of such personnel as the Commission considers necessary, in accordance with the provisions of title 5, United States Code, governing appointments to the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

“(g) REPORTS.—Not later than March 31 of each year, the Commission shall submit a report to the President and Congress regarding the operations and activities of the Commission during the preceding calendar year. Each annual report shall include a copy of the Commission's financial statements and such information and other evidence as is necessary to demonstrate that the activities of the Commission during the year for which the report is made. The Commission may also submit reports to Congress and the President at such other times as the Commission deems desirable.

“(h) DEFINITIONS.—For purposes of this section, the terms defined in section 257(i) shall have the same meanings as provided under such section.

“(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission to carry out this section \$10,000,000 for fiscal year 1999, to remain available until expended, of which not more than \$2,500,000 shall be available for administrative costs of the Commission and the remainder of which shall be available only for loans under subsection (c)(3).”.

**SEC. 6. STUDY OF AVAILABILITY OF SECONDARY MARKETS FOR MORTGAGES ON CHILD CARE FACILITIES.**

(a) **STUDY.**—The Secretary of the Treasury shall conduct a study of the secondary mortgage markets to determine—

(1) whether such a market exists for purchase of mortgages eligible for insurance under sections 223(h) and 257 of the National Housing Act (as added by this Act);

(2) whether such a market would affect the availability of credit available for development of child care and development facilities or would lower development costs of such facilities; and

(3) the extent to which such a market or other activities to provide credit enhancement for child care and development facilities loans is needed to meet the demand for such facilities.

(b) **REPORT.**—The Secretary of the Treasury shall submit to Congress a report regarding the results of the study conducted under this section not later than the expiration of the 2-year period beginning on the date of enactment of this Act.●

● **Mr. D'AMATO.** Mr. President, today I cosponsor the Children's Development Commission Act of 1998. I commend my friend and respected colleague, Senator HERB KOHL for introducing this critical piece of legislation which addresses a serious problem facing American families today—the shortage of affordable, quality child care.

America is facing a shortage of quality child care which is approaching crisis levels. This shortage bears most heavily on working families, including young working single mothers. Every day more than 5 million children under age 13 are left unattended after school. The parents of these children deserve meaningful, affordable child care options.

The high cost of child care impacts directly on families, affecting their ability to pay the rent or mortgage, to put food on the table or to save for their children's education. The lack of decent, high quality child care also impedes the development of critical learning skills these children will need in order to succeed later in life. Social and medical research continues to stress the importance of the first three years of development on a child's well-being and ability to learn.

In New York, the average cost of day care is over \$6,000 per year—and many families end up paying nearly \$10,000 per year. Many families are unable to locate quality child care at all, as evidenced by the long waiting lists at existing centers. In New York City, approximately 28,000 families are on waiting lists for assistance under the Child Care Development Block Grant Program.

Mr. President, as more families make the difficult transition from welfare to work, waiting lists for affordable care and assistance will likely increase significantly. As a result of welfare reform, by the year 2002, there may be as many as 135,000 additional infants and toddlers in New York who will need affordable quality child care.

These high costs and the overall shortage of quality care are found in all areas of my home State—cutting

across urban and rural boundaries. The New York Human Services Administration estimates that more than two-thirds of children in the Morrisania section of the Bronx and more than seventy percent of children in the Brownsville section of Brooklyn are in need of child care.

This shortage extends to rural areas of New York as well—for example, in Allegany, Hamilton, Washington and Yates counties there are no registered programs for school age children. Twenty of my State's sixty two counties have three or fewer registered school-age programs.

The Child Care Development Commission Act will employ a number of cost-effective strategies to increase the availability and affordability of child care throughout the nation.

First, the legislation would reduce lender risk by creating a new insurance authority within the Department of Housing and Urban Development's Federal Housing Administration (FHA). Using this new authority, FHA will provide loan guarantees for child care facilities. This will in turn spur the provision of private capital for the construction of new child care centers, the improvement of existing facilities and the cost of purchasing and installing fire safety equipment.

Second, the Act will create a new streamlined Commission—known informally as “Kiddie Mac.” The Commission will provide reasonable low-cost “micro-loans” for the renovation and improvement of existing facilities. In addition, the Commission will certify that facilities receiving FHA insurance meet state and local standards, such as licensing and child safety requirements.

Mr. President, The Children's Development Commission Act is an important step in ensuring that child care facilities can gain access to private market credit. Representatives Carolyn Maloney and Richard Baker have introduced companion legislation (H.R. 3637) in the House of Representatives. They deserve our praise for their diligence in addressing this issue.

The Children's Development Commission Act makes an investment in our children, an investment in our families and an investment in our future. I look forward to working with my Senate and House colleagues for its enactment.●

By Ms. MOSELEY-BRAUN:

S. 2179. A bill to amend the International Emergency Economic Powers Act to clarify the conditions under which export controls may be imposed on agricultural products; to the Committee on Banking, Housing, and Urban Affairs.

SELECTIVE AGRICULTURE EMBARGO PROHIBITION  
ACT OF 1998

Ms. MOSELEY-BRAUN. Mr. President, in January 1980, President Jimmy Carter terminated U.S. shipments of wheat and corn to the Soviet Union in retaliation against the Soviet invasion

of Afghanistan. The effect of this embargo on the USSR was limited, but the impact on American farmers was severe, cutting off the market for 17 million tons of U.S. grain and prompting the Soviets to reduce long term reliance on U.S. farm exports.

This action unfairly singled out the agriculture community to shoulder the burden of U.S. foreign policy. Congress quickly responded by limiting the President's power to impose restrictions on agriculture exports. The Export Administration Act, the principal export control statute of the era, was amended to include provisions to prohibit the President from imposing export controls on farm commodities for more than sixty days without Congressional approval.

The Export Administration Act expired August 20, 1994, however, and consequently, the legal protections that prevent the singling out of agriculture exports are no longer in place.

The current statutory vehicle that allows the President to impose economic sanctions is the International Emergency Economic Powers Act, also known by its acronym, IEEPA. The IEEPA allows the President to employ a wide range of sanctions against countries determined to be a threat to U.S. national security, foreign policy, or economy. If the President chooses to act under IEEPA, he can then declare a national emergency, and then is required to report to Congress explaining his actions. Sanctions authorized under IEEPA can continue until the President decides to terminate the emergency, or unless Congress acts to terminate it by joint resolution.

The President enjoys almost unlimited authority under IEEPA. The statute requires the President to consult with Congress on his actions, but this consultation is discretionary, not mandatory. Most importantly, nothing in IEEPA prevents a President from targeting American agriculture as a tool for sanctions or embargos against a foreign nation.

My bill, the Selective Agriculture Embargo Prohibition Act, simply restores the protection against selective embargos that farmers enjoyed before the EAA was allowed to lapse. Under the provisions of my bill, a President who imposes an embargo on agriculture commodities, using the authority provided by IEEPA, must report this action immediately to Congress. The President also must set forth the reasons, in detail, for this action, and specify the period of time, which may not exceed one year, that the agriculture export controls are proposed to be in effect.

My bill allows Congress 60 days after receiving the report to adopt a joint resolution approving the agriculture exports controls. If Congress fails to adopt that resolution within 60 days, then the controls shall cease to be effective upon the expiration of the 60 days.

Entering and expanding into foreign markets is not a simple task. It requires years of extensive work to nurture business relationships, foster consumer confidence and trust, and establish the procedures for effective sales. Destroying foreign markets, by comparison, can occur swiftly and easily, wreaking long-lasting and largely irreparable damage on American industries that have invested the time and money to build a strong consumer base overseas. Those foreign purchasers who cannot rely on American imports will then turn to other sources—our foreign competitors—and shut out American products for good.

That kind of damage was precisely the effect of the 1980 embargo on U.S. agriculture. And given the almost logarithmic increases in U.S. farm exports over the past decade, any sanction or embargo that targets agriculture today would have even greater devastating and permanent effects on the U.S. farm economy. We must ensure that this sort of mistake is never repeated.

There will be critics who argue that my legislation ties the hands of the President. This is not the case. My bill simply ensures that we do not embargo agriculture commodities unless both the President and the Congress are in full agreement. My bill ensures that adequate safeguards are in place so that farm families do not unfairly shoulder the burden of American foreign policy.

This legislation is very similar to the restrictions enacted three times by Congress during consideration of the Export Enhancement Act and later signed into law by President Ronald Reagan. This is a bipartisan bill is also good trade policy, good farm policy, and good economic policy. I urge my colleagues to support the swift passage of this bill in the Senate.

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. 2179

*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 "Selective Agriculture Embargo Prohibition Act".

#### SEC. 2. AGRICULTURAL EXPORT CONTROLS.

The International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) is amended—

(1) by redesignating section 208 as section 209; and

(2) by inserting after section 207 the following new section:

##### "SEC. 208. AGRICULTURAL CONTROLS.

"(a) IN GENERAL.—

"(1) REPORT TO CONGRESS.—If the President imposes export controls on any agricultural commodity in order to carry out the provisions of this Act, the President shall immediately transmit a report on such action to Congress, setting forth the reasons for the controls in detail and specifying the period of time, which may not exceed 1 year, that the controls are proposed to be in effect. If

Congress, within 60 days after the date of its receipt of the report, adopts a joint resolution pursuant to subsection (b), approving the imposition of the export controls, then such controls shall remain in effect for the period specified in the report, or until terminated by the President, whichever occurs first. If Congress, within 60 days after the date of its receipt of such report, fails to adopt a joint resolution approving such controls, then such controls shall cease to be effective upon the expiration of that 60-day period.

"(2) APPLICATION OF PARAGRAPH (1).—The provisions of paragraph (1) and subsection (b) shall not apply to export controls—

"(A) which are extended under this Act if the controls, when imposed, were approved by Congress under paragraph (1) and subsection (b); or

"(B) which are imposed with respect to a country as part of the prohibition or curtailment of all exports to that country.

"(b) JOINT RESOLUTION.—

"(1) IN GENERAL.—For purposes of this subsection, the term 'joint resolution' means only a joint resolution the matter after the resolving clause of which is as follows: 'That, pursuant to section 208 of the International Emergency Economic Powers Act, the President may impose export controls as specified in the report submitted to Congress on . . .', with the blank space being filled with the appropriate date.

"(2) INTRODUCTION.—On the day on which a report is submitted to the House of Representatives and the Senate under subsection (a), a joint resolution with respect to the export controls specified in such report shall be introduced (by request) in the House of Representatives by the chairman of the Committee on International Relations, for himself and the ranking minority member of the Committee, or by Members of the House designated by the chairman and ranking minority member; and shall be introduced (by request) in the Senate by the Majority Leader of the Senate, for himself and the Minority Leader of the Senate, or by Members of the Senate designated by the Majority Leader and Minority Leader of the Senate. If either House is not in session on the day on which such a report is submitted, the joint resolution shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session.

"(3) REFERRAL.—All joint resolutions introduced in the House of Representatives and in the Senate shall be referred to the appropriate committee.

"(4) DISCHARGE OF COMMITTEE.—If the committee of either House to which a joint resolution has been referred has not reported the joint resolution at the end of 30 days after its referral, the committee shall be discharged from further consideration of the joint resolution or of any other joint resolution introduced with respect to the same matter.

"(5) CONSIDERATION IN SENATE AND HOUSE OF REPRESENTATIVES.—A joint resolution under this subsection shall be considered in the Senate in accordance with the provisions of section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976. For the purpose of expediting the consideration and passage of joint resolutions reported or discharged pursuant to the provisions of this subsection, it shall be in order for the Committee on Rules of the House of Representatives to present for consideration a resolution of the House of Representatives providing procedures for the immediate consideration of a joint resolution under this subsection which may be similar, if applicable, to the procedures set forth in section 601(b)(4) of the International Security

Assistance and Arms Export Control Act of 1976.

"(6) PASSAGE BY 1 HOUSE.—In the case of a joint resolution described in paragraph (1), if, before the passage by 1 House of a joint resolution of that House, that House receives a resolution with respect to the same matter from the other House, then—

"(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

"(B) the vote on final passage shall be on the joint resolution of the other House.

"(c) COMPUTATION OF TIME.—In the computation of the period of 60 days referred to in subsection (a) and the period of 30 days referred to in paragraph (4) of subsection (b), there shall be excluded the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of Congress sine die."

By Mr. LOTT (for himself and Mr. DASCHLE):

S. 2180. A bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to clarify liability under that Act for certain recycling transactions; to the Committee on Environment and Public Works.

THE SUPERFUND RECYCLING EQUITY ACT OF 1998

Mr. LOTT. Mr. President, today, I am pleased to join my colleague, Senate Minority Leader DASCHLE, in introducing legislation which removes an unintended yet troublesome legal obstacle to recycling.

It is not a widely known fact that Superfund is biased against recycling. I am confident that the authors of the statute did not intend to favor new materials over those that have been recycled, but we now live with this unintended consequence.

Mr. President, our bill corrects current law and encourages recycling. It simply recognizes that recycling is not disposal and that recyclables are not wastes. Common sense tells us that recycling something is not the same as disposing of it.

Nonetheless, Mr. President, those who sell materials for recycling are being pulled into Superfund cleanups because, under the law, selling recyclable materials is equivalent to "arranging for disposal." Our bill waives Superfund liability for those who are legitimately recycling these goods. Clearly, recycling is not disposal—it is the opposite.

The Superfund Recycling Equity Act is necessary to correct Superfund's fundamental bias against recycled materials. Under current law, recyclable materials, such as paper, glass, plastic, metals and textiles cannot be competitive with new materials. This bill will help level the playing field between the use of recycled goods and competitive virgin raw materials. Currently, suppliers of virgin raw materials face no Superfund liability for contamination caused by their customer. This bill would provide the same waiver to those who sell recyclable materials.

Mr. President, this bill also contains protections to ensure that sham recyclers are unable to benefit from this exemption. In order for recyclers to be relieved of Superfund liability, they must act in an environmentally sound manner and sell their product to manufacturers with environmentally responsible business practices. Considering that most recyclers are currently operating in a reasonable and conscience manner, this should be an easy test.

Mr. President, the Superfund Recycling Equity Act is the product of lengthy negotiations between the federal and state governments, the environmental community and the scrap recycling industry. These negotiations have resulted in a bill that I believe to be both environmentally and fiscally sound.

Americans nationwide have embraced the benefits of recycling. We know that increased recycling means the more efficient use of our natural resources. By removing the threat of Superfund liability for recyclers, we will encourage more recycling.

I hope that my colleagues on both sides of the aisle will lend their support to this targeted and much-needed reform bill.

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. 2180

*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 "Superfund Recycling Equity Act of 1998".

#### SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to promote the reuse and recycling of scrap material in furtherance of the goals of waste minimization and natural resource conservation while protecting human health and the environment;

(2) to create greater equity in the statutory treatment of recycled versus virgin materials; and

(3) to remove the disincentives and impediments to recycling created as an unintended consequence of the 1980 Superfund liability provisions.

#### SEC. 3. CLARIFICATION OF LIABILITY UNDER CERCLA FOR RECYCLING TRANSACTIONS.

(a) CLARIFICATION.—Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) is amended by adding at the end the following new section:

##### "SEC. 127. RECYCLING TRANSACTIONS.

"(a) LIABILITY CLARIFICATION.—As provided in subsections (b), (c), (d), and (e), a person who arranged for recycling of recyclable material shall not be liable under section 107(a)(3) or 107(a)(4) with respect to the material.

"(b) RECYCLABLE MATERIAL DEFINED.—For purposes of this section, the term 'recyclable material' means scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber (other than whole tires), scrap metal, or spent lead-acid, spent nickel-cadmium, and other spent batteries, as well as minor amounts of material incident to or adhering

to the scrap material as a result of its normal and customary use prior to becoming scrap; except that such term shall not include shipping containers of a capacity from 30 liters to 3,000 liters, whether intact or not, having any hazardous substance (but not metal bits and pieces or hazardous substance that form an integral part of the container) contained in or adhering thereto.

"(c) TRANSACTIONS INVOLVING SCRAP PAPER, PLASTIC, GLASS, TEXTILES, OR RUBBER.—Transactions involving scrap paper, scrap plastic, scrap glass, scrap textiles, or scrap rubber (other than whole tires) shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that all of the following criteria were met at the time of the transaction:

"(1) The recyclable material met a commercial specification grade.

"(2) A market existed for the recyclable material.

"(3) A substantial portion of the recyclable material was made available for use as feedstock for the manufacture of a new saleable product.

"(4) The recyclable material could have been a replacement or substitute for a virgin raw material, or the product to be made from the recyclable material could have been a replacement or substitute for a product made, in whole or in part, from a virgin raw material.

"(5) For transactions occurring 90 days or more after the date of enactment of this section, the person exercised reasonable care to determine that the facility where the recyclable material was handled, processed, reclaimed, or otherwise managed by another person (hereinafter in this section referred to as a 'consuming facility') was in compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with recyclable material.

"(6) For purposes of this subsection, 'reasonable care' shall be determined using criteria that include (but are not limited to)—

"(A) the price paid in the recycling transaction;

"(B) the ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation, or other management activities associated with recyclable material; and

"(C) the result of inquiries made to the appropriate Federal, State, or local environmental agency (or agencies) regarding the consuming facility's past and current compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with the recyclable material. For the purposes of this paragraph, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activity associated with the recyclable materials shall be deemed to be a substantive provision.

"(d) TRANSACTIONS INVOLVING SCRAP METAL.—

"(1) Transactions involving scrap metal shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a prepon-

derance of the evidence that at the time of the transaction—

"(A) the person met the criteria set forth in subsection (c) with respect to the scrap metal;

"(B) the person was in compliance with any applicable regulations or standards regarding the storage, transport, management, or other activities associated with the recycling of scrap metal that the Administrator promulgates under the Solid Waste Disposal Act subsequent to the enactment of this section and with regard to transactions occurring after the effective date of such regulations or standards; and

"(C) the person did not melt the scrap metal prior to the transaction.

"(2) For purposes of paragraph (1)(C), melting of scrap metal does not include the thermal separation of 2 or more materials due to differences in their melting points (referred to as 'sweating').

"(3) For purposes of this subsection, the term 'scrap metal' means bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled, except for scrap metals that the Administrator excludes from this definition by regulation.

"(e) TRANSACTIONS INVOLVING BATTERIES.—Transactions involving spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that at the time of the transaction—

"(1) the person met the criteria set forth in subsection (c) with respect to the spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries, but the person did not recover the valuable components of such batteries; and

"(2)(A) with respect to transactions involving lead-acid batteries, the person was in compliance with applicable Federal environmental regulations or standards, and any amendments thereto, regarding the storage, transport, management, or other activities associated with the recycling of spent lead-acid batteries;

"(B) with respect to transactions involving nickel-cadmium batteries, Federal environmental regulations or standards are in effect regarding the storage, transport, management, or other activities associated with the recycling of spent nickel-cadmium batteries, and the person was in compliance with applicable regulations or standards or any amendments thereto; or

"(C) with respect to transactions involving other spent batteries, Federal environmental regulations or standards are in effect regarding the storage, transport, management, or other activities associated with the recycling of such batteries, and the person was in compliance with applicable regulations or standards or any amendments thereto.

##### "(f) EXCLUSIONS.—

"(1) The exemptions set forth in subsections (c), (d), and (e) shall not apply if—

"(A) the person had an objectively reasonable basis to believe at the time of the recycling transaction—

"(i) that the recyclable material would not be recycled;

"(ii) that the recyclable material would be burned as fuel, or for energy recovery or incineration; or

"(iii) for transactions occurring before 90 days after the date of the enactment of this section, that the consuming facility was not



in compliance with a substantive (not procedural or administrative) provision of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, or other management activities associated with the recyclable material;

“(B) the person had reason to believe that hazardous substances had been added to the recyclable material for purposes other than processing for recycling;

“(C) the person failed to exercise reasonable care with respect to the management and handling of the recyclable material (including adhering to customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances); or

“(D) with respect to any item of a recyclable material, the item—

“(i) contained polychlorinated biphenyls at a concentration in excess of 50 parts per million or any new standard promulgated pursuant to applicable Federal laws; or

“(ii) is an item of scrap paper containing at the time of the recycling transaction a concentration of a hazardous substance that has been determined by the Administrator, after notice and comment, to present a significant risk to human health or the environment, or contained that hazardous substance at a concentration at or higher than that determined by the Administrator to present such a significant risk.

“(2) For purposes of this subsection, an objectively reasonable basis for belief shall be determined using criteria that include (but are not limited to) the size of the person's business, customary industry practices (including customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances), the price paid in the recycling transaction, and the ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation, or other management activities associated with the recyclable material.

“(3) For purposes of this subsection, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activities associated with recyclable material shall be deemed to be a substantive provision.

“(g) EFFECT ON OTHER LIABILITY.—Nothing in this section shall be deemed to affect the liability of a person under paragraph (1) or (2) of section 107(a). Nothing in this section shall be deemed to affect the liability of a person under paragraph (3) or (4) of section 107(a) with respect to materials that are not recyclable materials as defined in subsection (b) of this section.

“(h) REGULATIONS.—The Administrator has the authority, under section 115, to promulgate additional regulations concerning this section.

“(i) EFFECT ON PENDING OR CONCLUDED ACTIONS.—The exemptions provided in this section shall not affect any concluded judicial or administrative action or any pending judicial action initiated by the United States prior to enactment of this section.

“(j) LIABILITY FOR ATTORNEY'S FEES FOR CERTAIN ACTIONS.—Any person who commences an action in contribution against a person who is not liable by operation of this section shall be liable to that person for all reasonable costs of defending that action, including all reasonable attorney's and expert witness fees.

“(k) RELATIONSHIP TO LIABILITY UNDER OTHER LAWS.—Nothing in this section shall affect—

“(1) liability under any other Federal, State, or local statute or regulation promulgated pursuant to any such statute, including any requirements promulgated by the Administrator under the Solid Waste Disposal Act; or

“(2) the ability of the Administrator to promulgate regulations under any other statute, including the Solid Waste Disposal Act.”.

(b) TECHNICAL AMENDMENT.—The table of contents for title I of such Act is amended by adding at the end the following item:

“SEC. 127. Recycling transactions.”.

Mr. DASCHLE. Mr. President, I am pleased to join the distinguished majority leader in introducing this bill to promote the reuse and recycling of scrap materials. There is broad agreement that more should be done to establish a climate in which businesses are encouraged to recycle scrap materials in an environmentally sound manner. We should make every effort to expand the responsible and beneficial use and reuse of this waste as soon as possible.

While I remain hopeful that bipartisan negotiators will be able to work out differences on broad-based Superfund reform, it appears unlikely that Congress will achieve that goal this year. That is particularly unfortunate, because there are many elements of Superfund reform for which there is agreement and for which we should move forward as expeditiously as possible, including establishing greater incentives for brownfields redevelopment, and providing liability relief to deserving municipalities and small businesses.

There are a number of important Superfund issues on which there continues to be significant disagreement. Despite the fact that resolution of these issues is unlikely in the near-term, we should not allow ourselves to adjourn this year without making a strong effort to enact those reforms on which there is broad agreement.

Therefore, I am very pleased that Senator LOTT has taken the initiative to move forward with this important element of Superfund reform. With enactment of this legislation, we will foster additional scrap recycling in America, thereby reducing the stream of waste materials now sent to landfills and other solid waste management facilities. By doing so, we will help to eliminate the fears of many businesses of potential Superfund liabilities even if they pursue legitimate means to recycle scrap materials. By clarifying the liability rules for recycling transactions under Superfund, this legislation will place recyclers on a more even playing field compared with those who produce goods using virgin materials.

In conclusion, Mr. President, I am pleased to cosponsor this timely legislation with Senator LOTT. This is an important step in providing meaningful reform and clarification to the Superfund law and I encourage all my colleagues to support this effort to promote scrap recycling as soon as possible.

## ADDITIONAL COSPONSORS

S. 505

At the request of Mr. HATCH, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 505, a bill to amend the provisions of title 17, United States Code, with respect to the duration of copyright, and for other purposes.

S. 603

At the request of Mr. SPECTER, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of S. 603, a bill to require the Secretary of Agriculture to collect and disseminate statistically reliable information from milk manufacturing plants on prices received for bulk cheese and to provide the Secretary with the authority to require reporting by such manufacturing plants throughout the U.S. on prices received for cheese, butter, and nonfat dry milk.

S. 604

At the request of Mr. SPECTER, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of S. 604, a bill to amend the Agricultural Market Transition Act to require the Secretary of Agriculture to use the price of feed grains and other cash expenses as factors that are used to determine the basic formula price for milk and any other milk price regulated by the Secretary.

S. 1147

At the request of Mr. WELLSTONE, the name of the Senator from South Dakota [Mr. DASCHLE] was added as a cosponsor of S. 1147, a bill to amend the Public Health Service Act, Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to provide for nondiscriminatory coverage for substance abuse treatment services under private group and individual health coverage.

S. 1365

At the request of Ms. MIKULSKI, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 1365, a bill to amend title II of the Social Security Act to provide that the reductions in social security benefits which are required in the case of spouses and surviving spouses who are also receiving certain Government pensions shall be equal to the amount by which two-thirds of the total amount of the combined monthly benefit (before reduction) and monthly pension exceeds \$1,200, adjusted for inflation.

S. 1482

At the request of Mr. COATS, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 1482, a bill to amend section 223 of the Communications Act of 1934 to establish a prohibition on commercial distribution on the World Wide Web of material that is harmful to minors, and for other purposes.

S. 1600

At the request of Mrs. BOXER, the name of the Senator from Illinois [Ms. MOSELEY-BRAUN] was added as a cosponsor of S. 1600, a bill to amend the

Internal Revenue Code of 1986 to waive in the case of multiemployer plans the section 415 limit on benefits to the participant's average compensation for his high 3 years.

S. 1981

At the request of Mr. HUTCHINSON, the name of the Senator from Maine [Ms. COLLINS] was added as a cosponsor of S. 1981, a bill to preserve the balance of rights between employers, employees, and labor organizations which is fundamental to our system of collective bargaining while preserving the rights of workers to organize, or otherwise engage in concerted activities protected under the National Labor Relations Act.

S. 2078

At the request of Mr. GRASSLEY, the name of the Senator from Arkansas [Mr. HUTCHINSON] was added as a cosponsor of S. 2078, a bill to amend the Internal Revenue Code of 1986 to provide for Farm and Ranch Risk Management Accounts, and for other purposes.

S. 2157

At the request of Mr. CLELAND, the names of the Senator from South Dakota [Mr. DASCHLE], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Maryland [Ms. MIKULSKI], the Senator from Michigan [Mr. ABRAHAM], the Senator from New York [Mr. D'AMATO], the Senator from Louisiana [Mr. BREAUX], the Senator from Connecticut [Mr. DODD], the Senator from New Mexico [Mr. BINGAMAN], the Senator from Wisconsin [Mr. KOHL], the Senator from Louisiana [Ms. LANDRIEU], the Senator from New Jersey [Mr. TORRICELLI], the Senator from Vermont [Mr. LEAHY], the Senator from Iowa [Mr. GRASSLEY], the Senator from Maine [Ms. SNOWE], the Senator from Iowa [Mr. HARKIN], the Senator from Arkansas [Mr. BUMBERS], the Senator from California [Mrs. FEINSTEIN], and the Senator from Texas [Mrs. HUTCHISON] were added as cosponsors of S. 2157, a bill to amend the Small Business Act to increase the authorized funding level for women's business centers.

#### SENATE JOINT RESOLUTION 50

At the request of Mr. BOND, the names of the Senator from Nebraska [Mr. HAGEL], the Senator from Oklahoma [Mr. NICKLES], the Senator from Louisiana [Ms. LANDRIEU], the Senator from Oklahoma [Mr. INHOFE], the Senator from Illinois [Ms. MOSELEY-BRAUN], and the Senator from Alabama [Mr. SESSIONS] were added as cosponsors of Senate Joint Resolution 50, a joint resolution to disapprove the rule submitted by the Health Care Financing Administration, Department of Health and Human Services on June 1, 1998, relating to surety bond requirements for home health agencies under the medicare and medicaid programs.

#### SENATE RESOLUTION 249—CONGRATULATING THE CHICAGO BULLS ON WINNING THE 1998 NATIONAL BASKETBALL ASSOCIATION CHAMPIONSHIP

Ms. MOSELEY-BRAUN (for herself and Mr. DURBIN) submitted the following resolution; which was considered and agreed to:

S. RES. 249

Whereas the Chicago Bulls, despite injuries to Scottie Pippen and Luc Longley, went 62-20 and tied for the best regular season record in the National Basketball Association;

Whereas the Bulls battled through the playoffs, sweeping the New Jersey Nets and defeating the Charlotte Hornets in 5 games, before beating the Indiana Pacers in 7 games to return to the NBA Finals for the third straight year;

Whereas the Bulls displayed stifling defense throughout the playoffs before beating the Utah Jazz to repeat the 3-peat and win their third consecutive NBA championship, their sixth in the last 8 years;

Whereas head coach Phil Jackson and the entire coaching staff skillfully led the Bulls through an injury riddled 62-win season and a 15-6 playoff run;

Whereas Michael Jordan won his fifth most valuable player award, and he, along with Scottie Pippen, were again named to the NBA's "All-Defensive First Team";

Whereas Michael Jordan won his record tenth scoring title and was named the NBA Finals most valuable player for the sixth time in 6 appearances in the finals;

Whereas Scottie Pippen again exhibited his outstanding offensive and defensive versatility, proving himself to be one of the best all-around players in the NBA;

Whereas the quickness, tireless defensive effort, and athleticism of the colorful Dennis Rodman, who won his seventh straight rebounding title, keyed a strong Bulls front line;

Whereas Toni Kukoc displayed his awesome variety of offensive skills in both assisting on, and hitting, several big shots when the Bulls needed them most;

Whereas veteran guard Ron Harper, in shutting down many of the league's top point guards throughout the playoffs, demonstrated the defensive skills that have made him a cornerstone of the league's best defense;

Whereas center Luc Longley frustrated many of the all-star caliber centers that he faced while at times providing a much needed scoring lift;

Whereas Steve Kerr buried several 3-pointers when the Bulls needed them most;

Whereas the outstanding play of Jud Buechler, Scott Burrell, and Bill Wennington and the tenacious defense of Randy Brown, each of whom came off the bench to provide valuable contributions, were an important part of each Bulls victory; and

Whereas the contributions of Dickey Simpkins and rookies Rusty LaRue and Keith Booth, both on the court and in practice, again demonstrated the total devotion of Bulls personnel to the team concept that has made the Bulls one of the great sports dynasties of modern times: Now, therefore, be it

*Resolved*, That the Senate congratulates the Chicago Bulls on winning the 1998 National Basketball Association championship.

#### AMENDMENTS SUBMITTED

#### THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1999

#### HUTCHINSON AMENDMENT NO. 2706

(Ordered to lie on the table.)

Mr. HUTCHINSON submitted an amendment intended to be proposed by him to the bill (S. 2057) to authorize appropriations for the fiscal year 1999 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; as follows:

Add at the end the following new title:

#### TITLE —RADIO FREE ASIA

##### SEC. . . . SHORT TITLE.

This title may be cited as the "Radio Free Asia Act of 1998".

##### SEC. . . . FINDINGS.

Congress makes the following findings:

(1) The Government of the People's Republic of China systematically controls the flow of information to the Chinese people.

(2) The Government of the People's Republic of China demonstrated that maintaining its monopoly on political power is a higher priority than economic development by announcing in January 1996 that its official news agency Xinhua, will supervise wire services selling economic information, including Dow Jones-Telerate, Bloomberg, and Reuters Business, and in announcing in February of 1996 the "Interim Internet Management Rules", which have the effect of censoring computer networks.

(3) Under the May 30, 1997, order of Premier Li Peng, all organizations that engage in business activities related to international computer networking must now apply for a license, increasing still further government control over access to the Internet.

(4) Both Radio Free Asia and the Voice of America, as a surrogate for a free press in the People's Republic of China, provide an invaluable source of uncensored information to the Chinese people, including objective and authoritative news of in-country and regional events, as well as accurate news about the United States and its policies.

(5) Radio Free Asia currently broadcasts only 5 hours a day in the Mandarin dialect and 2 hours a day in Tibetan.

(6) Voice of America currently broadcasts only 10 hours a day in Mandarin and 3 ½ hours a day in Tibetan.

(7) Radio Free Asia and Voice of America should develop 24-hour-a-day service in Mandarin, Cantonese, and Tibetan, as well as further broadcasting capability in the dialects spoken in the People's Republic of China.

(8) Radio Free Asia and Voice of America, in working toward continuously broadcasting to the People's Republic of China in multiple languages, have the capability to immediately establish 24-hour-a-day Mandarin broadcasting to that nation by staggering the hours of Radio Free Asia and Voice of America.

(9) Simultaneous broadcasting on Voice of America radio and Worldnet television 7 days a week in Mandarin are also important and needed capabilities.

#### SEC. . . . AUTHORIZATION OF APPROPRIATIONS FOR INCREASED FUNDING FOR RADIO FREE ASIA AND VOICE OF AMERICA BROADCASTING TO CHINA.

(a) AUTHORIZATION OF APPROPRIATIONS FOR RADIO FREE ASIA.—

(1) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated for "Radio Free Asia" \$30,000,000 for fiscal year 1998 and \$22,000,000 for fiscal year 1999.

(2) **LIMITATIONS.**—

(A) Of the funds under paragraph (1) authorized to be appropriated for fiscal year 1998, \$8,000,000 is authorized to be appropriated for one-time capital costs.

(B) Of the funds under paragraph (1), \$700,000 is authorized to be appropriated for each such fiscal year for additional personnel to staff Cantonese language broadcasting.

(b) **AUTHORIZATION OF APPROPRIATIONS FOR INTERNATIONAL BROADCASTING TO CHINA AND NORTH KOREA.**—In addition to such sums as are otherwise authorized to be appropriated for "International Broadcasting Activities" for fiscal years 1998 and 1999, there are authorized to be appropriated for "International Broadcasting Activities" \$10,000,000 for fiscal year 1998 and \$7,000,000 for fiscal year 1999, which shall be available only for enhanced Voice of America broadcasting to China and North Korea.

(c) **AUTHORIZATION OF APPROPRIATIONS FOR RADIO CONSTRUCTION.**—

(1) **AUTHORIZATION OF APPROPRIATIONS.**—In addition to such sums as are otherwise authorized to be appropriated for "Radio Construction" for fiscal years 1998 and 1999, there are authorized to be appropriated for "Radio Construction" \$10,000,000 for fiscal year 1998 and \$3,000,000 for fiscal year 1999, which shall be available only for construction in support of enhanced broadcasting to China.

(2) **LIMITATION.**—Of the funds under paragraph (1) authorized to be appropriated for fiscal year 1998, \$3,000,000 is authorized to be appropriated to facilitate the timely augmentation of transmitters at Tinian, the Commonwealth of the Northern Mariana Islands.

(d) **ALLOCATION.**—Of the amounts authorized to be appropriated for "International Broadcasting Activities", the Director of the United States Information Agency and the Board of Broadcasting Governors shall seek to ensure that the amounts made available for broadcasting to nations whose people do not fully enjoy freedom of expression do not decline in proportion to the amounts made available for broadcasting to other nations.

(e) **ALLOCATION OF FUNDS FOR NORTH KOREA.**—Of the funds under subsection (b), \$2,000,000 is authorized to be appropriated for each fiscal year for additional personnel and broadcasting targeted at North Korea.

**SEC. \_\_\_\_ . REPORTING REQUIREMENT.**

Not later than 90 days after the date of enactment of this Act, in consultation with the Board of Broadcasting Governors, the President shall prepare and transmit to Congress a report on a plan to achieve continuous broadcasting of Radio Free Asia and Voice of America to the People's Republic of China in multiple major dialects and languages.

**SEC. \_\_\_\_ . UTILIZATION OF UNITED STATES INTERNATIONAL BROADCASTING SERVICES FOR PUBLIC SERVICE ANNOUNCEMENTS REGARDING FUGITIVES FROM UNITED STATES JUSTICE.**

United States international broadcasting services, particularly the Voice of America, shall produce and broadcast public service announcements, by radio, television, and Internet, regarding fugitives from the criminal justice system of the United States, including cases of international child abduction.

**NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT**

**FORD (AND OTHERS) AMENDMENT NO. 2707**

Mr. FORD (for himself, Mr. HOLLINGS, and Mr. ROBB) proposed an amendment to amendment No. 2437 proposed by Mr. DURBIN to the bill (S. 1415) to reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes; as follows:

At the end of the amendment, insert the following:

**SEC. . INAPPLICABILITY OF TITLE XV.**

The provisions of Title XV shall have no force and effect.

**SEC. . ASSISTANCE FOR PRODUCERS EXPERIENCING LOSSES OF FARM INCOME.**

(a) **IN GENERAL.**—Notwithstanding any other provision of this Act, from amounts made available under section 451(d), the Secretary of Agriculture shall use up to \$250,000,000 for each of fiscal years 1999 through 2004 to establish a program to indemnify eligible producers that have experienced, or are experiencing, catastrophic losses in farm income during any of the 1997 through 2004 crop years, as determined by the Secretary.

(b) **GROSS INCOME AND PAYMENT LIMITATIONS.**—In carrying out this section, the Secretary shall, to the maximum extent practicable, use gross income and payment limitations established for the Disaster Reserve Assistance Program under section 813 of the Agricultural Act of 1970 (7 U.S.C. 1427a).

(c) **EFFECT ON OTHER PAYMENTS.**—None of the payments made under this section shall limit or alter in any manner the payments authorized under section 1021 of this Act.

**ASSISTIVE AND UNIVERSALLY DESIGNED TECHNOLOGY IMPROVEMENT ACT FOR INDIVIDUALS WITH DISABILITIES**

**BOND AMENDMENT NO. 2708**

(Ordered referred to the Committee on Labor and Human Resources.)

Mr. BOND submitted an amendment intended to be proposed by him to the bill (S. 2173) to amend the Rehabilitation Act of 1973 to provide for research and development of assistance technology and universally designed technology, and for other purposes; as follows:

At the end of the bill add the following:

**SEC. 8. TAX INCENTIVES FOR ASSISTIVE TECHNOLOGY.**

(a) **ASSISTIVE TECHNOLOGY DEVELOPMENT BUSINESS TAX CREDIT.**—

(1) **IN GENERAL.**—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by adding at the end the following:

**"SEC. 45D. CREDIT FOR ASSISTIVE TECHNOLOGY.**

"(a) **GENERAL RULE.**—For purposes of section 38, the assistive technology credit of any taxpayer for any taxable year is an amount equal to so much of the qualified assistive technology expenses paid or incurred by the taxpayer during such year as does not exceed \$100,000.

"(b) **QUALIFIED ASSISTIVE TECHNOLOGY EXPENSES.**—For purposes of this section—

"(1) **IN GENERAL.**—The term 'qualified assistive technology expenses' means expenses for the design, development, and fabrication of assistive technology devices.

"(2) **ASSISTIVE TECHNOLOGY DEVICE.**—The term 'assistive technology device' means any item, piece of equipment, or product system, including any item acquired commercially off the shelf and modified or customized by the taxpayer, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

"(3) **INDIVIDUALS WITH DISABILITIES.**—The term 'individuals with disabilities' has the meaning given the term by section 3 of the Technology Related Assistance for Individuals with Disabilities Act of 1988 (29 U.S.C. 2202).

"(c) **NO DOUBLE BENEFIT.**—Any amount taken into account under section 41 may not be taken into account under this section.

"(d) **TERMINATION.**—This section shall not apply to any amount paid or incurred after December 31, 2003."

(2) **CREDIT TREATED AS BUSINESS CREDIT.**—Section 38(b) of the Internal Revenue Code of 1986 (relating to current year business credit) is amended by striking "plus" at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting ", plus", and by adding at the end the following:

"(13) the assistive technology credit determined under section 45D(a)."

(3) **TRANSITIONAL RULE.**—Section 39(d) of the Internal Revenue Code of 1986 (relating to transitional rules) is amended by adding at the end the following:

"(9) **NO CARRYBACK OF SECTION 45D CREDIT BEFORE EFFECTIVE DATE.**—No portion of the unused business credit for any taxable year which is attributable to the assistive technology credit determined under section 45D(a) may be carried back to a taxable year ending before January 1, 1999."

(4) **CLERICAL AMENDMENT.**—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

"Sec. 45D. Credit for assistive technology."

(5) **EVALUATION OF EFFECTIVENESS OF CREDIT.**—The Secretary of the Treasury shall evaluate the effectiveness of the assistive technology credit under section 45D of the Internal Revenue Code of 1986, as added by this subsection, and report to the Congress the results of such evaluation not later than January 1, 2003.

(b) **EXPANSION OF ARCHITECTURAL AND TRANSPORTATION BARRIER REMOVAL DEDUCTION.**—

(1) **IN GENERAL.**—Section 190 of the Internal Revenue Code of 1986 is amended—

(A) by inserting "and qualified communications barrier removal expenses" after "removal expenses" in subsections (a)(1),

(B) by adding at the end of subsection (b) the following:

"(4) **QUALIFIED COMMUNICATIONS BARRIER REMOVAL EXPENSES.**—

"(A) **IN GENERAL.**—The term 'qualified communications barrier removal expense' means a communications barrier removal expense with respect to which the taxpayer establishes, to the satisfaction of the Secretary, that the resulting removal of any such barrier meets the standards promulgated by the Secretary and set forth in regulations prescribed by the Secretary. Such term shall not include the costs of general communications system upgrades or periodic replacements that do not heighten accessibility as the primary purpose and result of such replacements.

“(B) COMMUNICATIONS BARRIER REMOVAL EXPENSES.—The term ‘communications barrier removal expense’ means an expenditure for the purpose of identifying and implementing alternative technologies or strategies to remove those features of the physical, information-processing, telecommunications equipment or other technologies that limit the ability of handicap individuals to obtain, process, retrieve, or disseminate information that nonhandicapped individuals in the same or similar setting would ordinarily be expected and be able to obtain, retrieve, manipulate, or disseminate.”, and

(C) by striking “and transportation” in the heading and inserting “, transportation, and communications”.

(2) CONFORMING AMENDMENT.—The item relating to section 190 in the table of sections for part VI of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by striking “and transportation” and inserting “, transportation, and communications”.

(c) EXPANSION OF WORK OPPORTUNITY CREDIT.—Section 51(c) of the Internal Revenue Code of 1986 (defining wages) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following:

“(4) ASSISTIVE TECHNOLOGY EXPENSES.—

“(A) IN GENERAL.—The term ‘wages’ includes expenses incurred in the acquisition and use of technology—

“(i) to facilitate the employment of any individual, including a vocational rehabilitation referral; or

“(ii) to provide a reasonable accommodation for any employee who is a qualified individual with a disability, as such terms are defined in section 101 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111).

“(B) REGULATIONS.—The Secretary shall by regulation provide rules for allocating expenses described in subparagraph (A) among individuals employed by the employer.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

## THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1999

### INOUE AMENDMENT NO. 2709

(Ordered to lie on the table.)

Mr. INOUE submitted an amendment intended to be proposed by him to the bill, S. 2057, *supra*; as follows:

On page 76, between lines 7 and 8, insert the following:

#### SEC. 349. AUTHORITY TO PAY CLAIMS OF CERTAIN CONTRACTOR EMPLOYEES.

Of the amount authorized to be appropriated by section 301, \$300,000 shall be available to the Secretary of the Navy for the purpose of paying claims of former employees of Airspace Technology Corporation for unpaid back wages and benefits for work performed by the employees of that Corporation under Department of the Navy contracts N000600-89-C-0958, N000600-89-C-0959, N000600-90-C-0894, and DAAB-07-89-C-B917.

• Mr. INOUE. Mr. President, my amendment will provide the Secretary of the Navy with authority to use up to \$300,000 in funds available for operations and maintenance in fiscal year 1999 to pay unpaid back wages and benefits to former employees by Airspace Technology Corporation. The 141 employees affected by this case, from Hawaii, California, Guam and Oklahoma,

have gone unpaid for their services due to bankruptcy of the corporation and an error in the Navy's disbursement of monies due the corporation.

I am introducing the amendment in response to constituent requests. In addition, the Navy is willing to make the payment, but has indicated that legislative authority is needed to disburse the funds.●

### AUTHORITY FOR COMMITTEES TO MEET

#### COMMITTEE ON ARMED SERVICES

Mr. GORTON. Mr. President, I ask unanimous consent that the full Committee on Armed Services be authorized to meet on Tuesday, June 16, 1998, at 10 a.m. in open session, to consider the nominations of Mr. Louis E. Caldera, to be Secretary of the Army and Mr. Daryl Jones, to be secretary of the Air Force.

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

#### COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. GORTON. Mr. President, I ask unanimous consent that the Senate Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, June 16, 1998, at 2:30 p.m. on music lyrics.

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

#### COMMITTEE ON FOREIGN RELATIONS

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, June 16, 1998, at 10 a.m., 2:30 p.m., and 4 p.m. to hold three hearings.

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

#### COMMITTEE ON THE JUDICIARY

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Tuesday, June 16, 1998, at 10 a.m. in room 216 of the Senate Hart office building to hold a hearing on: “Mergers and Corporate Consolidation in the New Economy.”

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

#### SUBCOMMITTEE ON WATER AND POWER

Mr. GORTON. Mr. President, I ask unanimous consent that the Subcommittee on Water and Power of the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Tuesday, June 16, for purposes of conducting a subcommittee hearing which is scheduled to begin at 2:30 p.m. The purpose of this hearing is to receive testimony on S. 1398, the Irrigation Project Contract Extension Act of 1997; S. 2041, a bill to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the design, planning, and construction of the Willow Lake Natural

Treatment System Project for the reclamation and reuse of water, and for other purposes; S. 2087, the Wellton-Mohawk Title Transfer Act of 1998; S. 2140, a bill to amend the Reclamation Projects Authorization and Adjustment Act of 1992 to authorize the Secretary of the Interior to participate in the design, planning, and construction of the Denver Water Reuse project; S. 2142, the Pine River Project Conveyance Act; H.R. 2165, an Act to extend the deadline under the Federal Power Act applicable to the construction of FERC Project Number 3862 in the State of Iowa, and for other purposes; H.R. 2217, an Act to extend the deadline under the Federal Power Act applicable to the construction of FERC Project Number 9248 in the State of Colorado, and for other purposes; and H.R. 2841, an Act to extend the time required for the construction of a hydroelectric project.

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

### ADDITIONAL STATEMENTS

#### TELEMARKETING FRAUD

• Mr. KYL. Mr. President, I would like to say a few words on the subject of telemarketing fraud. In particular, I will discuss the severity of telemarketing fraud, the House and Senate telemarketing fraud bills, and the United States Sentencing Commission's recently proposed amendments to the sentencing guidelines.

At the outset, I would like to commend Representative GOODLATTE for his sponsorship of H.R. 1847 and for his leadership in combating telemarketing fraud.

#### TELEMARKETING FRAUD IS A SERIOUS PROBLEM

Mr. President, I would like to take a few minutes to describe the severity of the problem of telemarketing fraud. According to Maryland Attorney General J. Joseph Curran, Jr., telemarketing fraud is probably the fastest growing illegal activity in this country. Senior citizens appear to be the most vulnerable to chicanery of this kind. Fred Schulte, an investigating editor for the Fort Lauderdale Sun-Sentinel and an expert on telemarketing fraud, has pointed out that senior citizens are often too polite or too lonely not to listen to the voice on the other end of the line. As one telemarketing con man who has worked all over the country put it: “People are so lonely, so tired of life, they can't wait for the phone to ring. It's worth the \$300 to \$400 to them to think that they got a friend. That's what you play on.”

These criminals prey on the vulnerable of our society. In one case, Nevada authorities arrested a Las Vegas telemarketer on a charge of attempted theft. The telemarketer was accused of trying to persuade a 92-year-old Kansas man who had been fraudulently declared the winner of \$100,000 to send \$1,900 by Western Union in advance to

collect his prize. Another example: a Maine company showed real telemarketing creativity. For \$250, the so-called Consumer Advocate Group offered to help consumers recover money lost to fraudulent telemarketers—but it provided no services, according to Wisconsin Attorney General James Doyle, who sued the Maine firm plus four other telemarketers.

In 1996, more than 400 individuals were arrested by law-enforcement officials working on Operation Senior Sentinel. Retired law-enforcement officers and volunteers, recruited by AARP, went undercover to record sales pitches from dishonest telemarketers. Volunteers from the 2-year-long Operation Senior Sentinel discovered various telemarketing schemes. Some people were victimized by phony charities or investment schemes. Others were taken in by so-called premium promotions in which people were guaranteed one of four or five valuable prizes but were induced to buy an overpriced product in exchange for a cheap prize. One of the most vicious scams preyed on those who had already lost money. Some telemarketers charged a substantial fee to recover money for those who had been victimized previously—and proceeded to renege on the promised assistance. By the time the dust settled, it took the Justice Department, the FBI, the FTC, a dozen U.S. attorneys and state attorneys general, the Postal Service, the IRS, and the Secret Service to arrest over 400 telemarketers in five states, including my home state of Arizona.

Clearly telemarketing fraud is on the rise. It is estimated that eight out of ten households are targets for telemarketing scams that bilk us of up to \$40 billion annually. There are many seniors in my state and across the country who must be protected against this type of fraudulent activity. According to Attorney General Reno, it is not uncommon for senior citizens to receive as many as five or more high-pressure phone calls a day. Mr. President, malicious criminal activity like this must be punished appropriately.

#### THE HOUSE- AND SENATE-PASSED BILLS

The House and the Senate have passed bills which direct the U.S. Sentencing Commission to increase penalties for those who purposefully defraud vulnerable members of our society. The House bill, which passed by a voice vote, increases sentences by four levels for general telemarketing fraud, and by eight levels if the telemarketing fraud either victimized ten or more persons over age 55 or targeted persons over age 55.

The Senate-passed bill, which was approved unanimously, requires the Sentencing Commission to "provide for substantially increased penalties" for those convicted of telemarketing fraud offenses. I repeat: "substantially increased penalties." This language was carefully chosen; a two level increase is not substantial. The Senate-passed bill also requires the Commission to

"provide an additional appropriate sentencing enhancement if the offense involved sophisticated means, including but not limited to sophisticated concealment efforts, such as perpetrating the offense from outside the United States." Further, the Senate-passed bill requires the Commission to provide an additional appropriate sentencing enhancement for cases in which a large number of vulnerable victims . . . are affected by a fraudulent scheme or schemes." These provisions were carefully crafted to ensure that those perpetrating telemarketing scams would be severely punished.

#### THE SENTENCING COMMISSION'S PROPOSED ENHANCEMENTS

The United States Sentencing Commission recently issued an amendment that would increase by two offense levels—the smallest possible increase—the penalties for fraud offenses that use mass-marketing to carry out fraud. The amendment would also provide a two level enhancement in the fraud guideline if (i) the defendant relocated, or participated in relocating, a fraudulent scheme to another jurisdiction to evade law enforcement or regulatory officials; (ii) a substantial part of a fraudulent scheme was committed from outside the United States; or (iii) the offense otherwise involved sophisticated concealment.

These proposed amendments are a step in the right direction, but the step is too small. In addition to these enhancements, the Sentencing Commission should, as the Senate-passed bill says, substantially increase the penalties for telemarketing fraud.

#### CONCLUSION

Telemarketing fraud is a serious problem. The Sentencing Guidelines should reflect this but they do not. From the House- and Senate-passed bills, it should have been clear to the Sentencing Commission that Congress wanted significant increases in the guidelines, not the minor ones included in the Commission's proposed amendments.●

#### LEAGUE OF WOMEN VOTERS RETIRING PRESIDENT, BECKY CAIN

● Mr. ROCKEFELLER. Mr. President, I rise today to recognize Becky Cain as she prepares to retire from an outstanding six year term as president of the League of Women Voters. Becky Cain has shown remarkable leadership for the League and her community of Charleston, West Virginia as well as a strong dedication for the well being of the people of her state and her nation.

For generations, the League of Women Voters has had a tradition of working for campaign finance reform, defending the National Voter Registration Act, working for consumer protection legislation for health care, ensuring health care for seniors by protecting and enhancing Medicare, and protecting Clean Air standards, and strengthening the United Nations by

providing adequate funding. This is an organization of leaders, and Becky Cain is certainly a great leader among leaders.

As the volunteer head of the League of Women Voters, Becky Cain has been an articulate and committed spokesperson for citizens' interest in government. Under her direction, the League has been the leader in the passage of the National Voter Registration Act and has been stalwart in continuing efforts to preserve and strengthen this important legislation.

Under her leadership one of the priorities of the League has been a comprehensive, nationwide campaign entitled, "Making Democracy Work." This effort, involving different branches of the League and civic leaders in over 1,000 communities across the nation, is a long term effort to engage citizens in the important issues affecting them, to strengthen our democracy at the community level as well as bringing a diverse group of citizens together to face a larger challenge that faces us as a nation.

Finally, I would like to thank Becky Cain and volunteers like her who give of themselves so selflessly for the good of their community, their state, and our nation.●

#### RUTHERFORD ELEMENTARY SCHOOL

● Mr. SANTORUM. Mr. President, on May 30, the Rutherford Elementary School Memorial Committee commemorated the history of the Rutherford Elementary School. I rise today to mark the closing of this building.

The community of Rutherford has been served for 89 years by the current elementary school, which is scheduled for demolition. Amidst music, civic organizational displays, and food vendors, students past and present gathered to reflect on their childhood experiences. Members of Rutherford's first class still fondly reminisce about the "good old days."

Mr. President, the Rutherford Elementary School symbolizes strength and continuity in education. I ask my colleagues to join me in acknowledging this memorial.●

#### TENTH ANNIVERSARY OF GREENWICH SCHOOL AGED CHILD CARE, INC.

● Mr. DODD. Mr. President, I rise to today in honor of the tenth anniversary of the founding of Greenwich School Age Child Care in my home state of Connecticut.

As you know, child care has been a top legislative priority for me during my tenure in the Senate. After numerous hearings, debates, forums, and even passage of the Child Care and Development Block Grant (CCDBG) Act that I authored in 1990, I know that our country's working families continue to struggle with the issue of child care. Thousands of low-income children are

on waiting lists for affordable child care, and much of what is available is of poor quality. Every day, parents face tough decisions about how their children will be cared for when they can't be with them.

Ten years ago, in response to the child care needs expressed by the community, Greenwich School Age Child Care was created by a small, dedicated group of parents who understood the importance of safe, high quality child care services. At that time, there were no available services for before- and after-school child care within the community's schools. Since that time, the effort has grown from one school-age child care program in North Mianus Elementary School, to programs in all 10 public elementary schools. All of these programs accept children in grades kindergarten through fifth grade, in most instances offer both before- and after-school programs, and are open for the entire school year. This enables working parents to leave their child at 7:30 a.m. and return up to 6:00 p.m., knowing that their child will receive healthy snacks and loving care in a stimulating environment right in the school.

I share the belief of Greenwich School Age Child Care that quality child care should be available to all low income and disadvantaged families who need it. Greenwich School Age Child Care is to be commended for their innovative efforts to make available quality child care affordable. The scholarship fund they established through the Board of Education, private donations, and CCDBG dollars is critical for low-income families who otherwise could not afford a safe and educational environment for their children.

I am proud to be a member of the Greenwich School Age Child Care advisory board. I cannot emphasize strongly enough that their investment in quality child care pays off many times over, in terms of both the employment productivity of parents and the safety and well-being of children. I congratulate Greenwich School Age Child Care on the huge success of their first ten years, and wish them continued, long lasting success in the years to come.●

#### CONSUMERS REAP THE BENEFITS OF OPEN COMPETITION

● Mr. ASHCROFT. Mr. President, the economist Milton Friedman once wrote: 'Underlying most arguments against a free market is a lack of belief in freedom itself.' Demonstrating its belief in freedom the 104th Congress passed the pro-competition Telecommunications Act of 1996. The Hudson Institute has recently released a study of the cable industry since the new law has taken effect. The study has found what those of us that believe in a free market have always known: consumers reap the benefits of open competition. I submit it for the RECORD a copy of the executive sum-

mary for review. It is a pleasure to deliver further affirmation of the free market system.

The material follows:

#### EXECUTIVE SUMMARY—THE ROLE OF COMPETITION AND REGULATION IN TODAY'S CABLE TV MARKET

In late 1997 and early 1998, concerns have been raised among regulators, members of Congress, and consumer groups regarding cable television rates. This study analyzes the rationale for new efforts by the FCC to limit rates or impose other regulations on the cable television industry in response to such concerns. It examines the historical record of cable regulation, takes a new look at the state of competition for multichannel video programming, reviews the important capital investment in new digital services by the industry, and assesses the possible impact of new price controls on competition in the wider telecommunications market, including Internet access, telephony, and video programming.

The study finds that, despite current market share of around 85.6 percent (falling to around 75 percent by 2002); dynamic services offered by Direct Broadcast Satellite (DBS), broadcast television, and other multichannel video delivery systems provide substantial and growing competition for cable television. More than 65 percent of households can receive six or more broadcast channels with a suitable antenna. For many households, DBS offers greater levels of service at prices comparable to, or lower than, cable's. DBS appears to provide a good substitute for cable even after accounting for up-front equipment costs. Competing cable systems (overbuilds and Satellite Master Antenna TV) have become cost-effective and are growing rapidly, especially in the Midwest and Northeast.

The study also finds that past cable regulation, especially rate controls, provided little or no benefit to consumers, and in fact harmed consumers by inducing lower quality of service. On the other hand, periods of less regulation, such as the years between 1984 and 1990, stimulated production of greater quality and wider choice of programming for consumers, produced steady increases in demand for cable, and produced net consumer welfare gains of \$3 billion to \$6.5 billion per year.

Finally, the evidence shows that the cable industry is in the midst of investing up to \$28 billion to improve its infrastructure, including over \$1 billion per year to convert to interactive digital services. The entry of cable firms into new businesses such as telephony, Internet, and digital video is improving consumer choice and reducing prices for these services, especially to residential customers; spurring a competitive response from the telephone industry to upgrade its data transmission capabilities; and giving a boost to the introduction of digital television and to competition in the Internet business. An imposition of rate controls similar to those of 1993 and 1994 would undermine the financial basis for the cable industry to enter these new businesses in the near term, and hence weaken competition in the wider telecommunications market place.●

#### LUCILLE SMITH WATKINS

● Mr. ROCKEFELLER. Mr. President, I would like to take a moment to recognize an outstanding teacher, mentor, and West Virginian—Ms. Lucille Smith Watkins. For almost 50 years, Lucille has taught at Logan County Elementary School with unmatched enthu-

siasm. At 73, she is still fiercely committed to teaching and harbors no intention of quitting, saying "I like getting up and going to teach every day. The children seem to do real well. When I feel like I'm not helping them anymore, I'll retire."

Lucille credits her family for instilling an early appreciation and love for education—influenced by the sacrifices and efforts that they exerted in order to make higher education a possibility for herself and her six brothers and sisters. Her early love of education blossomed into a consuming lifelong passion of service to the school as she has often found herself cooking and buying groceries for the school along with teaching.

Her outstanding commitment to teaching hasn't gone unnoticed in the state. On May 5, she received the very first Lucille Smith Watkins Award, an award in her honor presented annually by her school to the county's outstanding educator. On May 8, she won the Mary L. Williams black educator award during a West Virginia Education Association conference in Charleston. Yet, these awards and honors cannot match her smiles and pride for the achievements of her students. Beaming with pride about her student's recent Young Writer's Award and her students' trophy for perfect attendance in her classroom, Lucille is a testament to her own love of teaching, and most importantly her love of her students.

There is no better way to make a profoundly lasting impact upon the future than through nurturing the mind of a young child. Lucille is a refreshing example of the strength and endurance of one woman's attempt to make a difference. Speaking for the citizens of West Virginia, I am proud to have such an outstanding woman in our state and challenge others to strive to affect and mold the lives of children as successfully as she has.●

#### TRIBUTE TO MR. HERMAN C. WRICE

● Mr. SANTORUM. Mr. President, I rise today to recognize the outstanding drug and crime fighting efforts of Mr. Herman C. Wrice.

Mr. Wrice, once called the "John Wayne of Philadelphia" by President Bush, is one of today's most effective non-violent community activists. His grassroots approach to cracking down on drugs and crime has been successful in cities, towns, and Indian reservations across the country. Herman's career as a social activist began in the late 1960's after a personal tragedy; his wife, Jean, was caught in gang cross-fire at a local supermarket.

Mr. Wrice's organization, Turn Around America, unites ordinary citizens and police who are determined to take back their neighborhoods. They organize street marches and all-night vigils at identified drug houses to separate drug dealers from their customers.



This partnership depends on trust, cooperation, and mutual respect. Citizen efforts enhance, but do not replace, law enforcement efforts. I am pleased to say that Turn Around America has yielded impressive results. In neighborhoods where demonstrations have taken place, crack houses have closed. Children play in parks that were once littered with drug paraphernalia. The number of drug-related arrests have risen, several of which were directly linked to citizen involvement. Even veteran police officers have been inspired by Herman's anti-drug crusade.

Mr. Wrice's relentless efforts to fight crime and violence have received widespread attention. Villanova University honored him with an honorary doctorate degree for his activism. His programs have been described in many publications, including the Wall Street Journal, the New York Times, Readers Digest, Policy Review, and Philadelphia Magazine. Mr. Wrice and his anti-crime program were even featured on 60 Minutes. This exposure led to requests for training from over 200 cities and towns across the country. In 1994, Herman was one of six activists to receive an America's Award for Courage during special ceremonies at the Kennedy Center. The following year, he was named a Join Together Fellow by the Robert Wood Johnson Foundation. On a local level, Herman has been a two-time recipient of the Mayor's Outstanding Citizen Award, and a three time honoree as the Junior Chamber's Outstanding Young Man of the Year. Finally, he has received the Freedom Foundation's Citizenship Award, the NAACP Unsung Hero's Award, and was named the Citizen Crime Commission's Crime Fighter of the Year.

Mr. President, Herman C. Wrice is a man with a purpose. He has dedicated his life to community service, and he has made a difference. He has worked to make the streets safe for neighborhood children, and he has raised 17 of his own—11 of whom were adopted. I ask my colleagues to join me in honoring Mr. Wrice and in extending the Senate's best wishes to his family.●

#### CONGRATULATING THE CHICAGO BULLS ON WINNING THE 1998 NBA CHAMPIONSHIP

Mr. LUGAR. On behalf of the leader, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 249 introduced earlier today by Senators MOSELEY-BRAUN and DURBIN.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The resolution (S.Res. 249) to congratulate the Chicago Bulls on winning the 1998 National Basketball Association Championship.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

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

MS. MOSELEY-BRAUN. Mr. President, I would like to take a few min-

utes today to join the citizens of the city of Chicago and the entire state of Illinois, as well as Bulls fans around the world, in congratulating the Chicago Bulls for winning a sixth National Basketball Association championship. The Bulls defeated the Utah Jazz 87-86 in game six of the finals this past Sunday in Salt Lake City.

One of the true joys of my life over the last several years has been to watch Michael Jordan, Scottie Pippen, Phil Jackson and the rest of the Bulls continually define excellence in team basketball. Considered by some to have been underdogs in this year's series against the Utah Jazz, the Bulls persevered and wrote yet another fantastic chapter in one of the greatest stories in professional sports.

Without a doubt, the Bulls' repeat-3peat would not have been possible without the star performance of Michael Jordan. His play throughout the season defined what it means to be a champion, and his 45 points and last-second winning shot on Sunday night ensured that his team remained champions. Once again, Michael Jordan has defined excellence. Once again, he has defined competitiveness and leadership. Once again, he and all of the Bulls have shown us that hard work, teamwork, talent and desire will produce victory.

Complementing Michael Jordan this year, as he has so skillfully done for each of the Bulls' championships, was forward Scottie Pippen. Despite being injured for much of the first half of the season and suffering with a severely strained back in game six, Scottie Pippen demonstrated through his outstanding offensive and defensive play that he too has the heart of a champion.

Mr. President, I would also like to recognize the flamboyant and talented play of Dennis Rodman. Like Michael Jordan and Scottie Pippen, Dennis Rodman has been a key reason for the Bulls' success. His harshest critics cannot take away his five NBA championships, two with the Detroit Pistons and three with the Bulls, or his seven consecutive NBA rebounding titles.

I would also like to highlight the accomplishments of Toni Kukoc, whose play often provided the boost to take the Bulls to victory. He was always there with a big shot when one was most needed. Ron Harper is another player who made many invaluable contributions during the Bulls' championship run. His defensive play throughout the playoffs shut down many of the league's best point guards.

Steve Kerr, Luc Longley, Randy Brown, Scott Burrell, Bill Wennington, Jud Buechler and Dickey Simpkins all played important roles in the Bulls' championship drive. Their contributions further demonstrated Phil Jackson's masterful coaching skills. His intelligent, deliberative and team-oriented approach to the game allowed his players to transcend the individual and operate as a unit.

Mr. President, I would also like to congratulate Jerry Reinsdorf and Jerry Krause for once again fielding an NBA championship team. This is an outstanding victory in which they can take great pride.

In congratulating the Bulls for winning a sixth NBA title in eight years, I also want to compliment the Utah Jazz for their spirited play and sportsmanship. This Jazz team gave the Bulls their toughest challenge in any of their six championships. Karl Malone and John Stockton are both certainly Hall of Fame players.

Mr. President, the state of Illinois can also take special pride in the accomplishments of the Utah Jazz because the coach of the Jazz, Jerry Sloan, is a product of our state. The McLeansboro native not only hails from Illinois, but also had a storied career with the Bulls. I would like to thank Jerry Sloan and his team for a thrilling finals series.

I have one last thought, Mr. President, and in expressing it, I believe that I speak for Bulls fans everywhere: Let there be seven!

Mr. DURBIN. Mr. President, I rise today to pay tribute to a spectacular team that has propelled itself into the upper echelon of basketball history, the Chicago Bulls. Add a new name to the history books of the National Basketball Association; the Boston Celtics of the 1960s, the Los Angeles Lakers of the 1980s, and undeniably, the Chicago Bulls of the 1990s.

On Sunday, as I watched Game Six with basketball fans and Bulls followers around the world, I was privileged to witness another incredible performance by Michael Jordan and the entire Bulls team. For the sixth time in eight years, in a victory for the ages, the Chicago Bulls are the champions of the National Basketball Association. It is with great honor, pleasure, and pride that I salute and congratulate the entire Chicago Bulls organization.

As a columnist for the Chicago Sun-Times noted, "We live in the right city at the right time." It is simple yet so true. No other team in any sport has been able to show the dominance and consistency that the Bulls have shown. The people of Chicago and Illinois have a special source of pride in the Chicago Bulls and especially in Michael Jordan. This wonderful championship and the five spectacular ones before it are all keepsakes in the hearts and minds of Chicagoans. I know personally that days, weeks, and years from now I will be recounting where I was when the Bulls achieved the "Six-Pack," and I will be doing it with great pride. My grandson Alex, who recently turned two years old, is not quite old enough to realize what the Bulls have accomplished. But make no mistake about it, in the years to come I know he will have a proud grandfather recounting the almost mythical tales of Michael Jordan and telling of the amazing dynasty that they created.

Michael Jordan. What more can possibly be said about him? There are simply no longer any more adjectives to describe his spectacular feats and clutch performances. Super-human? Possibly. The best to ever plan the game of basketball? Positively. In the pivotal Game Six, in a most unfriendly arena, Michael Jordan took his team and the people of "the city of big shoulders," put them all directly on his shoulders and carried them all to the NBA's promised land, the world championship. Jordan, the ambassador of the game of basketball to the world, accomplished what no other player has been able to do. With his unprecedented tenth scoring title and sixth Finals Most Valuable Player award, Jordan has shown the impact he has on the game. But I'm sure that all of the personal accolades are secondary when it comes to the team and to being champions. The true champion puts his team and their success above all and Jordan has done that time and time again.

None of us will forget the courageous performance given by an injured Scottie Pippen. With an injury that would have had anyone else bedridden, he played as well as he possibly could. But more importantly, he provided the emotional lift that the team needed. Again, another example of how being there for your team and your fellow players is ingrained in the hearts of these players, in the hearts of champions.

And of course, the man who keeps it all together and running like a well tuned machine, Phil Jackson. With a combination of years of basketball experience as a player and as a coach, his special relationship with Jordan, Pippen, and the entire team, and a touch of his Zen philosophy, Jackson has been able to lead this team to the apex of the National Basketball Association despite all of the distractions and injuries.

Surely we cannot overlook the contributions of the rest of the team—Dennis Rodman, Ron Harper, Luc Longley, Toni Kukoc, the "supporting cast" as they are called. But they are more than that. They are each a critical piece of a puzzle that when fully assembled presents us with an impressive and spectacular sight: Six golden, shining, championship trophies. Each clutch three point basket by Steve Kerr and Judd Buechler, each suffocating defensive stop by Scott Burrell and Randy Brown, each rebound from Bill Wennington and Dickey Simpkins are essential pieces of the big picture.

We should also acknowledge the impressive job that owner Jerry Reinsdorf has done with this organization from the time he took over as owner, and the sportsmanship and leadership that the Bulls organization has shown through the years.

I could go on and on, but I would like to switch tracks and commend the Utah Jazz for a wonderful and exciting series. The Jazz organization and the

fans of Salt Lake City were worthy opponents in this battle and did not go quietly into the night. They made the Bulls give every ounce of heart and determination to win this sixth championship. You could not have asked for more from the Utah Jazz. The Utah fans were the extra player on the bench ready to give their team a needed push. I'm sure that their biggest fan, my colleague Senator ORRIN HATCH, provided the loudest cheers of all. Unfortunately, there can only be one champion. But in my eyes, and the eyes of all basketball fans, Karl Malone, John Stockton, and the entire team earned our respect and admiration. They too are champions and I commend them and wish them the best of luck in returning to the NBA Finals.

As the city of Chicago celebrates another taste of excellence and prepares for another mid-June party in Grant Park, we can only hope that this is not the last we see from this team. But if it was our last opportunity to be graced with the performance of Michael Jordan, Scottie Pippen, and Phil Jackson, the core and heart of this team, then we could not have asked for anything more. They continually gave this city and fans everywhere joy, pride, a glimpse at what it is like to be the best at what you do and to accomplish the ultimate goal. The Chicago Bulls have given millions of fans the chance to live vicariously through them. When the Bulls are champions, the entire city of Chicago and all Bulls fans are also champions. When Jordan steals the ball and makes the game winning shot with five seconds to go, we all make that shot. The Bulls give us hope and pride and the chance to be champions. I salute them for bringing so much to the city of Chicago, and to basketball fans everywhere.

The breath-taking performances that Michael Jordan has graced us with and the six hard-fought championships that the entire team has brought to the city are truly "unbelieve-a-bull." Without question, being successful in all six of their championship endeavors, they were "unstop-a-bull." And their place in history and in the hearts of everyone in Chicago and the world is absolutely "undeni-a-bull." I salute the Chicago Bulls on a wonderful season, and a heart-stopping championship. If this was Michael Jordan's last game then it could not have been scripted any better. It was a fitting, almost storybook ending in which the man who got us there also brought us back victorious. As coach Phil Jackson put it, "it has been a wonderful ride." Indeed it has been. Congratulations to the city of Chicago and the World Champion Chicago Bulls.

Mr. LUGAR. Mr. President, I must comment, in my own congratulations to the Chicago Bulls, with the observation that our Indiana Pacers extended the Bulls to seven games, as the Chair will remember. We are delighted that such a great season occurred in the NBA, and a very worthy team, includ-

ing, obviously, the Utah Jazz, the ultimate survivors. We congratulate the Bulls on their sixth triumph in 8 years.

I ask unanimous consent the resolution and preamble be agreed to en bloc, the motion to reconsider be laid on the table, and any statements relating to the resolution appear in the RECORD in the appropriate place, as if read.

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

The resolution (S. Res. 249) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

#### S. RES. 249

Whereas the Chicago Bulls, despite injuries to Scottie Pippen and Luc Longley, went 62-20 and tied for the best regular season record in the National Basketball Association;

Whereas the Bulls battled through the playoffs, sweeping the New Jersey Nets and defeating the Charlotte Hornets in 5 games, before beating the Indiana Pacers in 7 games to return to the NBA Finals for the third straight year;

Whereas the Bulls displayed stifling defense throughout the playoffs before beating the Utah Jazz to repeat the 3-peat and win their third consecutive NBA championship, their sixth in the last 8 years;

Whereas head coach Phil Jackson and the entire coaching staff skillfully led the Bulls through an injury riddled 62-win season and a 15-6 playoff run;

Whereas Michael Jordan won his fifth most valuable player award, and he, along with Scottie Pippen, were again named to the NBA's "All-Defensive First Team";

Whereas Michael Jordan won his record tenth scoring title and was named the NBA Finals most valuable player for the sixth time in 6 appearances in the finals;

Whereas Scottie Pippen again exhibited his outstanding offensive and defensive versatility, proving himself to be one of the best all-around players in the NBA;

Whereas the quickness, tireless defensive effort, and athleticism of the colorful Dennis Rodman, who won his seventh straight rebounding title, keyed a strong Bulls front line;

Whereas Toni Kukoc displayed his awesome variety of offensive skills in both assisting on, and hitting, several big shots when the Bulls needed them most;

Whereas veteran guard Ron Harper, in shutting down many of the league's top point guards throughout the playoffs, demonstrated the defensive skills that have made him a cornerstone of the league's best defense;

Whereas center Luc Longley frustrated many of the all-star caliber centers that he faced while at times providing a much needed scoring lift;

Whereas Steve Kerr buried several 3-pointers when the Bulls needed them most;

Whereas the outstanding play of Judd Buechler, Scott Burrell, and Bill Wennington and the tenacious defense of Randy Brown, each of whom came off the bench to provide valuable contributions, were an important part of each Bulls victory; and

Whereas the contributions of Dickey Simpkins and rookies Rusty LaRue and Keith Booth, both on the court and in practice, again demonstrated the total devotion of Bulls personnel to the team concept that has made the Bulls one of the great sports dynasties of modern times: Now, therefore, be it

*Resolved*, That the Senate congratulates the Chicago Bulls on winning the 1998 National Basketball Association championship.

## ORDERS FOR JUNE 17, 1998

Mr. LUGAR. Mr. President, on behalf of the leader, I now ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. on Wednesday, June 17. I further ask that on Wednesday, immediately following the prayer, the routine requests through the morning hour be granted and the Senate then begin a period of morning business until 10:30 a.m., with Senators permitted to speak for up to 5 minutes each, with the following exceptions: Senator ASHCROFT, 20 minutes; Senator TORRICELLI, 15 minutes; Senator AKAKA, 10 minutes.

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

Mr. LUGAR. I further ask unanimous consent that, following morning business, the Senate resume consideration of S. 1415, the tobacco bill.

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

## PROGRAM

Mr. LUGAR. Mr. President, for the information of all Senators, the Senate will reconvene tomorrow at 9:30 a.m. and begin a period of morning business until 10:30 a.m. Following morning business, the Senate will resume consideration of the tobacco bill, with a Ford amendment pending regarding the tobacco farmers. Following disposition of the Ford amendment, it is hoped that Members will come to the floor to offer and debate remaining amendments to the tobacco bill. Therefore, rollcall votes are expected throughout Wednesday's session.

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

Mr. FORD. Will the Senator yield for a question so we might understand tomorrow?

Mr. LUGAR. Yes, I am pleased to.

Mr. FORD. I ask the Senator this. We have morning business from 9:30 to 10:30. I didn't hear the Senator. Are we out at 10:30 in recess?

Mr. LUGAR. The unanimous consent agreement was, following morning business, the Senate will resume consideration of the tobacco bill with the Ford amendment pending regarding tobacco farmers.

Mr. FORD. I say to my friend that we can do it a little bit later. I thought when we first talked, there would be a hiatus until whatever time the conference was over. Apparently, now the conference will not occur.

Mr. LUGAR. My understanding is that the conference of the Republicans will occur at 10:30, and the leader will make a decision in the morning with regard to any further motions in relation to that time.

Mr. FORD. I thought at the time you and I could have an agreement, as the two managers here, to make a decision on when we would have that vote, or some time prior that we have a chance to say a few words.

Mr. LUGAR. I will be guided by the leaders.

Mr. FORD. Just to be sure that the two leaders understand what we want then.

Mr. LUGAR. In any event, I am hopeful of attending the meeting at 10:30. I will miss the Senator during that period.

Mr. FORD. I wish I could be a little fly on the wall and listen to it, but I won't be able to do that.

Mr. LUGAR. I understand. I thank the Senator.

ADJOURNMENT UNTIL 9:30 A.M.  
TOMORROW

Mr. LUGAR. Mr. President, if there is no further business to come before the Senate, I now ask that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:31 p.m. adjourned until Wednesday, June 17, 1998, at 9:30 a.m.

## NOMINATIONS

Executive nominations received by the Senate June 15, 1998:

## IN THE AIR FORCE

THE FOLLOWING NAMED AIR NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

*To be colonel*

ALBERT K. AIMAR, 0000  
MICHAEL T. ANDERSON, 0000  
JOHN H. BABSON, 0000  
LEE C. BAUER, 0000  
JOE H. BRYANT, JR., 0000  
LYLE E. CABE, 0000  
CONSTANCE L. CALDWELL, 0000  
CHARLES M. CAMPBELL, 0000  
DAVID B. CASEY, 0000  
RANDALL W. CHRISTIANSEN, 0000  
RODNEY M. COWELL, 0000  
JOHN D. DORNAN, 0000  
MARCELINO ESPADA, 0000  
TIMOTHY P. FREUND, 0000  
ATLEE E. FRITZ, 0000  
GERALD T. GARLINGTON, 0000  
JAMES L. GILBERT, 0000  
ROGER H. HARKINS, 0000  
JAMES V. HENNESSEY, 0000  
MICHAEL P. HICKEY, 0000  
SANDRA J. HIGGINS, 0000  
CRAIG E. HODGE, 0000  
VERNON W. JAMES, 0000  
VAN A. JOHNSON, 0000  
LARRY L. KEMP, 0000  
CHARLES W. LIPPELGOOS, 0000  
DAVID E. LUNDQUIST, 0000  
JEFFREY P. LYON, 0000  
CARL E. MAGAGNA, 0000  
WILLIAM E. MALONE, 0000  
JAMES R. MARSHALL, 0000  
TIMOTHY J. MCCORMICK, 0000  
ROBERT J. MCCUSKER, 0000  
LINDA K. MCTAGUE, 0000  
CHARLES T. MILLER, 0000  
MARK C. MULKEY, 0000  
MARK R. NESS, 0000  
RICHARD W. NOBLE, 0000  
CARL W. OBERG, 0000  
DOUGLAS B. ROBINSON, 0000  
WILLIAM P. ROBINSON, JR., 0000  
JUAN F. ROMANSANTIAGO, 0000  
RICHARD M. SABURRO, 0000  
KATHLEEN M. SALIBA, 0000  
THOMAS L. SAUTTERS, 0000  
DANIEL R. SCACE, 0000  
DAVID A. SPRENKLE, 0000  
PHILIP E. STEEVES, 0000  
JOHN R. STRIFERT, 0000  
DANIEL P. SWIFT, 0000  
EDWARD J. THOMAS, JR., 0000  
JAMES P. TOSCANO, 0000  
GARY M. TOWNSEND, 0000  
GABRIEL V. TREMBLAY, 0000  
FRANCIS A. TURLEY, 0000  
WILLIAM H. WALKER IV, 0000  
FREDERICK L. WALTON, 0000  
GEORGE A. WASKOSKY, 0000  
JERRY L. WILPER, 0000

## IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE

UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C. SECTION 12203:

*To be colonel*

REGINALD H. BAKER, 0000  
WILLIAM S. BAYLES III, 0000  
MARK W. BIRCHER, 0000  
GARNETT P. BROX, 0000  
NANCY J. CHARBONNEAU, 0000  
TIMOTHY J. CHRISTENSON, 0000  
DONALD COBB, 0000  
THOMAS M. COOK IV, 0000  
KEVIN W. DONAHUE, 0000  
RUSSELL D. DOUDT, 0000  
GEORGE W. DUNBAR, 0000  
CHARLES J. DYER, JR., 0000  
JAMES L. EDWARDS, JR., 0000  
CARL R. FAUSER, 0000  
WENDY R. FONTELA, 0000  
JON L. GANT, 0000  
BRUCE R. GRATHWOHL, 0000  
GARY N. GRAVES, 0000  
CHARLES R. GROSS, 0000  
CONRAD C. HILSDORF, 0000  
CAROLYN A. HUDSON, 0000  
JOHN A. HUTCHISON, 0000  
KENNETH A. ICENHOUR, 0000  
JAMEEL F. JOSEPH, 0000  
KENNETH M. KOBELL, 0000  
PAUL A. LADY, 0000  
BENJAMIN M. LAFOLLETTE, 0000  
JOSEPH C. LONG, 0000  
MICHAEL J. MASSOTH, 0000  
SUSIE K. MCCALLA, 0000  
MICHAEL P. MCCLOSKEY, 0000  
DAVID H. MCLELRATH, 0000  
CAROL F. MEDEIROS, 0000  
DARRELL L. MOORE, 0000  
JACQUES J. MOORE, JR., 0000  
DONALD E. NELSON, 0000  
GERALD D. NIX, 0000  
JOSEPH C. NOONE, 0000  
EUGENE G. PAYNE, JR., 0000  
HAYDEN R. PHILLIPS, JR., 0000  
JOSEPH A. RAUSA, 0000  
JOHN W. SAPUTO, 0000  
JOSEPH A. SCOTTO, 0000  
TERRY C. THOMASON, 0000  
WILLIAM F. TODD, 0000  
LEONARD C. UTTENHAM, 0000  
JOHN R. VIVIANO, 0000  
ROBERT N. WAAGE, 0000  
JOHN A. WEIL, 0000  
DANIEL M. WELCH, 0000  
JAMES L. WILLIAMS, 0000  
JAMES J. WITKOWSKI, 0000

## IN THE NAVY

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTIONS 531 AND 5582:

*To be ensign*

DAVID ABERNATHY, 0000  
JOHN D. ADAMS, 0000  
JENNIFER L. ALLEN, 0000  
LEA H. AMERLING, 0000  
CRAIG D. ARENDT, 0000  
SCOTT E. ARMSTRONG, 0000  
PATRICK R. BALDAUFF, 0000  
GENE K. BARNER, 0000  
GEORGE C. BOROVINA, 0000  
WILLIE D. BROWN, 0000  
ROBERT T. BRYAN, 0000  
KURT A. BUCKENDORF, 0000  
IAN P. BURGOON, 0000  
JOSEPH C. BUTNER, 0000  
MICHELE CAROLYN, 0000  
BRIAN J. CHEYKA, 0000  
PHILIP R. CLEMENT, 0000  
JOHN D. CRADDOCK, 0000  
J. SCOTT CRAMER, 0000  
CRAIG L. DALLE, 0000  
JENNIFER N. DELLABARBA, 0000  
LANCE B. DETTMANN, 0000  
JEFFERY C. DEVINEY, 0000  
GREGORY P. DEWINDT, 0000  
CURTIS D. DEWITT, 0000  
ALPHONSO M. DOSS, 0000  
KEITH E. EASTLAND, 0000  
MICHAEL L. EGAN, 0000  
RONALD FANELLI, 0000  
MICHAEL FARNSWORTH, 0000  
TODD A. FAUROT, 0000  
ANDREW FITZPATRICK, 0000  
BRIAN FITZSIMMONS, 0000  
DOUGLAS J. FLANNERY, 0000  
KOMA B. GANDY, 0000  
STEVEN C. GOFF, 0000  
BRIAN C. HAHN, 0000  
KENNETH E. HARBAUGH, 0000  
SEAN J. HAYNES, 0000  
KATHRYN E. HITCHCOCK, 0000  
JOHN S. HOLZBAUR, 0000  
MALCOLM F. HOUSE, 0000  
MICHAEL E. ILTERIS, 0000  
CHARLES JACKEL, 0000  
ANTHONY A. JACKSON, 0000  
DAREN D. JEWELL, 0000  
DANIEL A. JOHNSON, 0000  
JAMES KELLY, 0000  
JAMES KENNEDY, 0000  
SHAWN M. KERN, 0000  
NATHAN J. KING, 0000  
KIMI L. KNUDSON, 0000

CRAIG KRAEGER, 0000  
 GARY W. KRUPSKY, 0000  
 RODERICK O. KURTZ, 0000  
 KEVIN G. LA RA, 0000  
 HOWARD J. LANDRY, 0000  
 TRICIA LIM, 0000  
 RICHARD LUNDSFORD, 0000  
 CARL F. LUSTENBERGE, 0000  
 STEPHEN J. MADDEN, 0000  
 KIMBERLY S. MARKS, 0000  
 JOHN R. MARTIN, 0000  
 RICHARD T. MCCARTHY, 0000  
 THOMAS D. MCKAY, 0000  
 CAROL E. MCKENZIE, 0000  
 MELISSA A. MCSWAIN, 0000  
 ALEXANDER MILLER, 0000  
 RICHARD MILLIOT, 0000  
 MARC MILOT, 0000  
 KELLY R. MITCHELL, 0000  
 STEPHEN E. MONGOLD, 0000  
 DAVID A. MONTI, 0000  
 MATTHEW B. MOORE, 0000  
 ALAN MUNOZ, 0000  
 NATHAN NORTON, 0000  
 DENNIS S. OGRADY, 0000  
 SHANE J. OSBORN, 0000  
 DAVID J. PEARSON, 0000  
 LIVIO PERLA, 0000  
 SHAWN D. PETRE, 0000  
 DAVID E. PROCTOR, 0000  
 DAVID M. REED, 0000  
 JOSHUA C. RENAGER, 0000  
 SCOTT ROSE, 0000  
 CARY ROSENBERGER, 0000  
 BRYAN C. ROSKOS, 0000  
 RONALD B. ROSS, 0000  
 DONALD W. SCHENK, 0000  
 DEREK SCRAPCHANSKY, 0000  
 ERIC A. SHAFER, 0000  
 MARCELE P. SHIELITO, 0000  
 GREGG R. SHIPP, 0000  
 MARY SIMMERING, 0000  
 DANIEL S. SPICER, 0000  
 WILLIAM M. SULLIVAN, 0000  
 JEFFREY W. SUMMERS, 0000  
 MERRILL T. SWALM, 0000  
 CHRISTOPHER P. TALLON, 0000  
 DAVID C. TERRY, 0000  
 SEAN THOMAS, 0000  
 TARA L. TOSTA, 0000  
 JOHN D. TUTWILER, 0000  
 MICHAEL E. VANHORN, 0000  
 HENRY M. VEGTER, 0000  
 THOMAS L. WALKER, 0000  
 NICOLE A. WAYBRIGHT, 0000  
 SHANNON J. WELLS, 0000  
 RICHARD H. WILHELM, 0000  
 KEVIN P. WILLIAMS, 0000  
 MARC WILLIAMS, 0000  
 KIMBERLY D. WINCKLER, 0000  
 ALAN R. WING, 0000  
 ERNEST M. WINSTON, 0000  
 MICHAEL B. WITHAM, 0000

## IN THE NAVY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT  
 TO THE GRADE INDICATED IN THE UNITED STATES NAVY  
 UNDER TITLE 10, U.S.C., SECTION 624:

*To be captain*

SANDERS W. ANDERSON, 0000  
 JAMES J. ANTUS, 0000  
 CHARLES A. ARENA, 0000  
 CHARLES R. AUKER, 0000  
 MARK E. BABBITT, 0000  
 DEAN A. BAILEY, 0000  
 LAWRENCE A. BARRETT II, 0000  
 EUGENE D. BARRON, JR., 0000  
 JEFFREY A. BASHFORD, 0000  
 WILLIAM J. BEARY, 0000  
 TIMOTHY A. BEMILLER, 0000  
 KARL H. BERNHARDT, 0000  
 GILBERT U. BIGELOW, 0000  
 JOHN R. BOLLINGER, 0000  
 BRUCE R. BOYNTON, 0000  
 DAVID M. BROWN, 0000  
 MARTIN J. BROWN, 0000  
 NORMAN F. BROWN, 0000  
 ROBERT F. BURT, 0000  
 CLINTON J. BUTLER, 0000

WILLIAM E. BUTT, 0000  
 JULIA T. CADENHEAD, 0000  
 THOMAS G. CALHOUN, 0000  
 ROBERT P. CARRILLO, 0000  
 LANETTA M. CASILIOBIXLER, 0000  
 RICHARD E. CELLON, 0000  
 CARLTON D. CHERRY, 0000  
 HENRY M. CHINNERY, 0000  
 JOE D. CLEMENTS, 0000  
 RICHARD M. COCRANE, 0000  
 JONATHAN S. COLLINS, 0000  
 DAVID J. CONNITO, 0000  
 RICHARD CONWAY, 0000  
 CAROL J. COOPER, 0000  
 MATTHEW D. CULBERTSON, 0000  
 SUSAN C. CULLOM, 0000  
 PATRICK R. DANAHAR, 0000  
 DOUGLAS M. DEETS, 0000  
 JAMES P. DELL, 0000  
 MARK S. DENUNZIO, 0000  
 JOHN M. DEPAUL, JR., 0000  
 WILLIAM N. DEURING, 0000  
 DUANE M. DIAN, 0000  
 MICHAEL A. DIAZ, 0000  
 MICHAEL P. DINNEEN, 0000  
 JOHN A. DIXON, 0000  
 DAVID S. DOUGLAS, 0000  
 HAL H. DRONBERGER III, 0000  
 DOUGLAS L. EAGAN, 0000  
 ROBERT N. ECKENBERG, 0000  
 MARK EDWARDS, 0000  
 GEORGE E. EICHERT, 0000  
 PETER W. EISENHARDT, 0000  
 FREDERIC F. ELKIN, 0000  
 MAURA A. EMERSON, 0000  
 ROBERT J. ENGELHART, 0000  
 GARY A. ENGLE, 0000  
 ROBERT E. ETHERIDGE, 0000  
 CHERYL L. S. GANDEE, 0000  
 DENZEL E. GARNER, 0000  
 DEBORAH C. GAY, 0000  
 ERIC J. GETKA, 0000  
 STEPHEN D. GIEBNER, 0000  
 DAVID P. GLEISNER, 0000  
 STEPHEN B. HAAS, 0000  
 GREGORY E. HALL, 0000  
 MARY M. HALUSZKA, 0000  
 KRISTINE J. HANSON, 0000  
 ROBERT K. HANSON, 0000  
 GERALD T. HATCH, 0000  
 RICHARD E. HAWKINS, 0000  
 KURT T. HENDRIX, 0000  
 MARK T. HETZER, 0000  
 ROGER N. HIRSH, 0000  
 ELWOOD W. HOPKINS, 0000  
 MALCOLM H. HORRY, 0000  
 CHARLES F. HOSTETTTLER, 0000  
 ROBERT L. HOWARD, 0000  
 MICHAEL A. HUBER, 0000  
 THOMAS C. HUDSON, 0000  
 SUSHIL K. JAIN, 0000  
 DEBRA L. JANIKOWSKI, 0000  
 CHARLES E. JEROME, 0000  
 DEBORAH K. JOHNSON, 0000  
 JOHN L. KAUL, 0000  
 BRIAN J. KELLY, 0000  
 MAJOR L. KING II, 0000  
 THOMAS A. LAFFERTY, 0000  
 SARA E. LEASURENELSON, 0000  
 JAMES M. LEVALLEY, 0000  
 PAUL A. LINDAUER, 0000  
 JOSEPH O. LOPREIATO, 0000  
 MICHAEL J. LYDEN, 0000  
 BRUCE E. MACDONALD, 0000  
 FRANCIS R. MACMAHON, 0000  
 KATHRYN W. MARKO, 0000  
 SUSAN E. MARSHALL, 0000  
 PETER J. MARTIN, 0000  
 ROBERT A. MATTHEWS, 0000  
 DENNIS R. MCCLAIN, 0000  
 SCOTT B. MCCLANAHAN, 0000  
 MICHAEL E. MCGREGOR, 0000  
 THOMAS P. MCILRAVY, 0000  
 MICHAEL J. METTS, 0000  
 DAVID G. METZLER, 0000  
 ARTHUR R. MILLER, 0000  
 JOHN W. MILLS, 0000  
 MARK W. MITTAUER, 0000  
 DALE M. MOLE, 0000  
 HENRY R. MOLINENGO II, 0000  
 BECKY S. MOORE, 0000

GREGORY R. MOORE, 0000  
 JOSEPH L. MOORE, 0000  
 JAMES A. MOOS, 0000  
 MAGDALENE A. MOOS, 0000  
 ROBERT L. MOSES, 0000  
 DAVID W. MUNTER, 0000  
 HOLLY L. NAPPEN, 0000  
 JAMES T. NEED, 0000  
 RICHARD L. NEMEC, 0000  
 ELIZABETH S. NIEMYER, 0000  
 HENRY NIXON, JR., 0000  
 KENNETH E. NIXON, 0000  
 HART S. ODOM, 0000  
 STEPHEN J. OLSON, 0000  
 DONALD H. ORNDORFF, 0000  
 BRIAN F. PAUL, 0000  
 JOHN A. PERCIBALLI, 0000  
 LAURENCE J. PEZOR, JR., 0000  
 JAMES H. POPE, 0000  
 GARY E. PROSE, 0000  
 JANE E. PRZYBYL, 0000  
 EMMETT W. QUESENBERY, 0000  
 ROBERT F. RASPA, 0000  
 BARBARA A. RECKER, 0000  
 EDWARD G. REEG, 0000  
 RUSSELL H. RHEA, 0000  
 ROBERT L. RINGLEY, JR., 0000  
 DOUGLAS S. ROARK, 0000  
 BARBARA A. ROBERTS, 0000  
 GABRIEL A. RODRIGUEZ, 0000  
 JOHN W. ROLPH, 0000  
 ALAN R. ROWLEY, 0000  
 MARIAN A. ROYER, 0000  
 ANGUS H. RUPERT, 0000  
 SHARON F. RUSHING, 0000  
 GERALD A. SANTULLI, 0000  
 SHELLEY A. SAVAGE, 0000  
 MICHAEL E. SCHAEFER, 0000  
 MARK E. SCHANDORFF, 0000  
 CHRISTOPHER SCHANZE, 0000  
 ROBERT E. SCHENK, JR., 0000  
 RICHARD R. SCHWAB, 0000  
 KENNETH K. SENN, 0000  
 JOHN W. SENTELL, 0000  
 MARK V. SHERIDAN, 0000  
 WILLIAM B. SHORT, 0000  
 MARK B. SKEEN, 0000  
 DAVID M. SKWARA, 0000  
 SUSAN M. SMALLING, 0000  
 JAMES A. SMITH, 0000  
 RANDALL J. SMITH, 0000  
 THOMAS B. SMITH, 0000  
 MARTIN R. STAHL, 0000  
 DAVID A. STARKEY, 0000  
 STEVEN C. STERRETT, 0000  
 FRANCES I. STEWART, 0000  
 RONALD L. S. SWAFFORD, 0000  
 DOUGLAS J. SWEENEY, 0000  
 WILLIAM G. SWEENEY, 0000  
 RAYMOND J. SWISHER, 0000  
 SCOTT A. SYNNOTT, 0000  
 DAVID A. TAFT, 0000  
 LEANNE L. THOMAS, 0000  
 CONNIE L. THORNTON, 0000  
 JEFFREY R. THORPE, 0000  
 HARRY J. TILLMAN, 0000  
 GLENN A. TINNEY, 0000  
 RICHARD J. TITI, 0000  
 JAY R. TROWBRIDGE, 0000  
 MICHAEL P. TRYON, 0000  
 BLAKE H. TURNER, 0000  
 DAVID B. TURTON, 0000  
 PHILIP J. VALENTI, 0000  
 JOHN A. VANDERCREEK, 0000  
 DARRELL Y. VANHUTTEN, 0000  
 ELAINE C. WAGNER, 0000  
 THOMAS D. WALCZYK, 0000  
 RANDALL E. WEBB, 0000  
 BARTON R. WELBOURN, 0000  
 MARVIN C. WENBERG II, 0000  
 ROBERT WESTBERG, 0000  
 GARY W. WESTFALL, 0000  
 CECIL WHITE, JR., 0000  
 KEVIN L. WHITE, 0000  
 ROBERT L. WILLIAMS, 0000  
 BLANE M. WILSON, 0000  
 ELAINE R. WINEGARD, 0000  
 SAMUEL YOUNG, 0000  
 PAUL R. ZAMBITO, 0000