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Senate

(Legislative day of Tuesday, October 10, 1995)

The Senate met at 9:45 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

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

Lord God, we thank You for the energy-releasing power of Your spirit. Life's challenges and difficulties often excavate trenches in our hearts. These can be riverbeds for the flow of discouragement or of joy. In this time of prayer we ask that Your joy overflow the banks of our hearts.

Nehemiah expressed this assurance in the arduous time of the rebuilding of the walls of Jerusalem. ''The joy of the Lord is your strength,'' he said. Only You could give the people what they needed to persist and endure. The same is true for us in our work today. We do not always find joy in our work: Sometimes it is demanding and exasperating. But we can bring Your joy to our work, a joy that lasts, a joy that bursts forth from Your love, forgiveness, and hope. Thank You for the creative thought and energy that Your divine joy triggers in our minds and our bodies.

This is the day You have made. We will rejoice and be glad in You, for Your joy is our strength. In our blessed Lord's name. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able Senator is recognized.

SCHEDULE

Mr. GRASSLEY. Mr. President, the first responsibility I have this morning is to announce for the leader what our potential points of business are for this morning.

This morning, there will be a period for the transaction of morning business until the hour of 10 a.m. Following morning business, the majority leader has stated that it would be his intention to appoint conferees to S. 652, the telecommunications bill. It is possible that a Senator will make a motion in regard to the appointment of those conferees. Therefore, it may be necessary to have a rollcall vote today if such a motion is made.

The majority leader has also indicated that it is hoped that the Senate will be able to appoint conferees to H.R. 4, the welfare reform bill, and to do that during today's session.

Mr. President, do I have time allocated for morning business?

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. KEMPTHORNE). Under the previous order, the time for the two leaders is reserved.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to a period for morning business until 10 a.m., with Senators allowed to speak for not more than 5 minutes, with the exception of the Senator from Iowa [Mr. GRASSLEY] who is entitled to speak for 10 minutes.

The Senator from Iowa is recognized.

DRUG POLICY, DRUG LEADERSHIP

Mr. GRASSLEY. Mr. President, several weeks ago on this floor, I addressed the issue of what I regard as a serious and growing problem in this country. The problem has two major features: Disturbing indications of a new drug epidemic among the Nation's young; and a lack of leadership from the administration either to provide the necessary moral guidance at home or to sustain programs overseas.

I called upon Democrats and Republicans to join in an effort to reverse this trend. In addition, Senator COVERDELL and I worked to restore funding to our international narcotics efforts as did Senator MCCONNELL. We hope that as we go to conference with the House that we can preserve the funding for our international programs that contribute to our overall efforts to fight drug abuse. Yesterday, Senator HATCH, in an eloquent and forceful statement, joined me in summoning up the awareness and resolve that we need to address now the dangerous trends we see in teenage drug use. Something that we must do before we find ourselves deep in a new wave of addicts and ruined lives.

Two weeks ago, Senator DOLE pointed out the seriousness of the problems that we face in an insightful opinion piece. As he noted there, we have lost our focus on drug policy. As a result the voice most commonly heard on the drug issue is from those who favor legalization in one form or another. Despite the fact that the public routinely, by overwhelming majorities, opposes any such notion, the press, our cultural elite, and some of our political leaders act as if this was not the case. The most remembered voice on the Clinton administration's drug policy was the call by Joclyn Elders, the Surgeon General of the United States, for legalization. The result of a policy of replacing Just Say No with Just Say Nothing has had predictable results.

Our interdiction efforts have fallen off as the focus on law enforcement has diminished. The priorities at DEA and Customs have shifted away from international efforts. Even domestically these agencies are doing far less to combat drug trafficking, as declines in arrests and seizures indicate. The Coast Guard has seen its budget shrink

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

for drug control, and DOD counterdrug funding has plummeted. More seriously, the administration has not fought for its own programs or supported its own drug czar in Congress. And the President has abandoned the bully pulpit—something that his own Attorney General, his Secretary of Health and Human Services, and his drug czar have called one of the most important tools in our counterdrug arsenal.

As a consequence, the message that drug use is both harmful and wrong is simply not getting to the audience that most needs it—young Americans. Marijuana use is on the rise, dramatically. Lest anyone forget, this was how the drug epidemic of the 1960's and 1970's got started. Marijuana was the gateway to an age of major drug addiction. We are seeing a repeat of that history because we failed to learn from our history. Today's marijuana, however, is many times more potent than anything from the 1960's, and we know a great deal more about the dangerous health consequences of even small use. Thus, we are not ignorant. We are, however, in danger of being negligent.

It is not as if we have learned nothing about what works. After many years of trial and error, we hit upon the mix of things that gets the job done. The first hurdle we overcame in the efforts of the late 1980's was to realize that counterdrug efforts cannot be a sometime thing. We need consistency and sustained effort.

We also learned that we needed comprehensive programs that combine effective interdiction, law enforcement, education, prevention, and treatment in well-publicized efforts. This is what it takes to send a clear message to the most at-risk population—young people between the ages of 12 and 20. When we managed to put these things together we saw significant declines in use.

Now, however, all that is at risk. We have retreated from what works. We have seen rhetoric that tries to ignore one of the most significant parts of the message about illegal drug use—that drugs are illegal because they are dangerous and wrong. Instead, the voice we hear says that drugs are dangerous because they are illegal. Or just as bad, that the only way to deal with the problem of drug abuse is through treatment. And we have seen program changes that reinforce this view. Once again, however, we can see the obvious: When you do not make it clear that drug use is not only harmful but wrong, and that use has consequences both social and judicial, then the coherence of the message is lost on our young people.

We need to revitalize our efforts. To remind ourselves of our responsibilities and of what is needful. It also involves asking ourselves what are the appropriate responses of the Federal Government. It certainly is not simply throwing money at programs.

There are a number of things the Federal Government is best able to do and most responsible for. First, there is a need to develop sound strategies that have substance rather than rhetoric as their main components. Second, Federal authorities need to focus on those things State and local authorities are less able or unable to do. This means, in particular, a major focus on interdiction, international control efforts, and law enforcement at and near the borders. These are areas that have suffered the most in recent years.

Third, we need consistent, visible leadership that ensures the level of cooperation and oversight of individual programs necessary to produce coordinated efforts. We need a drug czar whose authority is backed by a President committed to the effort.

Fourth, we need to renew our public agenda. To encourage local groups, family organizations, and private, voluntary groups in their efforts to fight drug abuse and the creeping influence of legalizers. We need a Just-Say-No czar with visibility and credibility.

Fifth, we need to revitalize our interdiction efforts at and near the borders and to recover the lost ground in recent years. We need to stop using our Federal drug law enforcement officers as deputy sheriffs in local jurisdictions. They should be focusing on the major cases that involve multiple jurisdictions. We need a recommitment to protect our borders, something even more important as we move forward with NAFTA.

Sixth, we need a major international effort to go after the major criminal organizations that are responsible for a spreading wave of criminality here and abroad.

Finally, we need congressional commitment to sustain realistic programs that have proven records. We need all of these things today.

As chairman of the Drug Caucus, I have highlighted the problems in the past. It is time for us to move ahead. In this regard, as a first step, I intend to offer a sense-of-the-Senate resolution in the coming days calling for a day of national drug awareness. This is in conjunction with Red Ribbon Week, sponsored by the National Family Partnership. I call on my colleagues and all Americans to wear a red ribbon during the period of October 23–31 in memory of a real hero in the drug war, Enriqué Camarena, a DEA agent killed fighting drug traffickers, and as a reminder of and commitment to a drug free country.

In the coming weeks I will be working with the private sector and my colleagues to bring greater focus to and effort on the drug issue. It is time. It is necessary. It is right. We need to make the whole country one big drug-free zone.

UNANIMOUS-CONSENT AGREEMENT

Mr. GRASSLEY. Mr. President, I want to make an announcement on behalf of our Republican leader.

We are asking unanimous consent that at 10:30 a.m. the Chair lay before the Senate a message from the House on S. 652, the telecommunications bill; that there be 2 hours of debate, with 1½ hours under the control of Senator DORGAN and Senator KERREY and the remaining 30 minutes under the control of Senator PRESSLER.

Further, that immediately following the debate or yielding back of time, the Senate disagree with the House amendments and the Senate agree to the House request for a conference and the Chair be authorized to appoint conferees on the part of the Senate, and that no other motion be in order during the pendency of this House message.

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

Mr. GRASSLEY. Mr. President, in light of this agreement, I have been authorized by the majority leader to announce that there will be no rollcall votes during today's session.

EXTENSION OF TIME FOR MORNING BUSINESS

Mr. GRASSLEY. Mr. President, I ask that the morning business period be extended until 10:30 a.m. under the same terms and conditions as the previous morning business order.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

SCHEDULE

Mr. DOLE. Mr. President, we will not be in session on Monday. There may be committee meetings. Some of us will be working on the tax portion of the reconciliation package. I have conferred last evening with the Democratic leader, and it is our view that it is going to be very difficult for people to be able to get to the Capitol on Monday, particularly staff. So there may be committee meetings, but we will not be in session.

I thank my colleague.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the hour of 10:30 a.m. having arrived, morning business is closed.

TELECOMMUNICATIONS COMPETITION AND DEREGULATION ACT OF 1995—MESSAGE FROM THE HOUSE

Mr. PRESSLER. Mr. President, I ask that the Chair lay before the Senate a

message from the House of Representatives on S. 652 a bill to provide for a procompetitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and for other purposes.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House insist upon its amendments to the bill (S. 652) entitled ''An Act to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and for other purposes'', and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That the following Members be the managers of the conference on the part of the House:

From the Committee on Commerce: Mr. Bliley, Mr. Fields of Texas, Mr. Oxley, Mr. White, Mr. Dingell, Mr. Markey, Mr. Boucher, Ms. Eshoo, and Mr. Rush: *Provided*, Mr. Pallone is appointed in lieu of Mr. Boucher solely for consideration of section 205 of the Senate bill.

As additional conferees, for consideration of sections 1–6, 101–104, 106–107, 201, 204–205, 221–225, 301–305, 307–311, 401–402, 405–406, 410, 601–606, 703, and 705 of the Senate bill, and title I of the House amendment, and modifications committed to conference: Mr. Schaefer, Mr. Barton of Texas, Mr. Hastert, Mr. Paxon, Mr. Klug, Mr. Frisa, Mr. Stearns, Mr. Brown of Ohio, Mr. Gordon, and Mrs. Lincoln.

As additional conferees, for consideration of sections 102, 202–203, 403, 407–409, and 706 of the Senate bill, and title II of the House amendment, and modifications committed to conference: Mr. Schaefer, Mr. Hastert, and Mr. Frisa.

As additional conferees, for consideration of sections 105, 206, 302, 306, 312, 501–505, and 701–702 of the Senate bill, and title III of the House amendment, and modifications committed to conference: Mr. Stearns, Mr. Paxon and Mr. Klug.

As additional conferees, for consideration of sections 7–8, 226, 404, and 704 of the Senate bill, and titles IV–V of the House amendment, and modifications committed to conference: Mr. Schaefer, Mr. Hastert, and Mr. Klug.

As additional conferees, for consideration of title VI of the House amendment, and modifications committed to conference: Mr. Schaefer, Mr. Barton, and Mr. Klug.

As additional conferees from the Committee on the Judiciary, for consideration of the Senate bill (except sections 1–6, 101–104, 106–107, 201, 204–205, 221–225, 301–305, 307–311, 401–402, 405–406, 410, 601–606, 703, and 705), and of the House amendment (except title I), and modifications committed to conference: Mr. Hyde, Mr. Moorhead, Mr. Goodlatte, Mr. Buyer, Mr. Flanagan, Mr. Conyers, Mrs. Schroeder, and Mr. Bryant of Texas.

As additional conferees, for consideration of sections 1–6, 101–104, 106–107, 201, 204–205, 221–225, 301–305, 307–311, 401–402, 405–406, 410, 601–606, 703, and 705 of the Senate bill, and title I of the House amendment, and modifications committed to conference: Mr. Hyde, Mr. Moorhead, Mr. Goodlatte, Mr. Buyer, Mr. Flanagan, Mr. Gallegly, Mr. Barr, Mr. Hoke, Mr. Conyers, Mrs. Schroeder, Mr. Berman, Mr. Bryant of Texas, Mr. Scott, and Ms. Jackson-Lee.

The PRESIDING OFFICER. Under the previous order, there will now be 2 hours of debate divided in the following manner: 90 minutes under the control of Senators DORGAN and KERREY of Nebraska, 30 minutes under the control of Senator PRESSLER.

Mr. PRESSLER addressed the Chair.

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

Mr. PRESSLER. If the Senate should agree later today, I believe that the Chair will be appointing the following conferees to the telecommunications bill. If the Chair so appoints and if there is not objection, Senators PRESSLER, STEVENS, MCCAIN, BURNS, GORTON, LOTT, HOLLINGS, INOUYE, FORD, EXON, and ROCKEFELLER will be named as conferees.

Mr. President, let me summarize for the Senate where we stand on the telecommunications bill.

The House and Senate have both passed major bills reforming the Telecommunications Act of 1934, bringing it up to date, and also making certain changes in our Nation's telecommunications laws. In addition, there are efforts to make it more procompetitive and deregulatory but also to protect the rights of the consumers in our country and to move the telecommunications bill forward.

We are in a situation today that our Nation very much needs to modernize its telecommunications laws. A House-Senate conference will soon begin to iron out the differences between the Senate and the House versions of telecommunications. We are doing this on a bipartisan basis, and I hope that it will proceed quickly and thoroughly.

I look forward to working with those Senators and all Members of this Chamber. Let me say, Mr. President, that although there are certain conferees named, all Senators are invited to have input, as they have had on this bill. I commend Senator HOLLINGS of South Carolina, the ranking Democrat and former chairman of the Commerce Committee, who has provided so much leadership on this bill. Indeed, he has brought to this process a very bipartisan spirit, and I look forward to working with him and the Republicans and Democrats in the Senate and the House.

Mr. President, I reserve as much time as I may have and I note the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DORGAN. Mr. President, I wanted to have a discussion this morning prior to the Senate appointment of conferees to the telecommunications bill.

After the appointment of conferees, there will then be a conference between the House and Senate on the telecommunications bill. This bill is very important. The telecommunications bill is the first substantial change in telecommunications law since the 1930's.

All of us know what has happened in this country to communication since the 1930's. I mean, it is breathtaking the kinds of changes we have seen in the communications industry and for everybody in this country. So when this Congress sits down and decides to make changes to law—and we should and must—the question is, How will those changes affect our country? Who will they affect? What will they affect?

One of the things I have been very concerned about is the issue of universal service for telephone service. You know, it is more costly to have telephone service in a town of 100 people in South Dakota, North Dakota, or Montana, than it is to have telephone service in New York City. Why is that? Well, because the fixed costs of providing telephone service in New York can be spread over millions of phone instruments, but in Grenora, ND, the fixed costs are spread over relatively few telephones.

But is the telephone in Grenora, ND, or Regent, ND, any less important than the telephone in New York City? No. One is used to call the other. The absence of one makes the other less valuable. Universal service in telephone service is important. It has been a concept in this country we have understood and protected for a long, long time.

We must make sure to protect universal service in the telecommunications legislation. People say, ''Well, this bill is about competition.'' I love the flowery language about opening up the petals of competition, competition in the marketplace; worshiping at that altar is what is going to allow us to flourish and provide vast new opportunities in communications for everyone in our country.

I want to talk a little bit about that competition today. One can conceive of competition in a rural area being someone saying, ''I want to come into this rural county''—where you barely have a telephone structure and are able to survive currently—''and I want to pick the only town that exists out in that county and serve that. That is all I want to serve.'' What about the rest of it that cannot stand by itself? ''That doesn't matter to me because I only want to compete in that small town.''

That is the kind of thing we have to be concerned about. We need legislation that protects us and provides universal service for the long term. We made progress on universal service in the telecommunications bill. Now, we just have to keep universal service intact in the conference. That is critically important.

There are two other areas that concern me greatly.

The two areas are this:

One is, when should local telephone carriers who essentially have a monopoly be free to compete in long distance? And should the Department of Justice have a role in determining when there is competition in the local exchange so that that carrier then is free to compete in long distance? The bill is set up pretty much like it is for airlines.

The airline situation says that if a couple airlines want to merge, the Department of Transportation determines whether it is in the public interest, and they make the decision, and they say to the Department of Justice and the antitrust folks over there, ''We will allow you to advise us on what you think, but we will make the decision at the Department of Transportation.''

Guess what? There has not been a merger that these folks have not loved to death. It does not matter which kind of corporations want to marry. Two airlines want to marry each other? Just fine. The Department of Justice might say, ''This is going to be anticompetitive, it is going to increase fares, it is not going to be in the public interest.'' But guess what? The Department of Transportation says, ''Well, it's just fine with us. Just get hitched. Merge up. That's fine.''

What do we have in this country these days? We see all these big airlines swallow the little airlines, either they crush them or they swallow them, one of the two, whichever they have the opportunity to do.

And if they decide to buy them and merge, the Department of Justice might say, ''Well, you know, they are trying to take out their competition here. It will be less competitive if you have this merger.'' The Department of Transportation says, ''It doesn't matter to us. We will allow them to merge anyway.''

That is what the experience has been. If you like that and think that is the right approach, then you do what is done in the Senate bill on telephones and communications. You say the same thing, prevent the Department of Justice from having a role in determining whether you have anticompetitive practices.

That does not make any sense to me. This bill is advertised with neon lights and bells and bands as being a bill for competition. ''It provides America the fruits and flowers of competition.'' Well, if that is the case, why would you not allow the Justice Department and the antitrust people in the Justice Department to weigh in on the question of when are you involved in anticompetitive practices? When is there truly competition in local exchanges so the local telephone carriers can then be free to compete in long distance?

The second area I want to talk about is whether there should be limits in this country on the number of television stations you can own. Or, the number of radio stations you can own.

Why is that important? We now have in law a limit that you can only own 12 television stations. It says 12 is the limit; and those 12 can reach no more than 25 percent of the American population. Now, why would we have a law like that? Well, because we believe that there ought to be competition in the flow of communications and ideas and in the media.

How do you promote competition? By broad-based ownership; that is how. If you get concentration of ownership, if you get half a dozen companies owning everything, you do not have competition. So we said, in the television industry, you can only own 12 television stations that reach no more than 25 percent of the population.

Now, we write a bill, the telecommunications bill, that we say promotes this idea of competition, and guess what, the bill says, ''By the way, we are going to change the law. Now you can have as many television stations as you want. You want to own 100? God bless you. You can own 100. It is no problem with us,'' they said. ''And we want to, by the way, allow you to own as many as you want up to 50 percent of the population.'' Then they thought better of it and said, ''OK, we better compromise; 35 percent of the population.'' So you can own as many television stations as you want that reach 35 percent of the population in this country.

Well, anybody worth their salt knows what is going to happen as a result of that. We will see a half dozen companies in America owning almost all the television stations in our country. And if you look surprised 10 years from now when we reach that point and stand on the floor of the Senate and say, ''Gee,'' scratch our head and say, ''Gee, I never thought that would happen,'' let me just tell you it is going to happen. You know it is going to happen. And it's not good for this country. This is about pressure, politics, and big money; it is not about good economics and good competition. Look what has already been happening in this country. Mega media mergers. This is not a discussion in which I am trying to be pejorative about all these mergers. Some are probably just fine.

People say, ''There's all this competition. Why should you worry about somebody owning more than 12 televisions stations? We have 250 channels or 500 channels.'' That sounds interesting. One of the major networks owns 19 cable channels, 19. So when you say we have 19 channels, is that competition where the same company owns it? I do not think so.

Here is a new mega media merger. We witnessed their big grins, smoking their cigars talking about this merger. Time Warner and Turner Broadcasting Co. Both are good companies. People I admire work for these companies. But let us look at the size of these companies. Time Warner decides to merge with Turner, for a total of $18.7 billion in revenue. Look at their cable holdings: CNN, TBS, TNT, Court TV, HBO, Cinemax, Comedy Central, Warner Brothers Television Network, New York 1 News Channel, on and on. You see the publications, the cable systems.

Mr. KERREY. I wonder if my friend from North Dakota will yield?

Mr. DORGAN. I will be happy to.

Mr. KERREY. First of all, I ask my friend from North Dakota, Mr. President, is it not the case that one of the arguments we have heard all along for this bill that we are going to get more competition?

Are Time Warner and Turner competitive?

Mr. DORGAN. Yes.

Mr. KERREY. Will we not get less competition as a consequence of bringing these two companies together?

Mr. DORGAN. Yes, that is exactly the point. When you have mergers, it means companies that used to be two get married up and now they are one.

Mr. KERREY. I wonder if my friend also will talk about something else that I think is terribly important. That is, all of us, when we go home and talk to people who are working, they feel a great deal of insecurity about their jobs today. As I saw that announcement, it seems to me I heard them say that there may be somewhere between 5,000 and 10,000 fewer jobs as a consequence of this merger, that they are expected to have some savings, as they call it, as a consequence. I believe I also saw Ted Turner is going to get $20 million a year for 5 years and Mike Milken got $50 million for shaking hands, none of which I doubt will benefit those people who will lose their jobs.

James Fallows the other morning talked about the fact that a single corporation, Boeing, laid more people off in the last 5 years than every corporation in Japan has over that comparable period of time.

What is going on, I ask my friend from North Dakota? We heard all through this debate that this piece of legislation was going to create jobs, that we are going to get more opportunity, that this is going to be good for the American worker? Do you see it that way?

Mr. DORGAN. I do not see it that way. I am going to go through a couple of charts and talk about the mergers, the corporate weddings where people get together and say, ''Bigger is better. There used to be two, we are now going to be one, we don't have to compete. We control the markets.''

They say, ''This is all about competition. We are going to have competition and competition is good for people.'' Not in this case. This is about concentration, the issue of whether you ought to limit the number of television stations you own to 12, as in current law. Some feel maybe we ought to make an adjustment. It should not be a political adjustment by somebody in Congress who says, ''Gee, let's remove the shackles from the folks who want to buy 100 television stations.'' Maybe that ought to be made by the Federal Communications Commission after an

evaluation of what represents effective and good competition, what is in the public interest.

ABC and Walt Disney got hitched a couple months ago; ABC and Disney. Let us look at what all this means. Disney, 11 television stations so far: Walt Disney Television, Touchstone, Buena Vista. They have cable: Disney channel, ESPN, Lifetime, they have 10 FM radio stations, 11 AM radio stations, publications, retail, motion pictures.

Put all of this together and what do they have? Less competition. Is that bad? Not necessarily. I am not saying every merger is bad. I say when you look at the confluence of mergers in this industry, you cannot conclude at the end of that look that this is good for competition. You cannot at the same time brag about the virtues of competition and then create a bill that gives you a fast slide toward more concentration. That does not fit.

CBS and Westinghouse just announced they were fond of each other and decided they would have an arrangement to get together. I do not know much about either of them, but let us look: 15 television stations owned by CBS broadcasting; Westinghouse has 18 AM stations, 21 FM stations; they have cable channels, publications, a whole range of broadcasting properties, $4.5 billion revenue.

Another merger, Gannett and Multimedia—15 television stations, $4.5 billion revenue.

NBC and GE, they are folks looking around to figure out who they can put together. There have been no mergers here, but there is lots of speculation in the press about if this group is able to be out there alone when everybody else is forming new partnerships. Fox, take a look at Fox.

Mr. KERREY. I wonder if my friend will yield for an additional question.

Mr. DORGAN. I will be happy to.

Mr. KERREY. One of the things the public needs to understand, it seems to me, is that these companies have been given public franchises. They made their money not as a consequence of going out and starting a business and trying to get customers to buy their product. Their business began by coming to Washington, DC, and getting a public franchise, in many cases a monopoly franchise.

The phone company is a monopoly. It is not a competitive business. It is not a farm in North Dakota or a manufacturer in Nebraska. This is not a person who said, ''Gee, I have an idea. I want to go to my bank, borrow a little bit of money, put a little bit of my money on the line, go into business and get customers to buy my products.''

You have 12 stations on that list on the left. These are franchises granted by the people's Government to these businesses. In the case of each of these stations, even if some of them do not make any money, just by holding a contract with the Government, the franchise that they have been given has value. They sometimes sell these stations for 20 times earnings simply because people know that there are a limited number of franchises. There are only so many that we can grant to these companies.

So they own something that the people have given them, they have made money as a consequence of the Government having granted them a license, and now they come in and object, very often, to us putting rules in place. They say, ''Oh, no, let the market take care of this.''

They did not make their money off the market to begin with. Certainly, they are out there selling and certainly there is a competitive environment. It seems to me, however, that it is a different kind of business than most small businesses and most entrepreneurs and most free enterprise capitalists who start off and try and engage in the competitive exercise of producing revenue from customers.

Mr. DORGAN. I agree with the Senator. The point is, these are important properties, and the reason we provide them franchises is the communication industry is a very important industry. I am not unmindful of the fact that some of these are very good corporations, very well run. I am not critical of individual corporations. I am critical of a mindset that says it does not matter how big you get, you can combine all you want and earn all you want and the public interest be damned. I am critical of that, because I think there is a public interest in maintaining and fostering competition in this country. The fewer corporations you have in an industry, the greater concentration you have, by definition the less competition you have. And that does not auger well for the American people.

The Wall Street Journal has an article. I want to read the headline: ''Immediate Consolidation Has Left and Right Worried About Big Firms Getting a Lock on Information.''

You talk about an odd couple. A picture of Bill Bennett and Jesse Jackson. That is both ends of the political spectrum, both of them essentially saying the same things: Worried about media concentration, media consolidation, stemming the flow of ideas, the competition that comes from having ideas moving from different centers of energy.

We need to reform our telecommunications laws. But this bill is in deep, deep trouble. If you try to push this bill through the White House, I think the President is going to veto it. I think what he said publicly indicates he is going to veto it, and I think he should veto it. He ought not in a million years allow a bill to come to the White House where a bunch of politicians decide, ''Hey, boys, let's take the limit off the number of television stations you can own. Let's say the sky is the limit.'' That is not in the public interest. That may be part of a deal somebody wants to make around here, but that is not in the public interest.

That is why when we had a vote on an amendment I offered, with the help of the Senator BOB KERRY from Nebraska, we prevailed, that is why we won. A lot of folks did not feel comfortable voting against an amendment that says, ''Hey, let's have the FCC determine what kind of limits are in the public interest, instead of a bunch of politicians saying we are arbitrarily going to say the sky is the limit on the number of television stations you own.''

So we won the vote, and then, politics of course—and somebody changes their vote and we lose.

The reason I come to the floor today is to say, if you try to push this kind of bill without a role for the Department of Justice on the issue of antitrust and on the issue of where there is competition with respect to the telephone industry, and when local carriers who have a monopoly are free to go out and compete in the long distance area, if you try to push a bill without the opportunity for the Justice Department to weigh in on this question of public interest and competition, I think the President will veto it.

If you try to push a telecommunications bill through conference committee that says the sky is the limit on television ownership, we do not care about concentration—the bigger the better, and the less competition the better, I think this President will veto it.

In conference, if we can make changes in this bill dealing with ownership limits on television stations and radio stations and make some changes with respect to the role of the Department of Justice, I think this bill will advance. If it keeps protection for universal service, then this bill can and will advance and should be signed by the President. If not, I hope very much the President says, no, this is radical and extreme and should not pass.

I yield the floor to my friend from Nebraska, Senator KERREY.

Mr. KERREY. Mr. President, first of all, I thank my friend from North Dakota for this presentation. I would like to be able to vote for a piece of legislation. I have spent a great deal of time on telecommunications. I am prepared to not only embrace the future but place a bet that there is tremendous opportunity for us in technology. Many of our systems need to rapidly acquire the transmission capacity to use these new technologies, as the computer moves from a calculating device to a communication device—I think, especially, for example, for our university systems.

I just had a meeting a couple of weeks ago in Nebraska with an individual with a very large software company who happens to be from a farm not far from Ashland, NE, and who came back to try to help us bring computer technology into our university. It is a tough transition. The university is sitting there with a real problem. They

have increased enrollment as people recognize that a college degree is worth an awful lot more than a high school degree. Student enrollment has almost doubled in a 4-year period as that demand goes up. In addition, what a person needs to know coming out of college is that there is a doubling, tripling, quadrupling of the requirements of the universities and they cannot get the professors and instructors to do more for less. The tax base will not allow us to build more buildings rapidly enough to be able to accommodate the demands. Only one thing can do that for us, and that is computer technology.

We are trying to figure out how to get these systems into an old system that does not replace the old system but augments it. Well, there are real serious problems trying to make those adjustments. We just got a couple of grants to match local commitments for three schools in the State through the Department of Education, and that will leverage a great deal of the private sector, as well as local money, to get the job done. But those are a couple of schools amongst many who are trying to bring this technology into the educational environment. I was pleased that a majority of this body, the Senate—I do not believe it is in the House bill—but in the Senate language we included a provision I cosponsored which provides for preferential rates for local K–12 schools. Connectivity may represent only 17 percent of the total cost of bringing information technology into local schools, but it is an awful lot of money. It is a principal barrier for many communities that do not, as I say, have competitive choice; they do not have competitive choice now, and they are not likely to see it for a long period of time.

So I do not want anybody to suffer under the illusion that I do not support change. I believe our telecommunications laws need to be changed. I am prepared to embrace the future. I am prepared to put down a bet. I am prepared to help institutions from the K-through-12 environment through the postsecondary, and indeed for Congress to bring this technology in so it becomes part of our core competency so that we are able to improve our efficiency.

We are going to debate in reconciliation the earned-income tax credit. One of the biggest reasons EITC has had trouble has nothing to do with the merits of being able to help people at the lower end of the economic scale—a woman, for example, that you see at your checkout stand at the grocery store making $7, $8 an hour, $12,000 to $15,000 a year, trying to support a couple of kids. That is better than being on welfare. So we want to refund your taxes and give you a couple thousand dollars so you can buy health insurance. Well, the IRS has a tough time doing it because it does not have a good information system.

I am prepared to embrace technology and place a bet because I believe there is tremendous merit in it. However, if we change the law to produce less competition, not more, to concentrate the power into fewer and fewer hands, to concentrate not only the power of economic decisions—but, I point out to Americans, it will concentrate the power of the individuals to be making decisions about what to tell us is going on in the world—these deals being done in anticipation of this law being changed will present Americans in their homes with fewer news choices. Fewer people will be telling us what is going on out there in the world.

I would love to be able to stand on this floor and vote for a piece of legislation that changes the law. I believe strongly, first of all, that there needs to be preferential rates for education. I believe strongly what the Senator from North Dakota is saying, that concentration in television stations would be a mistake. I believe strongly, as well, that we are far better off, instead of having a 10-part test that the Federal Communications Commission is going to look at to determine whether there is competition, to have the Department of Justice with a role in making the decision regarding entry by the regional Bell operating companies into the long distance market.

Mr. President, earlier, before I came to the floor, I was discussing with staff the reconciliation bill, trying to prepare myself for that debate. There is a lot about it that we do not know yet. We have not seen the details on the Medicaid proposal or the Medicare proposal, and there is a lot of discussion on the tax side of it and so forth.

One of the things I have said to staff is—and I will say to the people at home when discussing this—before we can talk about what kind of a budget we have here in Washington, we have to have jobs and growth and income out there in the private sector. That is where the money comes from. One of the most remarkable constants in this town over the last 70–80 years, really—is that the percentage of money that we withdraw for Federal expenditures from the economy has stayed, except for World War II and the Vietnam war, roughly 19 percent. It is about $1 out of $5 we bring to Washington for a variety of things. One of the disturbing things I find is that we are transferring more and more of that and investing less of it. Almost 7 cents out of every 10 cents, or 70 cents out of every dollar today, is transferred out for retirement, health care, or other sorts of things. That is a real concern.

We now know there is a great deal of consensus—and some may not believe this, but I believe that it is important for us to have laws, whether it is the regulations we have or the tax laws we have, and it is important for us to have expenditure patterns that produce economic growth.

Without economic growth, without people out there that are willing to invest money and willing to run the risk, whether it is a big or small business, it seems to me that we have serious problems.

Indeed, during the week that we took off to be at home last week, the Census Bureau came out with numbers that showed that as a result of the economic growth that we have been enjoying in the last 15-some months, we have seen the rates of poverty drop—not just the rates of poverty, but the number of people who are trapped in poverty has decreased. In almost every State—certainly in Nebraska—as a result of economic growth, we saw a substantial decrease of almost 20 percent in the number of people who are in poverty.

Now, the alarming thing in that—we know if we have rules and regulations and tax structure and expenditure patterns that produce economic growth, which we have to constantly watch and make sure that we have, if we have economic growth then we do see the boats of those who are poor begin to lift, a good piece of news.

However, the Census Bureau said there is a continuation of the widening between the economic haves—those in the work force, not on welfare, at the lower end of the economic spectrum—and those like Members of Congress that are at the higher end of the economic spectrum. There is a widening gap. The market growth all by itself does not seem to be fixing that problem.

One of the downward pressures upon wages in this country is the concentration of power. No question about it. You cannot read whether it is a bank merger or a megamedia deal that the Senator from North Dakota talked about earlier, every single one of the transactions talks about thousands of people being laid off. Every one.

You have the Time-Warner-Turner deal up there earlier, that was the most egregious example, because they said 5,000 to 10,000 jobs would be lost. However, the good news is Ted Turner will get $20 million a year for 5 years and a convicted felon will get $50 million—Mike Milken.

Workers out there are saying, well, we are doing everything we are supposed to be doing; should the laws of this country be written so that people can come in and merge the deal? And maybe it is a good deal. I am not coming down here proposing we change the law to prohibit this, but it is painfully obvious that inside of this transaction we are creating something that will create significant problems: 5,000 to 10,000 people being laid off, and a couple of guys making a heck of a lot of money.

It is not like we are talking about somebody starting a chain of restaurants or somebody—a doctor or somebody—that started a business from scratch.

These are companies that made their money as a consequence of a Government franchise. They were given the right to broadcast. They were given the

right to operate cable companies. They did not go out there and start this business out there in the wild blue yonder.

Mr. BURNS. Would the Senator yield?

Mr. KERREY. I am happy to yield to the Senator.

Mr. BURNS. Would you also relate what you are talking about to the Homestead Act?

Were the farms and lands granted to individual ownership by an act of the Homestead Act?

Mr. KERREY. If you want to talk of the Homestead Act, it has many specific requirements for the individual to develop, and if they worked the land and developed the land, they owned the land.

Mr. BURNS. Would you make the same comparison that spectrum—even though granted by this Government—has no value unless investment is made in equipment to make it valuable in the Government, I suggest to my friend in Nebraska, the Government did not go out there and buy—did not put up the tower, did not pay for the technology.

Mr. KERREY. I am pleased to acknowledge that is the case, in fact. No question that it is true that when we give somebody a monopoly franchise, when we give them that and say it is yours, there is no question they have to make an investment.

Mr. BURNS. Did we not make the same requirements when we gave the land, probably what your house sets on, and our house and my house, probably the folks up there, did we not make the same demand that we had to make——

Mr. KERREY. Mr. President, I ask the Senator from Montana, what is the point? I acknowledge that is the case.

Mr. BURNS. The point is that the land was granted and then there was a property right. The point is there was a property right—they could buy and sell that land from that point on without Government intrusion.

I just want to make that comparison, and I also ask is there anything in this act——

Mr. KERREY. I can answer the question, now I understand what the Senator is saying.

You are saying that bandwidth and a piece of real estate are the same? They are not the same. In that regard they are not the same. The people's airwaves are licensed.

Mr. BURNS. If it were not for the Homestead Act you could say it is people's land.

Mr. KERREY. It is not the same.

Mr. President, I ask the Senator from Montana, did the Senator believe we should not pass laws restricting what broadcasters can put over the airwaves? We do not have similar laws for people in their home. I can engage in any kind of discussion I want inside my house.

Do you think, I ask the Senator from Montana, should we have pornography laws in place or let the market dictate—they own it, for gosh sakes. Let them put whatever they want over the airwaves. Does the Senator from Montana believe the Government should not write decency laws in place to protect the communities?

Mr. BURNS. I imagine if you did that on private land you will have a neighbor holler at you.

Mr. KERREY. I ask the Senator from Montana a question: Does he believe that the people of the United States, having granted a franchise to somebody to operate a service using a piece of the frequency bandwidth, should say, ''You own it, do whatever you want? It is yours, have some fun with it. If you want to show pornography on television at 6 o'clock go do it.''

I am asking the Senator from Montana, does he believe that the people's laws should be written to protect against pornography, or does he believe we ought to change the laws to say, no, you own that, we get rid of pornography laws, let the market take care of it?

Mr. BURNS. I say there are certain rules but there are rules and regulations placed on land ownership.

I want to say that the land originally that was purchased by this Government through the Louisiana Purchase was paid for by the taxpayers of this country, taken from the Treasury. And then it was given, 160 acres to anybody that wanted it, who could stake it out and build a house and make it produce. After that it becomes—

I say what is the difference when you take a grant from a Government on a resource——

Mr. DORGAN. Let me reclaim my time, if the Senator would indulge me.

Mr. KERREY. I have the floor, Mr. President. I yielded to the distinguished Senator from Montana to ask a question and we have gone beyond that.

I am perfectly willing to have a debate about the comparative analysis between the Homestead Act and private property and franchises granted to phone companies to have a monopoly to deliver a local telephone service or to a television station or radio station to broadcast over public airspace.

I am perfectly willing to acknowledge certainly there is a similarity in having granted that franchise that people make substantial investments.

Mr. DORGAN. If the Senator would yield, the Senator from Montana raises an interesting but irrelevant question.

It is always interesting to hear irrelevant questions but this is irrelevant.

I guess the proposition you are trying to develop here is that concentration does not matter. If you receive a franchise to send a television signal, you have that and you do what you want. If you want to concentrate and bring them into one ownership pattern in this country that is fine.

The issue here we are talking about is concentration—not the television band, but the concentration.

I bet the Senator from Montana cares a little bit about concentration in the meatpacking industry. We have not talked about that. But I bet when you have three, four, five companies commanding 85 to 90 percent of the meatpacking industry, creating the neck on top of that bottle that forces down ranchers and holds their prices down, I bet the Senator from Montana cares about that.

If he does, and I think he does, and I care not only about that but I care about the big agrifactories that will be the superagrifactories farming America pretty soon, the fewer family farmers we have the more concentration you have and the less advantage you will have for the consumer because it is not in this country's interest to see concentration. It is in this country's interest to see broad-based economic ownership.

If it is true that the Senator from Montana believes that concentration in the meatpacking industry is a problem, and I think he does, and God bless him for that, I think that is in the interest of Montana ranchers and North Dakota ranchers to believe that, is there a point at which the Senator from Montana would believe that concentration in this industry is a problem?

If there is, then we ought to debate where is that point. He may figure you can have a dozen more of these mergers and there is not a problem but this will be a point, I assume, where he might also think that the concentration in an industry we are moving about ideas and information is as dangerous in this country as the concentration in the meatpacking industry is to his ranchers.

If that is the case, then we ought to be debating not whether concentration is good or bad, but how many more of these does one need to see before one understands that saying the sky is the limit on the number of television stations you can own is good for America. That is the point we are making today.

Mr. BURNS. I would get very upset. We have already filed an action, as far as IBP is concerned, on meat packing.

Mr. DORGAN. So the Senator agrees the concentration of the meatpacking industry is damaging?

Mr. BURNS. I would. I would be very concerned about this. But there is nothing in this piece of legislation as passed by this Senate that repealed the Sherman Antitrust Act. We did not repeal the Clayton Act, or the Hart-Scott-Rodino Act.

In other words, the Justice Department is not cut out of this. Somebody has to bring an action, and I imagine before now—and, remember, this is happening under the present law. This is happening under the present law. Not under one we are going to go to conference on.

Mr. DORGAN. But some of this is happening in anticipation of us passing what my colleague and others have supported. In fact, some of these mergers now have more television stations involved than they are permitted to hold. Why would they do that? Because

they know some in here have said we want to take the limits off the number of television stations you can own, so, because they are going to do that for us, we are going to start gearing up and have more stations than the current law allows. So they are anticipating what you are going to do for them. I am saying what you are going to do for them is not good for this country, that is the point.

Mr. BURNS. This Senator is not going to get into the business of forecasting what might happen. I am saying this is probably the biggest jobs bill we will pass. I just wanted to throw that in there.

Do we repeal any of those antitrust acts that are now the law of the land? No. And, on spectrum, has it any value at all until someone makes the investment to make it valuable? And then does it become a property right? That is what we have to see.

Those of us who live in the West—I think the Senator from North Dakota is very sound in his thinking, and understands the same values that I understand, because western North Dakota and eastern Montana are awfully a lot alike, on the way they think. But, if we took that case, basically, then maybe we should not have granted all that land to private ownership. Maybe we should have Government control all the way. In other words, I do not know how it is halfway/halfway/halfway.

But I ask those questions. I would be concerned about concentration because I think we will finally get to a point where Justice will have to step in on the meatpacking industry. But we have the laws in place for them to do so. The same laws would apply to concentration here.

Mr. DORGAN. My point is—and let me restate the point, probably more clearly. My point is on both areas of this bill. One is the trigger of when you have competition in the local telephone exchange so the monopoly carriers there, the Bell systems, are allowed to go out and compete against long-distance carriers. That trigger is a trigger that does not have the active participation of the Justice Department determining when there is competition. So you have, in my judgment, largely eliminated or limited Justice's role. Second, my point is we have affirmatively changed the law in this legislation that says: We used to say you can only own 12 television stations in this country because we thought that was in the public interest, but, guess what, we have folks here generous enough to believe you ought to be able to own as many as you like, the sky is the limit. Both of those changes, both of those actions taken by this Chamber, in my judgment, move against the public interest. That is the point of it.

The fact is, there are things in this bill that are good. I agree with that. And we ought to do a bill. I agree with that. But you move this bill with those provisions in it forward and it is going to get vetoed and it ought to get vetoed. That is the point of it.

We are about to appoint conferees to sit and have a conference, and there is not much disagreement between the House and Senate on these provisions, unfortunately. We have sort of the same mindset. My point is, it is a mindset not good for the people of this country.

The Senator from Montana makes some interesting points on the issue of spectrum. ''Is it not true that when spectrum is given someone and that person makes an investment, does that not enhance the value of the spectrum?'' So, of course, the Senator wins a debate we were not having. Of course. That is not the point. The point is concentration.

It is the point in both areas we are talking about, the telephone service and competition, the issue of concentration, and the issue of when the Department of Justice has a role and what role. And also the issue of concentration of media ownership.

I should put up a couple of other charts. I had a chart of TCI, a very large cable company, and a chart with Viacom, which has substantial holdings in a number of areas.

Let me point out, it is not my intention to say many of these companies are bad companies. They are wonderful companies, that have done breathtaking things in communications for which I offer them my heartfelt congratulations. Substantial progress has been made as a result of inventive people who work in these companies.

My point is concentration of ownership. I am a Jeffersonian Democrat. I am one of those people who believe broad-based economic ownership and healthy, robust competition is what advances and drives the best interests of this country. Concentration always augers against the interests of the market system in this country, in my judgment.

I will be happy to yield again to the Senator from Nebraska.

Mr. KERREY. Mr. President, I have said about all I need to say on this subject, having talked on it previously. I just say again, I would love to vote for a piece of legislation. I hope the conference committee comes back with one in a form I am able to vote for it. I am prepared not to just embrace the future but to make a bet, based on my strong belief that there is tremendous opportunity in education, tremendous opportunity for jobs in these new technologies.

But there are 100 million households in this country and each one of those individual households has very little economic power. When it comes time for them to make a purchase of cable service or phone service, when they are buying information services they are not buying at $1 million a month. They are buying at $20, $30, $40, $50 a month; very little economic power, very little. And the 16,000 school districts in America that operate individual schools at the local level, they have very little economic power. Both as a consumer of telecommunications services and as somebody who has been working with school districts in Nebraska, trying to get them hooked up to the Internet, trying to get them enhanced information services, I can tell you that when you do not have much economic power you do not have much choice. You do not have much leverage. You do not have much opportunity.

These guys who are doing these deals, they have real power. When you have a couple of billion dollars you can leverage an awful lot. But when you do not have much economic power you cannot.

The importance of this is not only consumer choice, not only the kinds of decisions that our citizens will be making as a consequence of who tells them what is going on in the world—and they are getting fewer and fewer numbers of people telling them what is going on in the world—not only is it relevant for those individuals in the household, but it is terribly relevant for our economy. Our economy has been robust and develops as a consequence of a competitive environment. The competition that matters the most is that entrepreneur who starts in business, who says, ''I would like to approach that household, I would like to sell packaged information services in the households in Omaha, the households throughout this country, I would like to be able to approach those consumers and try to give them a competitive option and a competitive alternative.''

Those are the people that this legislation ignores. This legislation has been put together with far more concern about the national companies, the regional companies—whether it is long distance or local—who come here and say this is what this is going to do for me, this is what it is going to do for the other guy.

This has been a balancing act from the beginning, between a range of corporations, long distance and local versus cable versus publishers versus all these big guys and gals who come into Washington and have access and are able to come and talk to us. This has not been put together by the entrepreneurs of America. It has not been put together by the consumers of America. It has not been put together by people who are either going to create the jobs—and most of the new jobs are not going to be created by these megacompanies. They are going to be created by the smaller startup companies. It has not been put together, in my judgment, in a fashion that is going to enable competition to really produce the benefits this Nation, I think, deserves and needs and expects.

Mr. DORGAN. Mr. President, I was originally considering, along with the Senator from Nebraska, offering a motion to instruct conferees this morning. But it turned out to be something that we thought was probably not

fruitful and not the thing to do. So we, instead, came to the floor to describe a couple of major areas of this bill that tell us, and I think tell a lot of people, this bill is in trouble.

I hope after a lot of reflection that conferees will recant or repent or rethink these two issues and address the issue of competition in the right way. You cannot advertise competition when in fact the product you are describing is enhancing concentration. That is mislabeling. There is much to commend this legislation for, but these areas are of great concern to us.

I hope very much that we get a different result out of this conference. We decided not to offer a motion to instruct. But there is going to be a lot of attention paid to this conference by us, and by a lot of others in this country. The result of this conference will have a significant impact on what people in this country will experience in the future.

Mr. President, how much time is remaining?

The PRESIDING OFFICER. Thirty minutes.

Mr. DORGAN. Mr. President, I have finished my presentation. The Senator from Nebraska has finished. The Senator from Vermont wanted 3 or 4 or 5 minutes. I will allow the Senator from Vermont to take whatever time he wishes and ask that he return the remaining time.

It is my understanding that the other side does not intend to use his time. When the Senator from Vermont completes his statement, we are finished with respect to the time agreement.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I thank my good friend from North Dakota. I was at another hearing, and I heard this debate was proceeding on the floor. I am concerned that we may end up in a situation with this conference where, among other things, the Senate does not even have Members of the Judiciary Committee on the conference.

The distinguished senior Senator from South Carolina, Senator THURMOND, who chairs the Antitrust Subcommittee of the Judiciary Committee, and I have written to the majority and minority leaders on this legislation asking that we be named, or people from our subcommittee on antitrust be named to the conference. I believe the House has named a number of Judiciary Committee members to their conference. Yet, we do not have anybody from the Judiciary Committee here.

There are significant antitrust issues. There are significant consumer issues. There are significant competitive issues, all of which have been looked at, explored and discussed by the Judiciary Committee. Yet, Senate Judiciary members will have no input in the conference, and we all know the bill is going to be written in conference.

When we remove competitive incentives, we all know what happens. Take a look at the cable industry. If you are fortunate enough to get cable television in Fairfax County, VA, you are faced with using antiquated equipment in the form of a set-top box that is kept on only because the consumers have to pay a monthly fee to use it even though the stuff would be in the trash bin otherwise. You pay a significant amount of money. But they can do that. They can give you an inferior product. They can give you out-of-date equipment. They can charge you for the use of outdated equipment because the cable company has a monopoly.

We are going to see some of the same things happen here without competition and without the consumer being considered in any way, shape or manner.

This bothers me a great, great deal, and it should bother all Senators, as it does Senator THURMOND and myself. This is not a conservative issue. Obviously, the two of us join on this question. But, rather, it is a basic, goodsense consumer issue. If you end up getting gouged in your cost, the people gouged will be both Republicans and Democrats and Independents. The people gouged will be in the North, the South, the East, and the West. One thing they will all share in common may not be a political ideology, but it will be the pain they will feel in their pocketbooks.

Yesterday, the House appointed 34 conferees to this conference. Of those 34, 14 of them came from the House Judiciary Committee. We do not see—as yet anyway—any Senate Judiciary conferees at all. They have 14. We do not even see any coming from the Senate Judiciary Committee.

As I said, earlier, Senator THURMOND and I sent a letter to the chairman and the ranking members of the Commerce Committee making clear our view that you should have Senate Judiciary Committee members. We would help with the conference to assure that those issues relating to antitrust and competition are resolved in a principled manner, good both for American business and American consumers.

If anyone would look at the hearings that Senator THURMOND and I and other members of our subcommittee have held on telecommunications legislation, they would see stressed the need for telecommunications reform both for business and for consumers.

Certainly, it does not take any special knowledge to know how critical telecommunications is to the economic health of our country, or to the education of our children, or to the delivery of health care services to our citizens, or to the overall quality of life in this country. In fact, the explosion of all these new technologies in telecommunications has fueled many of our newest innovations.

In the way I run my office—I know the distinguished Presiding Officer does the same—we do virtually everything in telecommunications by our computers. Just as frequently as we see memos or letters on paper, we also see electronic messages sent by computers. I stay connected by computer and telephone at home in the Washington area, in my home in Vermont, and at my office here at the Capitol. It is a given. When I get to Vermont this weekend, I will in effect be able to bring my office and my files, my filing cabinets, my staff, and everything else with me with a laptop computer. More and more of us do that. More and more of us are more efficient doing that.

But when we have legislation like this, we want to make sure that it expands those abilities and not contract them. Our challenge is to keep pace with the changes in the marketplace. But, if in keeping pace with them you pass legislation that stifles the growth of the industry, that quashes the opportunity presented by rapidly expanding telecommunications technology, then we have done a disservice to the country. We have done a disservice to consumers. We have done a disservice to business. We have done a disservice to the competitive edge of our Nation as we go into the next century.

So we have to make sure that our laws governing our telecommunications industries provide for future growth but to the benefit of consumers. We have to make sure that the promise of this legislation to open up competition in telecommunications is fulfilled because that is the bottom-line purpose of this legislation: to open up competition in telecommunications. If we do it wrong, we will not see new competition. We will see competition stifled. We will not see new innovation. We will see innovation stifled. We will not see consumers benefited. We will see consumers harmed. We will not see a cutting-edge industry having a chance to expand, but rather see the cutting-edge industry facing a dead end.

We have to understand that the Senate telecommunications bill is significantly different from the one passed by the House. This conference is going to be one of the most complicated, complex and difficult ones we have had in years. The conference is going to have to pick and choose between provisions in the two bills, provisions that are in many cases unreconcilable. They are not provisions like in an appropriations bill where maybe we can just split the difference. It is a case that you are either going to have to craft an entirely new provision or drop one or the other.

I think that given that situation it would be helpful to have input of Members with expert knowledge in antitrust issues. In fact, on the modification of final judgment, the MFJ, the House, to their credit, realizes that and has put Judiciary Committee members on the conference. The Senate has yet to do it.

In fact, the administration now threatens to veto this legislation for a number of reasons, including the need

for a stronger test for Bell company entry into the long-distance business and also a more meaningful role for the Justice Department.

I also share the administration's concern about the legislation not only taking the lid off but also promoting increased cable rates. I mean, we have already lived through a period of skyrocketing cable rates. Congress took action to address the problem of cable rate increases when we passed the 1992 Cable Act over a Presidential veto. Let us not go backward in time, but go forward with responsible telecommunications reform.

Again, I use Fairfax County as an example. Here you see rates go up for antiquated equipment. Rates go up, we are told, for all these channels we get, most of which I doubt if anybody including the cable system ever watch. But if at 3 o'clock in the morning, you are moved with a great desire to buy 10 pounds of zircons, you have at least five channels that you are paying for to know where you can buy those 10 pounds of zircons. Or, if you need to have your soul saved there are at least 10 different people at any given time who will tell you that your soul will be saved but only if you send the money to them. I guess they give you a plaque saying you have been saved. None of the 10 says why the other 9 should not get the money and why you get less soul salvation from them.

Well, that is fine, but I just wonder whether there might be a little more filtering, a little more selectivity, if there was competition here. Without competition, their rates go up. We see the same thing in local telephone service. Their rates go up because competition is not yet available.

Now, we know that there is a need for new legislation. Certainly the legislation from the 1950's, 1960's, 1970's, and early 1980's cannot keep up with the technology of today. But let us make sure we do not turn the clock back both for business and consumers. Rather, give us a chance to use the marketing and technological genius of our great country as we go into the next century.

I worry also about issues like criminal penalties for engaging in constitutionally protected speech that occurs over computer networks. Right now a provision in the Senate telecommunications bill would penalize you, if you are, for example, a botanist and click onto an online article on wild orchids, but suddenly find something that is not the kind of wild orchid you grow in your planter but reference to an obscene movie. The fact that you even clicked on, downloaded and found out what it was, you could be prosecuted. The distinguished Presiding Officer uses the Internet as I do, uses his computer as I do. Not that this would ever happen, but suppose he sends me a message disagreeing—I say it would probably never happen—but disagreeing with a political position I took. And suppose I sent back a message to him and in the heat of the moment was less than senatorial in my courtesy toward him and used terms that neither he nor I would use. I use this, of course, as a hypothetical, Mr. President. I could be prosecuted under this bill for doing it.

The interesting thing is he might be prosecuted for receiving it even before he knew what was in there, and certainly should he get incensed by what he received he could be in a real heap of hurt if he sent back, and you're one, too.

These are the kinds of silly things that we have crafted in this telecommunications bill that we ought to take a second look at. It might make us all feel good at the moment, but the long-range implications are weird and we ought to look at all of these issues.

The distinguished chairman of the Commerce Committee, the distinguished chairman of the Judiciary Committee, the distinguished ranking members of both of those committees and so many other Members in this body, Republicans and Democrats alike, have worked so hard to get a bill out of here. Let us not in almost a sense of final relief of throwing it out the door, throw out something that is going to come back and bite us. It will not just bite the 100 of us, but hundreds of millions of consumers and dozens and dozens of businesses that deserve better.

So let us appoint Judiciary Committee members. It does not guarantee that everything that I might want or Senator THURMOND might want would be on that bill by any means. But it might mean that those with expertise in the areas of antitrust, first amendment rights, and so on, would have a choice, and we might have better legislation as a result.

Mr. President, I understand that neither the distinguished Senator from North Dakota nor anybody else wishes to speak over here.

I might ask the distinguished Senator from South Dakota if it is his same feeling as the distinguished Senator from North Dakota, that upon completion of this we just yield back all the time?

I understand it is, Mr. President, and I yield back all time.

Mr. PRESSLER. Mr. President, I would just like to make a couple of remarks regarding the distinguished Senator from Nebraska.

Mr. LEAHY. In that case I think I will reserve the remainder of the time, Mr. President.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PRESSLER. Mr. President, I would say that through this legislation we are trying to address and correct some of the problems raised, and we will be proceeding with the conferees after they are agreed to. I thank all of my colleagues who have participated in this debate, and I am prepared to yield back the remainder of our time on this side.

I am prepared to yield back the remainder of our time.

Mr. LEAHY. I yield back the remainder of our time.

The PRESIDING OFFICER. Under the previous order, the Senate disagrees with the amendments of the House, agrees to a conference requested by the House on the disagreeing votes of the two Houses, and the Chair appoints the following conferees: Senators PRESSLER, STEVENS, MCCAIN, BURNS, GORTON, LOTT, HOLLINGS, INOUYE, FORD, EXON, and ROCKEFELLER.

Mr. PRESSLER. Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

HOUSE-SENATE CONFERENCE ON TELECOMMUNICATIONS REFORM HAS IMPLICATIONS FOR FIRST AMENDMENT APPLICATION TO THE INTERNET

Mr. FEINGOLD. Mr. President, today the Senate appointed Members to the House-Senate conference committee on telecommunications reform. The historic nature of this legislation and its effect on the lives of every citizen of this country goes well beyond the issues associated with regulation of telephony, cable rates, and other forms of communications. Mr. President, this legislation has dramatic implications for the first amendment rights of every American.

Mr. President, I am referring to the precedent-setting provisions in S. 652 and H.R. 1555 regarding indecency on the Internet. I am here today to urge each Senate conferee to take the first amendment issues of these bills seriously and to consider the ramifications of these provisions not just for speech on the Internet but for all speech in this country. During conference deliberations, I urge Senate conferees to strike the potentially unconstitutional provisions regarding on-line indecency contained in both the Senate and House versions of this legislation.

The issue of Government censorship of the Internet is a critical first amendment matter. Guaranteeing the Internet is free of speech restrictions, other than the statutory restrictions on obscenity and pornography on the Internet which already exist, should be of concern to all Americans who want to be able to freely discuss issues of importance to them regardless of whether others might view those statements as offensive or distasteful.

Specifically, Mr. President, the Exon-Coats amendment, added to S. 652 on the Senate floor, included provisions which I believe violate the first amendment rights of Internet users and will have a chilling effect on further economic and technological development of this exciting new form of

telecommunications. When this matter was considered on the Senate floor, I urged my colleagues to reject the Exon-Coats amendment in favor of legislation requiring the Department of Justice to carefully study the applicability of existing obscenity statutes to computer networks, which Senator LEAHY and I offered as an alternative.

Specifically I have objected to the indecency provisions of S. 652 for the following reasons:

First, indecent speech, unlike obscenity, is protected under the first amendment to the U.S. Constitution; second, an outright ban on indecent speech on computer networks is not the least restrictive means of protecting children from exposure to such speech on the Internet. There are a number of existing tools available today to allow parents to protect their children from materials which they find inappropriate; third, a ban on indecent speech to minors on the Internet will unnecessarily require adults to self-censor their communications on the Internet; fourth, since indecency will be defined by community standards, protected speech by adults will be diminished to what might be considered decent in the most conservative community in the United States and to what might be appropriate for very young children; fifth, the on-line indecency provisions will establish different standards for the same material that appears in print and on the computer screen. Works that are completely legal in the bookstore or on the library shelf would be criminal if transmitted over computer networks; sixth, the Supreme Court has ruled that the degree to which content can be regulated depends on the characteristics of the media. The unique nature of interactive media must be considered when determining how best to protect children. S. 652 ignores the degree to which users have control over the materials to which they are exposed as well as the decentralized nature of interactive technology which liken it more to print media than broadcast media.

Mr. President, the Senate was not alone in its rush to judgment on the controversial and highly emotional issue of pornography accessed via computer networks. Section 403 of H.R. 1555, known as the Hyde amendment, raises equally serious concerns with respect to the first amendment and appears antithetical to other provisions contained in the House bill. The prohibitions against on-line indecency contained in the Hyde language will have a similar chilling effect on the on-line communications of adults. The Hyde amendment is also inconsistent with the more market oriented and less intrusive provisions of section 104 of H.R. 1555, the On-Line Family Empowerment Act introduced by Congressmen COX and WYDEN, as adopted by the House. Section 104 recognizes that first amendment protections must apply to on-line communications by prohibiting FCC content regulation of the Internet. The Cox-Wyden provisions also promote the use of existing technology to empower parents to protect their children from objectionable materials on the Internet, and encourages on-line service providers to self-police offensive communications over their private services.

In addition, the Hyde amendment is incompatible with the pro-first amendment provisions of section 110 of H.R. 1555, which requires a report by the Department of Justice [DOJ] on existing criminal obscenity and child pornography statutes and their applicability to cyber-crime. Section 110 also requires an evaluation of the technical means available to enable parents to exercise control over the information that their children receive on the Internet. Perhaps most significantly, section 110 embraces the application of first amendment speech protections to interactive media. H.R. 1555, while embracing the principles of restraint with respect to new criminal sanctions on protected speech and the promotion of a free-market parental empowerment approach, simultaneously ignores both of those axioms with the Hyde provision. By imposing new criminal sanctions on indecent speech and amending existing criminal statutes, the Hyde amendment rushes to judgment before the DOJ study has even begun.

Mr. President, recently the Senate Judiciary Committee held the first ever congressional hearing on the issue of cyberporn. Based on the testimony of the witnesses, which included parents as well as victims of cyberporn, it became clear that the objectionable communications on the Internet are already covered by existing criminal statutes. The concerns raised at the hearing centered upon trafficking of child pornography, the proliferation of obscenity, and the solicitation and victimization of minors via the Internet. However, those offenses are already violations of criminal law. Indeed, recent press accounts indicate that law enforcement officers are already aggressively prosecuting on-line users for violations of criminal law relating to obscenity and child pornography.

It is critical that we use law enforcement resources to prosecute criminal activity conducted via the Internet and not be distracted by the issue of indecency which has not been identified as a serious concern by users or parents. It was clear, during our recent Senate hearing, that the witnesses' concerns about the Internet did not relate to indecent speech or the so-called seven dirty words. It is incumbent upon Congress to wait for the results of the study required by H.R. 1555 before embracing overly restrictive, potentially unnecessary, and possibly unconstitutional prohibitions on indecent speech contained in both versions of telecommunications reform legislation.

Mr. President, I urge the conference committee to reject the Exon-Coats and Hyde provisions during its deliberations and to maintain the Cox-Wyden amendment adopted overwhelmingly by the House of Representatives. If the United States is to ever fully realize the benefits of interactive telecommunications technology, we cannot allow the heavy hand of Congress to unduly interfere with communications on this medium.

Furthermore, Mr. President, I urge Senate conferees to recognize that if the first amendment has any relevancy at all in the 1990's, it must be applied to speech on the Internet. As Members of this body sworn to uphold the Constitution we cannot take a cafeteria style approach to the first amendment, protecting the same speech in some forms of media and not in others. Shifting political views about what types of speech are viewed as distasteful should not be allowed to determine what is or is not an appropriate use of electronic communications. While the current target of our political climate is indecent speech—the so-called seven dirty words—a weakening of first amendment protections could lead to the censorship of other crucial types of speech, including religious expression and political dissent.

I believe the censorship of the Internet is a perilous road for the Congress to walk down. It sets a dangerous precedent for first amendment protections and it is unclear where that road will end.

CHILDREN'S TELEVISION

Mr. LIEBERMAN. Mr. President, I rise today to continue the discussion that I gather a few of my colleagues here in the Senate began earlier in the day as a result of the fact that conferees have been appointed to deal with the telecommunications bills that have passed both the Senate and the other body. These are very important bills dealing with a rapidly expanding, rapidly changing, ever more influential sector of not only our economy but our lives, that of telecommunications.

I rise today not to talk about the corporate structures that are overlapping or the technical details of the revolutionary changes occurring in telecommunications but to talk about the content, talk about what is broadcast on these increasingly important parts of our lives and particularly to focus on the ever-present box, the television, in our homes and the impact that what is on television has on our kids and therefore on our society.

The Senate and the House included in their telecommunications bills the so-called V chip, or violence chip, or C chip, as we like to call it, choice chip provisions that I was privileged to cosponsor with the Senator from North Dakota [Mr. CONRAD], but which was supported by a very strong bipartisan group in the Senate to create the technical capacity in parents and viewers generally to have some control over what comes through the television screen and affects our kids and also to require the industry to create a rating

system that would make it easier for a parent or anyone to block out shows either rated as too violent or containing lewd material, language or scenes or otherwise—all of that I think an expression of what I am hearing and I would guess the occupant of the chair, the distinguished Presiding Officer, is hearing from his constituents in New Hampshire, that what we are seeing on television is becoming ever more morally questionable; so much sexually inappropriate material is working its way into what is known as the family viewing hours from 7 to 9 in the evening, and it is having an effect on our kids.

I find over and over as I talk to parents in Connecticut that they will say to me: Please do something about the violence and sex and lewd language on television and movies and music and video games because all of this is making us feel as if we are in a struggle with these other great, very powerful entertainment forces in our society to effect the growth and maturation of our own kids.

They say to me, ''You know, we're trying to give our kids values. We're trying to give them a sense of priorities and discipline, and then the television music, movies, video games come along and seem to be competing with the values we're trying to give our kids. So please try to help.'' And the V chip component of these two telecommunications bills is critical to that effort. And I hope that the conferees will keep the V chip component in there.

I know that the television industry is lobbying against it. But it is not censorship. It is really about citizenship. It is really about the television industry upholding its responsibility to the community. And it is about empowering parents and viewers generally to at least have some greater opportunity to control what is coming through the television screen into their homes affecting their children and their families. And it may in some sense, in doing that, make it easier for those of us who are viewers to express our opinions by what we are watching and what we are blocking out to the networks that we want better programming. We want programming that better reflects the values of the American people, which too much programming today simply does not.

Mr. President, I want to now focus for a moment on another arena in which this struggle to upgrade the television and to hope that it can do something other than downgrading or degrading our culture and affecting our kids; and that is to call the attention of my colleagues to a significant debate taking place at the Federal Communications Commission about the responsibility of the broadcast television industry to serve the educational needs of America's children.

What has stirred this debate is a ground breaking proposal being advocated by the Commission's Chairman, Reed Hundt, that would require a minimum amount of educational programming each week from each television station in America, 3 hours a week at first, growing ultimately to 5 hours.

Before the FCC closes its public comment period on this subject next week, I want to take this opportunity to share with my colleagues why I believe this issue should be of such concern to us and the FCC and why I am so grateful to Chairman Hundt for taking the initiative here.

I begin, Mr. President, with a little history. Congress has clearly been concerned about the content of television programming for our kids for a long time. Congress acted on that concern in 1990 when we adopted the Children's Television Act of 1990. And passing the legislation—incidentally, it passed with overwhelming, again, bipartisan majorities in both Houses—Congress made an unambiguous statement about television's extraordinary potential as an educational resource and our displeasure at seeing that potential squandered. Congress also made an equally unambiguous statement about the responsibility of the broadcasters as what might be called public fiduciaries in meeting the educational needs of and potentials of our children.

The fact is that the broadcasters have always been required the serve the public interest as a condition of receiving access to the public's airwaves, which is how they transmit to us, over airwaves that we, the public, own.

The report language for the Children's Television Act of 1990 states explicitly that as part of that obligation—I quote —''broadcasters can and indeed must be required to render public service to children.''

To meet that standard, the Children's Television Act set specific goals for the industry. We asked them to increase the number of hours of quality educational programming for children that are on the air. We chose, I think in good faith and wisely, appropriately at the time, not to mandate a set number of hours of programming, instead, to make an appeal through the legislation to the television industry and to hope and trust that they would meet with specific action to broad goals we articulated.

Mr. President, I am sad to say that 5 years later it is clear that that trust has not been vindicated. Not only has there been no noticeable increase in the amount of quality children's programming on the air, but the fact is that the spirit of the act has been trod upon. Some local broadcast outlets have actually made a mockery of the act's requirements by publicly claiming that programs such as the ''Jetsons'' and ''Super Mario Brothers'' are educational. The ''Jetsons'' can be fun, but I would not say that it is educational.

Mr. President, just yesterday The Washington Post reported on a study that was released by Dale Kunkel, a researcher at the University of California in Santa Barbara, that concluded—it was an update of an earlier 1993 report on the broadcasters' compliance with the Children's Television Act. The conclusion was that the law has had little effect on the quantity of educational programs to be found in 48 randomly selected TV stations around the country.

Mr. Kunkel concluded that the vaguely written law allows broadcasters to engage in what he describes as ''creative relabeling'' of programs with dubious educational value. And there he points to stations that have claimed that the beloved, but usually not educational, ''Yogi Bear'' is an educational television program according to the study, and the claim by one station as to ''The Mighty Morphin Power Rangers.''

The researchers found that broadcasters reported airing an average of 3.4 hours per week of educational shows last year, exactly the same amount as reported after the law became effective. But he said that the averages have been inflated by such shows as ''Yogi Bear,'' ''Sonic the Hedgehog,'' ''X-Men'' and other shows, including a Pittsburgh station that put ''America's Funniest Home Videos,'' an enjoyable show but not educational by my standards, into the education category.

Another in Portland, ME, claimed ''Woody Woodpecker'' and ''Bugs Bunny and Friends'' were educational, and five stations listed the ''Biker Mice From Mars'' as educational programs, obviously making a mockery of the intention of the act.

To add insult to the mockery, I would offer this testimony, one recent report that said one station in Cincinnati went so far as to list two Phil Donahue shows as educational to improve its compliance with the Children's Television Act. And the content of those two shows were: The first one on ''Teen-Age Strippers and Their Moms'' and, second, ''Parents Who Allow Teenagers to Have Sex at Home,'' which is part of the normal fare on the daytime television talk shows, a subject for another series of comments in terms of the impact it is having on people who are watching and kids who watch, but surely not educational.

Mr. President, this kind of callous disregard for kids is all too evident in what we are seeing coming over the television screen. As a study by the Center for Media Education detailed a couple years ago, the few educational programs that make it on the air have been too often ''ghettoized,'' you might say, in the early morning hours when few children are watching. Much of the programming that does see the light of day is largely used as a marketing vehicle for the greatest, latest toys. And a number of those action-oriented shows are tinged with what a recent study by the UCLA Center for Communication Policy called sinister combat violence, which as many parents can attest, study after study has shown,

often translates into imitative aggressive behavior.

So let us be painfully candid about what seems to be happening here. Rather than serving the public interests, the industry has too often been serving our kids garbage. And it has an effect on them in our society. We have given the broadcast networks, their affiliates and independent local stations, use of the public airwaves, and they have not used those airwaves well.

Too often our children have been subjected to a diet featuring ever larger helpings of morally questionable programs meant for adults that are appearing at hours when children and families are watching, and children's shows, as my friend, Congressman ED MARKEY of Massachusetts, a leader in this effort, recently said, offer the kids' minds the nutritional value of a twinkie. Congressman MARKEY is right.

In pursuing this path, the broadcasters, I think, are not only ignoring their legal obligations but, in a broader sense, their moral obligations to the larger community to which they belong. Knowing how powerful a median television is and knowing that the average young viewer watches 27 hours a week of television, the people who are running the American television industry, which, in a sense, is our Nation's electronic village, must recognize that they have a greater responsibility to wield their power carefully and constructively.

This all really comes down, Mr. President, to a question of values. What are we saying to our kids and about our kids when we allow them to be subjected to the kind of lowest common denominator trash that they, too often, are forced or choose to watch on television? How can we expect our kids to appreciate the importance of education which parents are trying to convey to them and to recognize the necessity for self-discipline, indeed, sometimes for sacrifice, in order to learn and to improve one's place in life when so much of what is on television treats knowledge as either irrelevant or worthy of disrespect?

I stress the word ''we'' here, because our society, as a whole, I think, shares the blame for the status quo. We have ignored the warnings of people like Newt Minow, Peggy Charren, and dozens of other advocates for kids who have warned us about the impact of what is coming across television has on our children and our society.

I have spoken about this subject before, Mr. President. No one is prepared to say violence on television and in the movies and music and video games is the cause of the ever greater violence in our society. No one is prepared to say that the way in which sexual behavior is treated so casually, without consequence, without warning, without awareness of a sense of responsibility, is the sole cause of some of the moral breakdown in our society, the moral breakdown of families, the outrageous epidemic of babies being born to women unmarried, particularly teenage women. But I cannot help but believe while the treatment of sex and violence on television is not the cause of those two fundamental problems our society is threatened with, it has been a contributor, and, in that sense, we all share some responsibility for making it better, including those at the Federal Communications Commission who have not done as much as they could have up until now and now have the opportunity, thanks to the proposal that Reed Hundt has made to begin a new era.

This proposal would make significant changes in the rules implementing the Children's Television Act, which, taken as a whole, would guarantee that the broadcasters know exactly what is expected of them in terms of meeting their obligations to serve the needs of our kids. The demands are modest; some have even said too modest. They should not put an undue burden on the television industry. Indeed, the FCC proposal proves that this is not an either/or equation, that we can be both sensitive to the educational needs of our children and the economic needs of the broadcast industry.

In drafting these proposals, Chairman Hundt has been guided by the precept that we should do whatever we can to enable the market to work more efficiently. For instance, the proposal would require that each identify what programs are deemed educational and to alert parents about the air time, time in which those shows would be on the air.

Such a requirement should help stimulate demand for more and better children's programming, without putting a hardship on the industry. The new rules would also ask stations to enhance parental access to their children's television reports. This requirement would make it easier for parents rather than the Government to enforce compliance with the law.

In the end, though, I must say that I share Reed Hundt's judgment that regardless of the changes, the market will probably continue to underserve children unless the FCC steps in and explicitly requires a commitment from the broadcast industry to provide some minimal amount of programming every week for our kids.

The competitive pressures seem to be so great in the industry that one broadcast outlet will not unilaterally arm itself with educational programming and risk giving ground to a rival.

So I think the best solution will be to guarantee a level playing field and assure that no broadcaster is put at a disadvantage by offering quality children's programming. This proposal, for a minimum of 3 hours a week educational programming for kids, I think will create that level playing field.

The solution the Commission is considering is more than fair. As Peggy Charren has pointed out, the broadcasters claim they are already airing an average of more than 3 hours a week of educational programming. Assuming that is true, they should have no problem whatsoever in meeting the 3-hour obligation that Chairman Hundt is proposing.

On the other side, if implemented, this proposal will present families, especially those without access to cable, with a real positive alternative to the growing level of offensive and vacuous programming on the air today. In other words, it will give families an oasis in what too often has been the intellectual and moral desert of contemporary television.

That relief is something that parents want. I referred earlier to informal conversations I have had with parents in Connecticut, but to make it somewhat more scientific, in a recent poll, 82 percent of those surveyed said that there is not enough educational programming on television today, and nearly 60 percent supported a minimum requirement of broadcasters to show at least 1 hour a day of enriching programming, in effect, going well beyond the standard that Chairman Hundt is proposing at the FCC.

Like those parents who answered that poll, it is my hope that these new rules will inspire more kids to become, if you will, power thinkers, power builders, power growers instead of Power Rangers.

I was reminded of television's potential as an educational tool in a study released this spring by John Wright of Aletha Huston of the University of Kansas. After working with 250 low-income preschoolers, the researchers found that children who regularly viewed educational programming not only were better prepared for school but actually performed better on verbal and math tests, and that is what this is all about.

The FCC will be making a decision on this proposal probably next month, and the outcome, unfortunately, is uncertain. I hope that my colleagues and members of the public, parents, advocates for children, will let the Federal Communications Commission know where they stand; that we remain in Congress committed to the Children's Television Act and the principle of serving the public interest; that our children deserve something better from television than a choice between ''Dumb and Dumber.''

Mr. President, that concludes my remarks. It strikes me, looking at the Presiding Officer, that I should make clear his years in television only contributed to the well-being and intellectual awareness of those who watched his shows.

With that, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

UNANIMOUS-CONSENT AGREEMENT—H.R. 927

Mr. GRASSLEY. Mr. President, I ask unanimous consent that notwithstanding rule XXII of the standing rules of the Senate, Senators have until close of business today to file first-degree amendments to the substitute amendment to H.R. 927, the Cuba Libertad bill, in conjunction with the cloture vote to take place on Tuesday of next week.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. ASHCROFT. Mr. President, I ask unanimous consent that I be allowed to speak as if in morning business for such time as I may consume.

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

THE AMERICAN PUBLIC'S DISSATISFACTION WITH CONGRESS

r the quorum call be rescinded.

Mr. ASHCROFT. Mr. President, the American public's dissatisfaction with the Congress is again on the rise. The American public's faith in its elected leaders is waning, and I think there are reasons for this disturbing trend.

I think it is because when the people look at Washington, DC, they are beginning again to see what they have seen in years past. They see business as usual. They see politicians putting self-interest first and politics first. They see politicians perhaps then moving to parochial interests or just the interests of a small part of the country. The national interest, it seems, follows somewhere after the special interests. But it takes a long time, as people watch this body deliberate, for them to see us finally get to the national interest. It sees a body in deliberation that finds it very difficult to confront the issues that the people have actually sent us here to confront.

In short, I think the American people see an imperial Congress, a Congress that is perceived to be arrogant and indifferent and out of touch, and seen so because the agenda of the people is accorded a standing which is simply disproportionately low compared to the standing of the political interests, the special interests, the provincial or parochial interests.

I think it is important that we begin again to restate and redemonstrate our commitment to the agenda of the American people. As the people grow in their dissatisfaction, they manifest their disapproval in a number of ways which are clear and apparent.

Approval ratings of Congress are at an all-time low again. We have managed to snatch from the jaws of victory a defeat here. The American people were beginning to think that they could count on us for reform. As a matter of fact, there are a number of substantial reforms which we have undertaken. We have made a commitment to balance the budget in 7 years, and that is important. And we are on track for doing it. That is significantly different than the President of the United States who said he wants to balance the budget in 10 years. But if you look through the smoke and mirrors of those 10 years, you find that they are predicated upon administration figures, and they do not have the integrity or validity of the Congressional Budget Office bipartisan figures that the Congress is using.

It is a shame when we are making that kind of progress, when we are doing welfare reform that is substantial and will make a real difference, when we are addressing major issues, that we again are falling in the approval of the American people. But I think it is because they see some of the endemic, old-time politics as usual rising again to the surface. You see our two-party system being questioned and people talking about a third party and people discussing the potential of independent candidacies with an alarming frequency and with a tremendous—well, it is an alarming array of support. There is a new desire for a third party and a reincarnation again of Ross Perot.

I think we need to demonstrate that, as American people, we are a different kind of Congress, that this Congress which was elected in 1994 is a Congress where our rhetoric is matched by our resolve. It is a Congress where our agenda meets the agenda and the challenges of the American people. It is a Congress where our greatest concern is not losing a vote but losing the faith of the American people.

I think in order to reacquire the confidence of the people we have to be willing again to tackle the toughest issues—issues like the balanced budget and term limits which represent fundamental systemic reform. We now have the opportunity to keep the faith on term limits. We are in the process of making good on our commitment for a balanced budget. But we have an opportunity to keep the faith on term limits. To do so will require courage—not the courage of shying away from fights and delaying votes, but the courage of meeting our challenges and keeping the faith with the American people. We came here to change Washington. We need to ensure that Washington does not change us.

There are lessons to be learned, lessons about how to get things done, about how to be most effective, about how not to spin our wheels, how to take advantage of the rules so we are not dislocated in our efforts for achievement by those who are much more familiar with the process than we are.

But there are things that we do not want to learn here in Washington. We do not want to learn about sacrificing our principles or setting aside the agenda of the American people.

We do not want to learn how to avoid or skirt dealing with the issues for which we were sent here. We do not want to learn to act just for political expedience. Those would be substantial lessons, but they would be lessons which would drive us away from the American people and drive the wedge of insecurity and a lack of confidence between the people and their representatives.

We must always be sure that we are ready to fight for principles, always stand up for what we know is right even if it means losing a vote.

As you well know, Mr. President, I am speaking about our commitment to address the issue of term limits. Why are term limits important? Because they help restore one of the first principles of the American people and the American Republic, and that is representative democracy. Term limits help ensure that there are competitive elections. When incumbents are running for public office, even in years where there is as much revolutionary change as there was in 1994, incumbents win 91 percent of the time. Yes, even in the revolution of 1994, incumbents won 91 percent of elections where they were seeking reelection.

How? Well, they use their biggest perk. That is incumbency. If you look at the data about who raises the most funds and who can just simply blow away the competition, it is the fact that incumbents have the ability to amass these war chests. They obviously have the most easy access to the media. They speak from an official position. And incumbency becomes a perk which is so big that it tilts the playing field. It is unfair to expect that there would be a massive infusion of the will of the people against incumbency, at least few are asking for it in the election, because the incumbents are so inordinately favored with the tools of politics—access to the podium and the resources that are necessary to buy advertising.

We need term limits to help ensure accountability. Individuals who know that they will be returning to their districts or to their home States to live under the very laws that they enact, I believe, will have a different kind of incentive to deal with the public interest rather than the special interests or rather than the provincial interests or rather than the political interests, to deal with the interests of this Nation. The national interests of America would be elevated if we were to embrace the concept of term limits.

Term limits would also help to ensure the right kind of voice of the people in Government by making it possible for new people and new ideas to come here. We need to open the doors of Government to the citizens of this country, and I think having reasonable

term limits would make it possible not only for more people to serve but for groups of people that have previously been unrepresented to have the opportunity for running in elections where there are open seats. Those open seat elections are the kinds of elections that can provide opportunity for newcomers to the process—the minorities, the women who would seek to be candidates.

Incumbency is such an advantage that that tilted playing field, added to the disadvantage of people who do not have a heritage of running for public office, makes their access to public office almost impossible. Term limits would help remedy that problem. We need to return to the concept of a citizen legislature. We need a new respect for ideas that come from the people, not from the power. When we allow the voice of the people to be heard, we will really again begin to see a restoration of the public confidence in American Government.

Now, the problem of term limits and the enactment of term limits is a significant one, and it is compounded by the events of recent days. Last year, the executive branch, the Clinton administration, sent its lawyers from the Justice Department into court to argue in the Thornton case against the right of States to impose term limits on Members of Congress. So the executive branch has clearly stated—at least the Clinton administration has—that it is against the right of the people as expressed in 23 of the States already that tried to impose term limits on their States and on their State's representatives to the Congress. The Clinton administration has said that door is slammed shut. The executive branch opposes that, went to court, and argued in the Supreme Court against it.

The people know that there are three branches of Government, and they looked to the judicial branch, they looked to the Supreme Court until last spring when the Supreme Court again slammed the door of self-government in their faces, saying you do not have a right in your State to say how long any individual would be eligible for service in the U.S. Congress. It is not up to you. We know better than you here in Washington. We will slam that door shut.

Having exhausted the potential of the executive branch and having experienced the disappointment of a ruling in the judicial branch, the people of America, seeking a branch of Government confident in the voice of the people, confident in wanting to recognize the inputs of people, wanting to swing wide the door of self-government rather than to hold it shut, the people of America are looking now to the Congress, the House of Representatives and the Senate.

Earlier in the year, we scheduled that on this day and the day preceding—yesterday—we would devote these 2 days to a debate of term limits and a vote on term limits. It would be the first time in history that we would have done so, and we would have been able to vote on an amendment that passed out of the Judiciary Committee.

That amendment was passed out not only with a majority but with a bipartisan majority and sent to the floor of this Senate for consideration, and, well, we are simply not debating that. As a response to our change in plans, I simply do not want us to avoid confronting this issue that the American people expect us to confront.

Will we win a vote? Since the Thornton case, where the State of Arkansas's laws were struck down by the Supreme Court, it means that we will have to have 67 votes in order to win enough support for a constitutional amendment in this Chamber and two-thirds, of course, in the House of Representatives. Frankly, that is unlikely. But that does not mean we should not begin. And the American people deserve a vote on this issue because we promised them we would give them a vote on this issue and because they deserve a vote on this issue to identify who the supporters are and who the supporters are not.

Seventy-four percent of the people of this country registered their approval for term limits; 23 States have actually tried to enact them on a State-by-State basis in spite of the fact that the Supreme Court has said it cannot be done, and two additional States will be voting on term limits in the South in the next couple weeks.

I think it is time for us Members of the Senate to respond to our own commitment to have a vote on term limits, and that is why I have offered an amendment to this measure which is now being considered on our relationship to our neighbor to the south, to Cuba, and saying we need a sense of the Senate providing a marker for every Member of this body to cast a ballot either in favor of term limits or against term limits. I look forward to a vote on that amendment. I look forward to a vote on that amendment in the near future, a vote that will not be binding, no, because it is just a sense of the Senate—not binding, but it will be revealing, a vote that will finally allow the American people to know where Senators stand on this very important issue.

I believe term limits provides an opportunity for us to justifiably regain the confidence of the American people because a vote on term limits is something we promised the American people. It is something we should deliver, not just because we promised it but because the people of America want it. It is a part of the agenda of the American people and as such it must be a part of the agenda of the Senate.

Mr. President, I thank the Chair for this opportunity, and I yield the floor.

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

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

The legislative clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask that further proceedings under the quorum call be dispensed with.

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

FRAUD IN THE MEDICARE SYSTEM

Mr. HARKIN. Mr. President, I could not believe my eyes this morning when I opened up the front page of the newspaper. And here is the headline, Mr. President: ''Gingrich places low priority on Medicare crooks, defends cutting anti-fraud defenses.''

Well, what is this all about, Mr. President? Well, what it is about is the House bill, the House bill on Medicare reform, which I think ought to be titled, ''The Scam Artist Protection Act.'' But, Mr. President, do not take my word for it. Here is a letter dated September 29 from the inspector general's office of the Department of Health and Human Services.

It says:

However, if enacted, certain major provisions of H.R. 2389—

The House bill.

would cripple the efforts of law enforcement agencies to control health care fraud and abuse in the Medicare program and to bring wrongdoers to justice.

''Would cripple their efforts.'' And so the Speaker yesterday says, ''It is all right. No big deal.'' He said that it is more important to lock up murderers and rapists than dishonest doctors. Well, it is important to lock up murderers and rapists. You bet it is. But what does that have to do with Medicare fraud? Talk about using a logic that just about takes all right there.

But even more astounding is this quote attributed to the Speaker. When he was pressed on it, he said that they might be willing to negotiate on it. He said—this is a quote attributed to the Speaker—''We can be talked out of it if there is enough public pressure.''

I will repeat that:

We can be talked out of it if there is enough public pressure.

Talked out of what? Talked out of easing the antifraud measures that we now have in the law?

I think in that statement is a tacit acknowledgment by the Speaker that they are, indeed, opening the doors to more fraud and abuse in Medicare. But he said if there is enough public pressure, we can change it.

If we can slip it through in the dark of night, if we can do it behind closed doors, if we can ram it through in a hurry and the public does not know about it, we will do it. But if the public finds out about it and they put pressure on us, well then, we will change it.

Mr. President, I am here to start putting pressure on us. The public ought to put pressure on us, because what has been happening in Medicare is billions of dollars in proportion. The ripoffs, the fraud, the waste and abuse is ongoing and getting worse instead of better,

and the few minimal laws that we have that permit the inspector general's office to go after the crooks in Medicare are now being weakened in the House bill and the inspector general said so. She said it would cripple the efforts of law enforcement agencies to control health care fraud and abuse.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter dated September 29 from the inspector general's office outlining the provisions in the House bill that would, indeed, cripple their efforts.

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

DEPARTMENT OF HEALTH
& HUMAN SERVICES,
Washington, DC, September 29, 1995.

Re H.R. 2389: ''Safeguarding Medicare Integrity Act of 1995.''

Hon. TOM HARKIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR HARKIN: You requested our views regarding the newly introduced H.R. 2389, which we understand may be considered in the deliberations concerning the ''Medicare Preservation Act.'' We strongly support the expressed objective of H.R. 2389 of reducing the fraud and abuse which plagues the Medicare program. The proposed legislation contains some meritorious provisions. However, if enacted, certain major provisions of H.R. 2389 would cripple the efforts of law enforcement agencies to control health care fraud and abuse in the Medicare program and to bring wrongdoers to justice.

The General Accounting Office estimates the loss to Medicare from fraud and abuse at 10 percent of total Medicare expenditures, or about $18 billion. We recommend two steps to decrease this problem: strengthen the relevant legal authorities, and increase the funding for law enforcement efforts. Some worthy concepts have been included in H.R. 2389, and we support them. For example, we support:

A voluntary disclosure program, which allows corporations to blow the whistle on themselves if upper management finds wrongdoing has occurred, with carefully defined relief for the corporation from qui tam suits under the False Claims Act (but not waiver by the Secretary of sanctions);

Minimum periods of exclusion (mostly parallel with periods of exclusion currently in regulations) with respect to existing exclusion authorities from Medicare and Medicaid; and

Increases in the maximum penalty amounts which may be imposed under the civil monetary penalty laws regarding health care fraud.

As stated above, however, H.R. 2389 contains several provisions which would seriously erode our ability to control Medicare fraud and abuse, including most notably: making the civil monetary penalty and anti-kickback laws considerably more lenient, the unprecedented creation of an advisory opinion mechanism on intent-based statutes, and a trust fund concept which would fund only private contractors (not law enforcement). Our specific comments on these matters follow.

1. MAKING CIVIL MONETARY PENALTIES FOR FRAUDULENT CLAIMS MORE LENIENT BY RELIEVING PROVIDERS OF THE DUTY TO USE REASONABLE DILIGENCE TO ENSURE THEIR CLAIMS ARE TRUE AND ACCURATE

Background: The existing civil monetary penalty (CMP) provisions regarding false claims were enacted by Congress in the 1980's as an administrative remedy, with cases tried by administrative law judges with appeals to Federal court. In choosing the ''knows or should know'' standard for the mental element of the offense, Congress chose a standard which is well defined in the Restatement of Torts, Second, Section 12. The term ''should know'' places a duty on health care providers to use ''reasonable diligence'' to ensure that claims submitted to Medicare are true and accurate. The reason this standard was chosen was that the Medicare system is heavily reliant on the honesty and good faith of providers in submitting their claims. The overwhelming majority of claims are never audited or investigated.

Note that the ''should know'' standard does not impose liability for honest mistakes. If the provider exercises reasonable diligence and still makes a mistake, the provider is not liable. No administrative complaint or decision issued by the Department of Health and Human Services (HHS) has found an honest mistake to be the basis for CMP sanction.

H.R. 2389 Proposal: Section 201 would redefine the term ''should know'' in a manner which does away with the duty on providers to exercise reasonable diligence to submit true and accurate claims. Under this definition, providers would only be liable if they act with ''deliberate ignorance'' of false claims or if they act with ''reckless disregard'' of false claims. In an era when there is great concern about fraud and abuse of the Medicare program, it would not be appropriate to relieve providers of the duty to use ''reasonable diligence'' to ensure that their claims are true and accurate.

In addition, the bill treats the CMP authority currently provided to the Secretary in an inconsistent manner. On one hand, it proposes an increase in the amounts of most CMPs which may be imposed under the Social Security Act. Yet, it would significantly curtail enforcement of these sanction authorities by raising the level of culpability which must be proven by the Government in order to impose CMPs. It would be far preferable not to make any changes to the CMP statutes at this time.

2. MAKING THE ANTI-KICKBACK STATUTE MORE LENIENT BY REQUIRING THE GOVERNMENT TO PROVE THAT ''THE SIGNIFICANT'' INTENT OF THE DEFENDANT WAS UNLAWFUL

Background: The anti-kickback statute makes it a criminal offense knowingly and willfully (intentionally) to offer or receive anything of value in exchange for the referral of Medicare or Medicaid business. The statute is designed to ensure that medical decisions are not influenced by financial rewards from third parties. Kickbacks result in more Medicare services being ordered than otherwise, and law enforcement experts agree that unlawful kickbacks are very common and constitute a serious problem in the Medicare and Medicaid programs.

The two biggest health care fraud cases in history were largely based on unlawful kickbacks. In 1994, National Medical Enterprises, a chain of psychiatric hospitals, paid $379 million for giving kickbacks for patient referrals, and other improprieties. In 1995, Caremark, Inc. paid $161 million for giving kickbacks to physicians who ordered very expensive Caremark home infusion products.

Most kickbacks have sophisticated disguises, like consultation arrangements, returns on investments, etc. These disguises are hard for the Government to penetrate. Proving a kickback case is difficult. There is no record of trivial cases being prosecuted under this statute.

H.R. 2389 Proposal: Section 201 would require the Government to prove that ''the significant purpose'' of a payment was to induce referrals of business. The phrase ''the significant'' implies there can only be one ''significant'' purpose of a payment. If so, at least 51 percent of the motivation of a payment must be shown to be unlawful. Although this proposal may have a superficial appeal, if enacted it would threaten the Government's ability to prosecute all but the most blatant kickback arrangements.

The courts interpreting the anti-kickback statute agree that the statute applies to the payment of remuneration ''if one purpose of the payment was to induce referrals.'' United States v. Greber, 760 F.2d 68, 69 (3d Cir. 1985) (emphasis added). If payments were intended to induce a physician to refer patients, the statute has been violated, even if the payments were also intended (in part) to compensate for legitimate services. Id. at 72. See also: United States v. Kats, 871 F.2d 105, 108 (1989); United States v. Bay State Ambulance, 874 F.2d 20, 29–30 (1st. Cir. 1989). The proposed amendment would overturn these court decisions.

However, the nature of kickbacks and the health care industry requires the interpretation adopted by Greber and its progeny. to prove that a defendant had the improper intent necessary to violate the anti-kickback statute, the prosecution must establish the defendant's state of mind, or intent. As with any intent-based statute, the prosecution cannot get directly inside the defendant's head. The prosecution must rely on circumstantial evidence to prove improper intent. Circumstantial evidence consists of documents relevant to the transaction, testimony about what the defendant said to business associates or potential customers, etc. These types of evidence are rarely clear about the purposes and motivations of the defendant. The difficulties of establishing intent are multiplied by the complexity, size, and dynamism of the health care industry, as well as the sophistication of most kickback scheme participants. Documents are ''pre-sanitized'' by expert attorneys. Most defendants are careful what they say. In most kickback prosecutions, the Government has a difficult task to prove beyond a reasonable doubt that even one purpose of a payment is to induce referrals.

If the Government had to prove that inducement of referrals was ''the significant'' reason for the payment, many common kickback schemes would be allowed to proliferate. In today's health care industry, very few kickback arrangements involve the bald payment of money for patients. Most kickbacks have sophisticated disguises. Providers can usually argue that any suspect payment serves one or more ''legitimate purposes.'' For example, payments made to induce referrals often also compensate a physician who is providing health care items or services. Some payments to referral sources may be disguised as returns on investments. Similarly, many lease arrangements that indisputably involve the bona fide use of space incorporate some inducement to refer in the lease rates. In all of these examples, and countless others, it is impossible to qualify what portions of payments are made for nefarious versus legitimate purposes.

Where the defendant could argue that there was some legitimate purpose for the payment, the prosecution would have to prove beyond a reasonable doubt, through circumstantial evidence, that the defendant actually had another motive that was ''the significant'' reason. For the vast majority of the present-day kickback schemes, the proposed amendment would place an insurmountable burden of proof on the Government.

3. CREATION OF AN EASILY ABUSED EXCEPTION FROM THE ANTI-KICKBACK STATUTE FOR CERTAIN MANAGED CARE ARRANGEMENTS

Background: There is great variety and innovation occurring in the managed care industry. Some managed care organizations, such as most health maintenance organizations (HMOs) doing business with Medicare, consist of providers who assume financial risk for the quantity of medical services needed by the population they serve. In this context, the incentive to offer kickbacks for referrals of patients for additional services is minimized, since the providers are at risk for the additional costs of those services. If anything, the incentives are to reduce services. Many other managed care organizations exist in the fee for service system, where the traditional incentives to order more services and pay kickbacks for referrals remain. In the fee for service system, the payer (like Medicare and private insurance plans) is at financial risk of additional services, not the managed care organization. While broad protection from the anti-kickback statute may be appropriate for capitated, at-risk entities like the HMO described above, such protection for managed care organizations in the fee for service system would invite serious abuse.

H.R. 2389 Proposal: Section 202 would establish broad new exceptions under the anti-kickback statute for ''any capitation, risk-sharing, or disease management program.'' The lack of definition of these terms would result in a huge opportunity for abusive arrangements to fit within this proposed exception. What is ''risk-sharing?'' Is not any insurance a form of risk sharing? What is a ''disease management program?'' Does not that term include most of health care?

Nefarious organizations could easily escape the kickback statute by simply rearranging their agreements to fit within the exception. For example, if a facility wanted to pay doctors for referrals, the facility could escape kickback liability by establishing some device whereby the doctors share in the business risk of profit and loss of the business (i.e., they would share some risk, at least theoretically). Then, the organization could pay blatant kickbacks for every referral with impunity.

If the concern is that the kickback statute is hurting innovation, as observed above, there is now an explosion of innovation in the health care industry, especially in managed care. No one in Government is suggesting that HMOs or preferred provider arrangements, etc., formed in good faith, violate the kickback statute. There has never been any action against any such arrangement under the statute.

4. INAPPROPRIATE EXPANSION OF THE EXCEPTION TO THE ANTI-KICKBACK STATUTE FOR DISCOUNTS

Background. Medicare/Medicaid discounts are beneficial and to be encouraged with one critical condition: that Medicare and/or Medicaid receive and participate fully in the discount. For example, if the Medicare reasonable charge for a Part B item or service is $100, Medicare would pay $80 of the bill and the copayment would be $20. If a 20 percent discount is applied to this bill, the charge should be $80, and Medicare would pay $64 (80 percent of the $80) and the copayment would be $16. If the discount is not shared with Medicare (which would be improper), the bill to Medicare would falsely show a $100 charge. Medicare would pay $80, but the copayment would be $0. This discount has not been shared with Medicare.

Many discounting programs are designed expressly to transfer the benefit of discounts away from Medicare. The scheme is to give little or no discount on an item or service separately billed to Medicare, and give large discounts on items not separately billed to Medicare. This scheme results in Medicare paying a higher percentage for the separately billed item or service than it should.

For example, a lab offers a deep discount on lab work for which Medicare pays a predetermined fee (such as lab tests paid by Medicare to the facility as part of a bundled payment), if the facility refers to the lab its separately billed Medicare lab work, for which no discount is given. The lab calls this a ''combination'' discount, yet is a discount on some items and not on others. Another example is where ancillary or noncovered items are furnished free, if a provider pays full price for a separately billed item, such as where the purchase of incontinence supplies is accompanied by a ''free'' adult diaper. Medicare has not shared in these combination discounts.

H.R. 2389 Proposal. Section 202 would permit discounts on one item in a combination to be treated as discounts on another item in the combination. This sounds innocent, but it is not. Medicare would be a big loser. Discounting should be permissible for a supplier to offer a discount on a combination of items or services, so long as every item or service separately billed to Medicare or Medicaid receives no less of a discount than is applied to other items in the combination. If the items or services separately billed to Medicare or Medicaid receive less of a discount than other items in the combination, Medicare and Medicaid are not receiving their fair share of the discounts.

5. UNPRECEDENTED MECHANISM FOR ADVISORY OPINIONS ON INTENT-BASED STATUTES, INCLUDING THE ANTI-KICKBACK STATUTE

Background: The Government already offers more advice on the anti-kickback statute than is provided regarding any other criminal provision in the United States Code.

Industry groups have been seeking advisory opinions under the anti-kickback statute for many years, with vigorous opposition by the Department of Justice (DOJ), and the HHS Office of Inspector General (OIG) under the last three administrations, as well as the National Association of Attorneys General. In 1987, Congress rejected calls to require advisory opinions under this statute. As a compromise, Congress required HHS, in consultation with the Attorney General, to issue ''safe harbor'' regulations describing conduct which would not be subject to criminal prosecution or exclusion. See Section 14 of Public Law 100–93.

To date, the OIG has issued 13 final anti-kickback ''safe harbor'' rules and solicited comment on 8 additional proposed safe harbor rules, for a total of 21 final and proposed safe harbors. Over 50 pages of explanatory material has been published in the Federal Register regarding these proposed and final rules. In addition, the OIG has issued six general ''fraud alerts'' describing activity which is suspect under the anti-kickback statute. Thus, the Government gives providers guidance on what is clearly permissible (safe harbors) under the anti-kickback statute and what we consider illegal (fraud alerts).

H.R. 2389 Proposal. HHS would be required to issue advisory opinions to the public on the Medicare/Medicaid anti-kickback statute (section 1128B(b) of the Social Security Act, as well as all other criminal authorities, civil monetary penalty and exclusion authorities pertaining to Medicare and Medicaid. HHS would be required to respond to requests for advisory opinions within 30 days.

HHS would be authorized to charge requestors a user fee, but there is not provision for this fee to be credited to HHS. Fees would therefore be deposited in the Treasury as miscellaneous receipts.

Major problems with anti-kickback advisory opinions include:

Advisory opinions on intent-based statutes (such as the anti-kickback statute) are impractical if not impossible. Because of the inherently subjective, factual nature of intent, it would be impossible for HHS to determine intent based solely upon a written submission from the requestor. Indeed, it does not make sense for a requestor to ask the Government to determine the requestor's own intent. Obviously, the requester already knows what their intent is.

None of the 11 existing advisory opinion processes in the Federal Government provide advisory opinions regarding the issue of the requestor's intent. An advisory opinion process for an intent-based statute is without precedent in U.S. law.

The advisory process in H.R. 2389 would severely hamper the Government's ability to prosecute health care fraud. Even with appropriate written caveats, defense counsel will hold up a stack of advisory opinions before the jury and claim that the dependent read them and honestly believed (however irrationally) that he or she was not violating the law. The prosecution would have to disprove this defense beyond a reasonable doubt. This will seriously affect the likelihood of conviction of those offering kickbacks.

Advisory opinions would likely require enormous resources and many full time equivalents (FTE) at HHS. The user fees in the bill would go to the Treasury, not to HHS. Even if they did go to HHS, appropriations committees tend to view them as offsets to appropriations. There are no estimates of number of likely requests, number of FTE required, etc. Also, HHS is permanently downsizing, even as it faces massive structural and program changes. The possible result of the bill is a diversion of hundreds of anti-fraud workers to handle the advisory opinions.

For the above reasons, DOJ, HHS/OIG and the National Association of Attorneys General strongly oppose advisory opinions under the anti-kickback statute, and all other intent-based statutes.

6. CREATION OF TRUST FUND MECHANISM WHICH DOES NOT BENEFIT LAW ENFORCEMENT

Background: In our view, the most significant step Congress could undertake to reduce fraud and abuse would be to increase the resources devoted to investigating false claims, kickbacks and other serious misconduct. It is important to recognize that the law enforcement effort to control Medicare fraud is surprisingly small and diminishing. There is evidence of increasing Medicare fraud and abuse, and Medicare expenditures continue to grow substantially. Yet, the staff of the HHS/OIG, the agency with primary enforcement authority over Medicare, has declined from 1,411 employees in 1991 to just over 900 today. (Note: 259 of the 1,411 positions were transferred to the Social Security Administration). Approximately half of these FTE are devoted to Medicare investigations, audits and program evaluations. As a result of downsizing, HHS/OIG has had to close 17 OIG investigative offices and we now lack an investigative presence in 24 States. The OIG has only about 140 investigators for all Medicare cases nationwide. By way of contrast, the State of New York gainfully employs about 300 persons to control Medicaid fraud in that State alone.

Ironically, the investigative activity of OIG pays for itself many times over. Over the last 5 years, every dollars devoted to OIG investigations of health care fraud and abuse has yielded an average return of over $7 to

the Federal Treasury, Medicare trust funds, and State Medicaid programs. In addition, an increase in enforcement also generates increased deterrence, due to the increased chance of fraud being caught. For these reasons, many fraud control bills contain a proposal to recycle monies recovered from wrongdoers into increased law enforcement. The amount an agency gets should not be related to how much it generates, so that it could not be viewed as a ''bounty.'' The Attorney General and the Secretary of HHS would decide on disbursements from the fund. We believe such proposals would strengthen our ability to protect Medicare from wrongdoers and at no cost to the taxpayers. The parties who actually perpetrate fraud would ''foot the bill.''

H.R. 2389 Proposal: Section 106 would create a funding mechanism using fines and penalties recovered by law enforcement agencies from serious wrongdoers. But none of the money would be used to help bring others to justice. Instead, all the funds would be used only by private contractors for ''soft'' claims review, such as, medical and utilization review, audits of cost reports, and provider education.

The above functions are indeed necessary, and they are now being conducted primarily by the Medicare carriers and intermediaries. Since the bill would prohibit carriers and intermediaries from performing these functions in the future, there appears to be no increase in these functions, but only a different funding mechanism.

These ''soft'' review and education functions are no substitute for investigation and prosecution of those who intend to defraud Medicare. The funding mechanism in H.R. 2389 will not result in any more Medicare convictions and sanctions.

* * * * *

In summary, H.R. 2389 would:

Relieve providers of the legal duty to use reasonable diligence to ensure that the claims they submit are true and accurate; this is the effect of increasing the Government's burden of proof in civil monetary penalty cases;

Substantially increase the Government's burden of proof in anti-kickback cases;

Create new exemptions to the anti-kickback statute which could readily be exploited by those who wish to pay rewards to physicians for referrals of patients;

Create an advisory opinion process on an intent-based criminal statute, a process without precedent in current law; since the fees for advisory opinions would not be available to HHS, our scarce law enforcement resources would be diverted into hiring advisory opinion writers; and

Create a fund to use monies recovered from wrongdoers by law enforcement agencies, but the fund would not be available to assist the law enforcement efforts; all the monies would be used by private contractors only for ''soft'' payment review and education functions.

In our view, enactment of the bill with these provisions would cripple our ability to reduce fraud and abuse in the Medicare program and to bring wrongdoers to justice.

Thank you for your attention to our concerns.

Sincerely,

JUNE GIBBS BROWN,
Inspector General.

Mr. HARKIN. Mr. President, over the last several years when I was Chair of the Subcommittee on Appropriations that funded HCFA and Medicare, we held a series of hearings, and I requested GAO to do a number of studies on waste, fraud, and abuse in the Medicare system.

What we have uncovered is mind boggling: HCFA paying for 240 yards of tape per person per day—Medicare paying that. Medicare paying over some $200 for a blood glucose tester that you can buy down at Kmart for $49.99. Medicare is paying thousands of dollars for devices that only cost $100. Foam cushions that cost about $50 that Medicare is paying $880 each for.

The list goes on and on and on, and we know it is happening out there. We know how medical suppliers are scamming the system, double billing going on. We have documentation. GAO has documented this in the past.

Last year, I asked the GAO to do a study just on medical supplies—just on medical supplies. They started their study in about May or June 1994, and the study was completed in August of this year. They issued their report.

GAO went to Medicare and said, ''We want to take a representative sample of bills that you have paid for medical supplies.''

You have to understand, Mr. President, that when Medicare pays a bill for medical supplies, they do not even know what they are paying for, because all of the supplies are put under one code, 270. So Medicare pays a bill, code 270, medical supplies, $20,000. They have no idea what is in there, because they do not require it to be itemized. Imagine that.

So GAO went to Medicare, got a representative sample, went behind the code to the suppliers, to the nursing homes, to the hospitals and said, ''OK, we want the itemized account.''

Guess what they found? Now this will knock your socks off. They found that that 89 percent—89 percent—of the claims should have been totally or partially denied; 61 percent of the money spent should never have been paid out—61 percent.

Then you ask the question: How much did Medicare pay last year for medical supplies? The answer, $6.8 billion. If you can extrapolate from this sample and say that 61 percent of that money should not have been paid out, you are talking about $4 billion—$4 billion. Maybe we cannot get it all, but could we get $3 billion? I bet we could. How about even $2 billion? We ought to be able to save that. Multiply that over 7 years, which is what we are talking about here, and you can see that is a pretty good chunk of money. And that is just medical supplies, that is just tape and bandages, things like that. We are not even talking about durable medical equipment. We are not talking about the double billing that goes on. That is just one, just medical supplies. It does not include oxygen, and it does not include ambulances, orthotic devices. It does not include durable medical equipment. It is just the bandages, $6.8 billion, and 61 percent should not have been paid.

A lot of this is fraud. A lot of it comes about because scam artists know that they can game the system.

Why would they do that? Are there not enough penalties? Would they not be afraid of getting caught? The fact is that in 24 States, the inspector general's office does not even have a presence. They are not even in 24 States.

Right now, Medicare reviews about 5 percent of the claims. So if you want to scam the system, you want to put in fraudulent claims, your chances are 5 percent that you are even going to be reviewed, and out of the reviews, they may or may not do something based upon that. If you are in one of the 24 States where there is not an inspector general operating, the sky is the limit.

That is why fraud is so rampant in the Medicare system today. What the Speaker says is that is fine, that is a low priority. We do have some antifraud legislation on the books, as inadequate as it is right now. The House bill weakens it even further, and the Speaker says that is fine, but he says if the public catches on to it and they put on enough pressure, maybe we will change it.

I hope the public does put on the pressure, because we do have to change it. The House will say, well, they put more money into the IG's office, they put $100 million into the inspector general's office. So you give more money into the inspector general, then you put the handcuffs on it by making it so they cannot prove fraud. That is exactly what they have done.

Mr. President, we have to not put waste, fraud, and abuse in the back seat, we ought to put it in the front seat. We have to attack that. I do not think it is right, I do not think it is fair for this Congress, for the Speaker of the House to say, ''OK, we're going to double your premiums for the elderly, we're going to double your deductibles, but we're going to let the crooks go, we're not going to crack down on them.''

Oh, yeah, from what I read, they are going to let the doctors off, too. They are not going to have to belly up to the bar.

One other item before I finish on fraud. I have another report from the inspector general's office issued just this month in October. Here is what they found: 13 percent of nursing homes have been offered inducements in exchange for allowing suppliers to provide products to patients in their facilities; 17 percent of nursing homes with Medicare-reimbursed products have been offered these inducements. The inducements range from free trial products to cameras, blenders, and diamond rings. Fraud, and yet the Speaker says it is too tough the way it is, we have to make it even less tough. We have to ease up. One other thing, Mr. President, that has disturbed me, came to my attention in the last 24 hours. It has to do with the block granting of Medicaid to the States. The Finance Committee—the Senate Finance Committee, of which I am not a member, but I follow closely what it has done—adopted an amendment offered by a Republican, Senator CHAFEE, that says, OK, if you block grant it to the States,

we still want to have some guarantees. What do we want to guarantee? We want to guarantee that pregnant women who fall under the poverty line get medical help under Medicaid; we want to guarantee that all children under the age of 12 get Medicaid medical help; we want to guarantee that all disabled continue to get medical help, as they are today. Plus, they want to guarantee that we continue the provisions in law that provide that a spouse does not have to spend all of his or her money down to nothing and give up their income before Medicaid will start paying for their spouse's long-term care in a nursing home. It is called the spousal impoverishment provision. It says you cannot impoverish a spouse simply because his or her husband or wife is in a nursing home. What does it say? It says basically that, minimum, a spouse can keep, I think, a little over $14,000 in assets and can make a little over $1,200 a month.

Now, in my view, if a couple saved up all of their lives and they have $50,000 in the bank, and one spouse gets Alzheimer's and cannot be cared for and has to go to a nursing home and the other spouse has to spend that $50,000 until they get to $14,000 and then Medicaid will kick in and start paying, that $14,000 is not a lot of money to have in the bank for a rainy day when you are getting old.

So these provisions were left in the Senate-passed Finance Committee bill. It passed, as I understand, by a vote of 17 to 3. I picked up this publication, the National Journal of Congress, dated Friday, October 13, this morning. Here is what it says:

''Thursday, Senator Jay Rockefeller said GOP leaders were trying to undo a compromise that preserved the disabled's right to Medicaid,'' the Associated Press reported. Rockefeller and Senator John Chafee won a 17 to 3 Finance panel vote to keep the Medicaid entitlement for poor children and pregnant women, as well as the disabled. But GOP Governors have protested overly prescriptive and onerous provisions in the bill. Roth said Thursday evening, ''It is a matter that is still open.''

The AP said, ''Sheila Burke, Dole's Chief of Staff, told reporters, ''The disabled will not be an entitlement.'' Chafee and six other moderates wrote Dole, asking him to ''stand fast in your support for at least a minimal level of support provided to our Nation's most vulnerable populations.''

Mr. President, I hope this is not true. I hope this is not true that now the Republicans on the Senate Finance Committee are going to throw out the disabled in our country, that they are going to say, OK, all right, we will keep pregnant women in and children up to age 12, but the disabled, you are out the door, you are not entitled to be covered, we are not going to guarantee you coverage—the most vulnerable of our population, those who are disabled.

Mr. President, here is another thing I cannot believe. We got a letter the other day, sent to Senator DOLE on October 6, signed by 24 Republican Governors, saying that they wanted the block granting of the Medicaid bill. They supported that, but they said there are some things they do not like.

I will read this from the letter of 24 Republican Governors:

The bill includes a number of overly prescriptive and onerous provisions that will mitigate against the States' ability to implement reforms.

What are those onerous provisions? They are that the Senate Finance Committee, by a vote of 17 to 3, on a bipartisan basis, said you have to cover pregnant women who fall under the poverty line with medical care, you have to provide for children to age 12 who are in poverty, you have to cover the disabled, and you have to have provide against espousal impoverishment. The Republican Governors said that is onerous.

I have to ask this, Mr. President. These Governors have said, ''Turn Medicaid over to the States. We will take care of it better than the Federal Government can take care of it.'' What makes you think that these Republican Governors do not care for the disabled, poor, and the women as much as Congress? Well, they cannot have it both ways. If these Republican Governors say they do not want these provisions in there that mandate that they continue to cover the disabled, then are they then saying they want to have the freedom to throw the disabled out? If the Republican Governors are saying they do not want the provision in there that says we will ensure against spousal impoverishment, are they then saying that they, the Republican Governors, are willing to throw that out?

Well, if they are not saying that and if the Republican Governors are saying, oh, no, no, no, no, we will make sure we keep provisions against spousal impoverishment, we will cover the disabled, pregnant women, and the children, why do they care if it is in there? You cannot have it both ways.

These Republican Governors have shown their hand. If we turn Medicaid over to the States without these provisions, they are going to go cut the disabled, pregnant women, children, and cut back on the provisions against spousal impoverishment. It is right here in this letter, signed by 24 Republican Governors.

So I think it is becoming clearer as the days roll by, Mr. President, that on the Medicare side, the Speaker and the GOP are turning a blind eye to the concerns of seniors. But they are giving a wink and a nod to the Medicare crooks.

When it comes to Medicare, Mr. GINGRICH and his allies are willing to tell the seniors they have to pay more, double their premiums, double their deductibles. They want to take $270 billion out of Medicare and use it for a tax cut for some of the most privileged in our society. Yet, they are not willing to crack down on those that are scamming the system, bilking the system of billions of dollars a year. Oh, no, we do not want to do that. Well, I think the public ought to know about it. I think the public is becoming aware of it, Mr. President. I think the public is now beginning to wake up to the fact that we do not need to cut $270 billion out of Medicare.

The head of Medicare said that maybe $90 billion would get us through the next 10 years; $90 billion would provide for the security of the Medicare system through 2006. Think about that. GAO said that 10 percent of Medicare goes for waste, fraud, and abuse. That is about $18 billion a year. Well, $18 billion a year for 7 years is $126 billion, which, over the next 7 years, will go for waste, fraud, and abuse. If we cannot get all the $126 billion, can we get $90 billion of it? We might be able to squeeze enough out of waste, fraud, and abuse to ensure the viability of Medicare at least for the next 10 years. But, no, Republicans say, though, they want $270 billion out of Medicare. Sock it to the seniors, make them pay double for premiums, double for deductibles, and then they will take that money and give a $245 billion tax cut for the most privileged in our society. Not fair, not right. I think the people and the public are beginning to understand that.

Now, on the Medicaid side, $187 billion of cuts in Medicaid and then block granted to the States. I think the Senate Finance Committee cast a conscientious vote last week when they said, ''Look, we will block grant to the States but we want to make sure that we cover all pregnant women who are eligible for Medicaid, all children who are eligible for Medicaid, and the disabled.''

Now, I understand that they are willing to throw out the disabled. That is unconscionable—unconscionable that some would be willing to throw out the disabled to say that, ''No, we are not going to cover you. You just go plead your case in the States. Go to the Governors.'' Well, the Governors told us what they wanted to do in their letter. They found those provisions onerous.

Mr. President, it is becoming clearer, in Medicare it is the seniors who get hit. In Medicaid, it is the poor.

Here it is right here in contrast, Wednesday, October 11, the Washington Post. Here it is. This is it, right here. Two stories, side by side, that tell it all.

On the right hand side, it says: ''Leaders Pledge Full Tax Cut By Senate GOP.'' Full $245 billion tax cut. ''Leaders Pledge Full Tax Cut By Senate GOP.'' The story right next to it: ''Working Poor May Pay the High Price for Reform.''

There you go. It cannot be said any better than that.

In Medicare, the disabled, if you are disabled, forget it. You will not have any protections. We throw you out.

Well, I hope that is a wrong report. I hope everything I have said here today will prove not to be so. I hope that the Senate Finance Committee will not jettison the most vulnerable in our society, the disabled. If they do, if that is what comes here to the Senate floor,

that we have a Medicaid bill—I do not care how it is wrapped up. If it is wrapped up in reconciliation, as you know, we cannot filibuster that under the rules. But if they jettison the disabled, I hope and trust that President Clinton will veto that the second it lands on his desk and say to this country that we are not going to make the most vulnerable in our society, those who have disabilities, pay for the $245 billion tax cut for the most privileged in our society.

I yield the floor.

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

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

[From the Washington Times]

GINGRICH PLACES LOW PRIORITY ON MEDICARE CROOKS

DEFENDS CUTTING ANTI-FRAUD DEFENSES

(By Nancy E. Roman)

House Speaker Newt Gingrich yesterday defended GOP moves to reduce penalties and enforcement efforts against Medicare fraud by saying it's more important to lock up murderers and rapists than dishonest doctors.

The Georgia Republican cited ''murderers out after three years'' and ''rapists who don't even get tried'' in response to a question at a seniors gathering to promote the GOP Medicare overhaul. ''For the moment, I'd rather lock up the murderers, the rapists and the drug dealers,'' he said. ''Once we start getting some vacant jail space, I'd be glad to look at it.''

The GOP bill in the House would weaken laws against kickbacks and self-referrals in the Medicare program. The Congressional Budget Office has estimated the seven-year cost of relaxing those laws to be $1.1 billion.

Gerald M. Stern, special counsel for health care fraud at the Justice Department, said one provision would overturn a common interpretation of Medicare anti-kickback case law and increase the burden of proof in criminal prosecutions.

Rep. Pete Stark, the California Democrat who drafted the anti-kickback and self-referral statutes, called Mr. Gingrich's comments ''arrogant and gratuitous.''

''To put O.J. Simpson, the Menendez brothers and Claus von Bulow in the same category as physicians who get kickbacks and who steal from the government is not the issue,'' Mr. Stark said. ''Republicans are in the position of having weakened protections that we put in [Medicare law] at the urging of the Reagan and Bush administration.''

Mr. Stark said Republicans weakened the provisions to shore up support from the American Medical Association, a wealthy lobby representing 300,000 doctors.

Rep. Tom Coburn, Oklahoma Republican and obstetrician who helped draft the new anti-kickback provisions, said the changes simply would put medical professionals on equal footing with other professionals subject to such laws.

Courts have interpreted the Medicare anti-kickback law to prohibit a payment if ''one purpose'' of it is to induce referrals of services paid for by Medicare.

The GOP bill would change that to ''the significant purpose,'' which Mr. Stern and others said is much harder to prove in court. Under this standard, he said, the government would not have won two big cases this year that led to fines of hundreds of millions of dollars.

Kern Smith, an assistant commerce secretary under Presidents Johnson and Kennedy, posed the question about lighter fraud rules to Mr. Gingrich at a forum sponsored by the Coalition to Save Medicare, a group backing the GOP reforms.

The 73-year-old Democrat said he's gone ''around the country selling your plan'' but found seniors vexed by the new fraud rules. He said they were hard to defend.

''I've been around Washington for a long time, and you are giving the Democrats something to clobber you with,'' Mr. Smith said.

Mr. Gingrich said Republicans are willing to negotiate on fraud and abuse provisions, leaving open the possibility of the bill being changed on the House floor.

''We can be talked out of it if there is enough public pressure,'' he said.

A senior House aide yesterday said the legal standard in the anti-kickback law was changed to make it consistent with other such laws ''without a lot of thought, and it is something that could be changed.''

Republicans spent much of the summer discussing Medicare changes with seniors, and many found that fraud topped constituents' complaints. Many seniors erroneously thought eliminating fraud and abuse could solve Medicare's money woes.

Republicans have created other ways to reduce fraud, such as: allowing seniors to keep a portion of money recovered from fraud cases they report; establishing a voluntary disclosure program for corporate managers who uncover wrongdoing in their companies; and increasing the maximum civil penalties for health care fraud.

The CBO estimates that these changes would save $2 billion over seven years.

Democrats support some of these changes but argue that relaxing kickback and self-referral laws would undermine the success achieved in reducing Medicare fraud.

After Democrats upbraided Republicans for going soft on fraud, the House Ways and Means Committee added $100 million to the budget of the Inspector General's Office to prosecute fraud and abuse. The CBO estimates that the additional money would produce $700 million more in Medicare fraud fines.

Rep. Sam M. Gibbons of Florida, ranking Democrat on the Ways and Means Committee, said it will be difficult to block the softer fraud rules without public outcry.

''The Republicans are all marching in lock step,'' Mr. Gibbons said. ''In my lifetime I've never seen anybody march in lock step like this.''

Mr. HARKIN. Mr. President, I ask unanimous consent that the letter be printed in the RECORD.

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

REPUBLICAN GOVERNORS ASSOCIATION,
Washington, DC, October 6, 1995.

HON. ROBERT DOLE,
Majority Leader, U.S. Senate, Capitol Building, Washington, DC.

DEAR SENATOR DOLE: Collectively we desire to express our gratitude for the working relationship with you and Republican governors. We share your commitment to balancing the budget and returning responsibilities to the states. Your leadership on these matters is acknowledged and admired. We are writing to you to convey our deep concern with provisions that were included in the Medicaid portion of the reconciliation bill approved by the Senate Finance Committee on September 30.

Since January of this year, Republican governors have worked in good faith with Republican leadership on concepts to bring meaningful, urgently needed reforms to the Medicaid program while achieving the Congressional budget targets. As governors representing the unique needs of our individual states, we have not been in total agreement on all aspects of the program. However, throughout this lengthy partnership, we have consistently argued that the fiscal and functional integrity of the program demand freedom from individual and provider entitlements and other mandates on states. The Senate Finance Committee bill ignores this principle.

The bill includes a number of overly prescriptive and onerous provisions that will militate against the states ability to implement reforms. Among these are individual entitlements, which create both a huge potential cost shift to states and unlimited potential for litigation; a set-aside for one class of providers; and mandated federal requirements on spousal asset protection.

Further, we are concerned that the bill reported out by the Senate Finance Committee will be amended on the Senate floor with additional mandates on states. While we support efforts to reduce the deficit and balance the federal budget we will not sit idly by while the costs associated with this program are shifted to the states.

We have kept our commitments to Republican leadership throughout a difficult process of negotiating reforms that states can implement, while protecting the interests of all of our citizens. We are fully prepared to provide health care for our most vulnerable populations, without prescriptions and mandates from the federal government. We are pleased with the flexibility provisions incorporated in the House measure and intend to work for inclusion of such provisions in the final bill.

We are hopeful that we can work with the Senate leadership on this most important issue. We urge you to remove mandates and other prescriptive provisions from the Senate bill.

It is our sincere hope that we can resolve these issues quickly. As those charged with the actual administration of these programs, we cannot support a combination of individual entitlements and mandate provisions that will subject us to unlimited ligation, and still meet the budget targets.

Sincerely,

Michael O. Leavitt, Bill Weld, Fife Symington, John G. Roland, Christine T. Whitman, John Engler, Marc Racicot, Gary E. Johnson, George V. Voinovich, Frank Keating, William J. Janklow, George Allen, Jim Edgar, Fob James, Jr., Pete Wilson, Phil Batt, Terry E. Branstad, Kirk Fordice, Stephen Merrill, Edward T. Schafer, Tommy G. Thompson, David M. Beasly, George Bush, Jim Geringler.

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

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

THE BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, every day since February 1992, I have reported to the Senate the exact total of the Federal debt, down to the penny, as

of the close of business of the previous day, or on Mondays it would be, of course, for the previous Friday.

As of the close of business yesterday, October 12, the Federal debt stood at $4,972,685,593,071.75. And this figure is approximately $27 billion away from $5 trillion which the Federal Government will surpass later this year or early next year. On a per capita basis, every man, woman and child in America owes $18,876.40, as is his or her share of that debt.

No wonder babies come into this world crying.

THE NOMINATION OF JIM SASSER TO SERVE AS UNITED STATES AMBASSADOR TO MAINLAND CHINA

Mr. HELMS. Mr. President, on another subject, with varying frequency all Senators occasionally find themselves in the predicament of having to be in two places or more at one time. Generally, the problem can be resolved by dividing time between conflicting responsibilities. This happened to me yesterday, when the distinguished former Senator from Tennessee, Jim Sasser, appeared before the Foreign Relations Committee, having been scheduled a week or so earlier in connection with his nomination by President Clinton to serve as United States. Ambassador to mainland China, which calls itself the People's Republic of China. If ever there was a misnomer, that is it.

In any case, the hearing had been set several days ago for 10 a.m. yesterday morning.

On Wednesday evening, the distinguished majority leader and the distinguished minority leader of the Senate scheduled the Cuba Libertad bill to be the pending business of the Senate at 11 a.m. yesterday. This kind of scheduling happens to all Senators with a high degree of frequency, as I say. And all of us understand that it is endemic to Senate procedure.

Yesterday morning I knew it would be a tight fit to handle both responsibilities, but I had many times done it before. But yesterday it did not turn out quite that way.

In any event, in my opening statement as chairman of the Senate Foreign Relations Committee I wanted to say some positive things about former Senator Sasser's nomination to be Ambassador to Communist China. So, midway through my brief remarks I commented, and I quote myself:

When Jim was nominated, I was especially pleased to learn that the President had nominated a gentleman who hasn't always been that easy on the Communists in Beijing.

When Mr. Sasser was in the Senate, in fact, he and I often agreed on our respective approaches to China.

Between 1988 and 1994 Senator Sasser voted six times to condition the renewal of most-favored-nation trading status for China until the Chinese made significant progress on human rights. He helped override President Bush's veto of the legislation prohibiting the President from extending MFN until the Chinese cleaned up their act after the massacre of 1989.

I commend Senator Sasser for standing firm.

In his capacity as Senator from Tennessee, Jim Sasser voted to impose some of the very sanctions against China that many U.S. businessmen now actively seek to relax—for example, the suspension of the operations in China by the Overseas Private Investment Corporation. Senator Sasser supported restrictions on the transfer of nuclear equipment, materials, or technology to China unless specific conditions were met. These were hard, tough issues and Senator Sasser chose the right way every time. I hope he will continue to stick by his principles in making the decisions he will have to make as Ambassador Sasser.

Now that he has been nominated to represent the President and the executive branch, I trust he will understand, encourage, and support the congressional role in the formulation and adaptation of the United States foreign policy toward China, Taiwan, and Tibet.

That was the statement I made yesterday at the hearing.

Now, then, I am getting to the point. Mr. President, I ask unanimous consent that the full text of a letter I have this afternoon faxed to Senator Sasser be printed in the RECORD.

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

U.S. SENATE,
Washington, DC, October 13, 1995.

Hon. JIM SASSER,
Ambassador Nominate to the People's Republic of China, U.S. Department of State, Washington, DC.

DEAR JIM: It was unfortunate that circumstances yesterday required that I depart from your hearing and go to the Senate Floor to manage a piece of legislation that became the Senate's pending business at 11 a.m.

Your comments on two matters after I departed left two significant additional matters that I feel obliged to have you discuss further in a second public hearing on your nomination.

They are: (1) Your comment after I had departed, to the effect that you ''corrected the record'' (according to media reports) by testifying that you had become ''less and less convinced'' that it was correct to link trade with China to human rights, and (2) your comments relating to China's threat to disband Hong Kong's Legislative Council.

It need not be a lengthy hearing but I believe it essential that there be one. Accordingly, I am asking Admiral Nance and his staff to work with you and the State Department in scheduling your appearance at the most mutually agreeable date and time.

It is my intent to schedule a business meeting of the Foreign Relations Committee as quickly as possible for a vote on reporting your nomination to the Senate.

Sincerely,

JESSE HELMS.

Mr. HELMS. Let me read the letter.

Dear JIM: It was unfortunate that circumstances yesterday required that I depart from your hearing and go to the Senate Floor to manage a piece of legislation that became the Senate's pending business at 11 a.m.

Your comments on two matters after I departed left two significant additional matters that I feel obliged to have you discuss further in a second public hearing on your nomination.

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It need not be a lengthy hearing but I believe it essential that there be one. Accordingly, I am asking Admiral Nance and his staff to work with you and the State Department in scheduling your appearance at the most mutually agreeable date and time.

It is my intent to schedule a business meeting of the Foreign Relations Committee as quickly as possible for a vote on reporting your nomination to the Senate.

When I made my statement, my positive statement, regarding the Sasser nomination, and identified the six votes that Senator Sasser as a Senator had cast correctly, he nodded. It never dawned on me that he was going to correct the record after I left the hearing. If he had made any indication of what he was going to do, I would have called the Senate floor and said I will be delayed in getting there, because it is time that the American people, and particularly those of us who say we represent the American people, understand that we become a part of what we condone. For us to condone what is going on in Red China is to be a part of it. And that is the reason I want to hear further from Senator Sasser, about his nomination to be Ambassador to Communist China—which they call the People's Republic of China.

Mr. President, yesterday's comments by Mr. Sasser relating to the administration's position on China's threat to disband and abolish the Hong Kong Legislative Council deserves a bit more comment as well. I do not challenge the opinion expressed by Mr. Sasser on behalf of the administration regarding this action by China. I want to emphasize, however, that China is sweeping away every vestige of democracy in Hong Kong. It is a matter that deserves somewhat more detailed understanding by Americans of precisely what is at stake in Hong Kong.

Therefore, Mr. President, I ask unanimous consent that a front page article of the South China Morning Post faxed to me from Hong Kong be printed in the RECORD.

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

[From the South China Morning Post, Oct. 13, 1995]

U.S. NOMINEE SAYS CHINA HAS RIGHT TO DISBAND LEGCO

(By Simon Beck)

The nominee to become U.S. Ambassador to China last night appeared to side with Beijing one the Hong Kong question, saying China was not required to keep the Legislative Council in place after 1997.

Even though former senator James Sasser said he hoped China would not carry out its threat to abolish Legco, his remarks at this sensitive time are certain to be viewed with alarm.

Until now, successive administrations have lent strong support to widening the democratic franchise in the territory. Governor Chris Patten was praised for his brave stand in going ahead with his reforms in the face of violent opposition from Beijing, Democratic Party leader Martin Lee Chu-ming was recently feted in the U.S. and awarded the American Bar Association Human Rights Award.

But speaking at his Senate confirmation hearing late last night, Mr. Sasser said: ''Governor Patten has sought to 'enlarge it' [the 1984 Joint Declaration] to some extent by his encouragement of the democratic movement in Hong Kong.

''The Chinese have indicated that they are not going to abide by this democratic election of legislative councillors, and clearly by the covenant of 1984, they are not required to. But I am hopeful they will reconsider that.''

His comments appeared to conflict with the passion in the US for supporting the continuation of Hong Kong's rights and freedoms after 1997.

In June, senators joined senior officials in declaring US determination to stay deeply involved in the future of the territory.

China came under fire from all sides for blocking the Court of Final Appeal and for vowing to dismantle the Legislative Council.

Assistant Secretary of State Winslow Lord said the Legco issue had caused great concern to Washington and warned that apparent moves by China to put pressure on civil servants were ''making many in the career rank uncomfortable at a time when Beijing should instead be reassuring them''.

Former US attorney-general Dick Thornburgh said China ''has signalled its intention to renege on virtually all of the guarantees it made to preserve Hong Kong's legal system and the rule of law''.

He said he was troubled by the lack of attention that Hong Kong and its people were receiving despite the gravity of the developments taking place in the territory.

Beijing has warned Britain not to ''internationalise'' the Hong Kong issue and the US not to interfere in China's internal affairs.

Foreign Relations Committee chairman Senator Jesse Helms, a staunch critic of China, promised to ''expedite'' Mr. Sasser's confirmation for the Beijing job.

A vote could come within one week at which Mr. Sasser is expected to be easily confirmed.

Mr. Sasser vowed to push for human rights improvements in China, stick firmly to the United States' one-China policy and promote US trade with Beijing.

Mr. Sasser told senators: ''Some people say China needs us more than we need China. The reality is that China and the United States need each other.''

Asked by several senators how he would handle Tibet and other human rights issues, he replied: ''I intend at every appropriate occasion and on occasions when it might not seem appropriate to make the views of the administration known in this regard.

''The American people expect the Chinese Government to respect the human rights of its own citizens.''

The White House made a symbolic gesture of support for its nominee, by sending Vice-President Al Gore to urge the committee to support Mr. Sasser, whom he described ''a man of stature, wisdom and authority''.

Mr. Sasser, who when he was a senator voted six times to link China's trading status to human rights, said he had changed his mind and now believed that trading with China was the best way to encourage freedom and democracy in that country.

On Taiwan, he defended the administration's one-China policy.

If he is confirmed before October 24, Mr. Sasser said he hoped to take part in the summit meeting in New York between presidents Jiang Zemin and Bill Clinton.

The only question as to Mr. Sasser's competence in the job was raised by Senator Craig Thomas, who pointed out that the past five ambassadors were career diplomats with much China experience, and not political appointees like Mr. Sasser.

However, Mr. Sasser, a Democrat who lost his Senate seat last year, said he had spent recent months studying Chinese language and politics at Harvard University and the Foreign Service Institute.

Mr. HELMS. I thank the Chair. I apologize for keeping the Senate in session a little bit longer than would otherwise have been the case.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

THE LIBERTAD BILL

Mr. COVERDELL. Mr. President, first I would like to commend the Presiding Officer, the chairman of the Foreign Relations Committee, for the attention and dedication to the legislation that is pending before the Senate, the Libertad bill which deals with the notorious dictator and the oppression that has occurred for over three decades over the people in Cuba, and for your attempts to address those vital issues.

As you know, Mr. President, I spoke on that yesterday in support of your effort with particular emphasis on the abrogation of property rights. This has been something that has bothered me, not only in Cuba but in Nicaragua and other countries in the hemisphere, and I think the President is doing exemplary service, not only for our citizens, but citizens around the world in confronting the issue of the confiscation of property in our world today, and without compensation and without appropriate redress.

So I compliment the Chair.

THE FISCAL AFFAIRS OF THE UNITED STATES

Mr. COVERDELL. Mr. President, I also appreciate your accepting the duty of presiding so that I might make a comment or two about a number of the speeches that have been made as amendments and commentary at the time of discussing your bill that had nothing whatsoever to do with your bill.

From the other side of the aisle, we have heard repeatedly criticism of the efforts of the new majority to take charge of the fiscal affairs of the United States, even though the vast majority of the American people sent this new majority here to do just that. They have rejected the status quo. They have rejected the concept of spending money we do not have. They have rejected the prospect of robbing the future of its opportunity because there are no resources left. They have rejected the idea that this Nation not stumble into the next century 5 years from now. Yet, all we hear is the same song sheet—leave everything the way it is, and reject the pleas of the American people to take charge of our own financial house.

I tell you. It is mind-boggling.

We have said there are four things that must happen. We must balance our budgets. Eighty-eight percent of the American people say we must balance our budget. Are we deaf? They want the budget balanced, and for good reason. They have to balance their own checkbooks. They have to balance the checkbooks of their businesses. And they know nations have to do the same thing.

I was reading in the bipartisan entitlement commission report just the other day where it said—and it ought to be a loud wake-up call for every American, and certainly for the President and for every American policymaker. It says this: It says that within 10 years—that is a snap of a finger—within 10 years all U.S. resources will be exhausted by just five programs. Just five—Social Security, Medicare, Medicaid, Federal retirement, and the interest on our debt. And there is nothing left. We will not be debating a B–2 bomber. There will not be one, nor anything else to defend the Nation, nor a school lunch program nor a Transportation Department nor a Commerce Department nor any of them. No American, no Member of this Senate, not a person who has abused their financial affairs can carry out their mission—not a person, not a family, not a business, not a community and yes, Mr. President, not even nations. No generation of Americans has ever given the future a country crippled. But we are perilously close to doing just that.

Mr. President, we have said we must balance our budgets so that we quit adding debt. We have said we want to save Medicare because the trustees have said it is going bankrupt, and we want to protect it and preserve it. And we want to save $270 billion, not for a tax increase, but by law to keep it in the Medicare Trust Fund so that its solvency is pushed out years from now so that it does not go bankrupt, so that the current beneficiaries will not have the program closed, and, importantly, so the beneficiaries to come will have it in place.

We said welfare as it is known must come to an end. You would be hard pressed to find a single citizen in this

country that would not agree with that—balance the budget, protect Medicare, alter welfare, and, Mr. President, the fourth item is lower taxes.

You would think that was a travesty from what we have heard on the floor; that it is an absolute sin to talk about lowering taxes on the American working family.

When Ozzie and Harriet were the preeminent American family, Ozzie sent 2 percent of his paycheck to this town. If Ozzie was here today, first of all his family would be completely different and not look a bit like what it was then, mainly because he would be sending 25 percent of every dime he earned to this town. Would it be any wonder that Harriet would not be in the house? She would have to be working.

Balance our budget—America wants that done; protect Medicare—America wants that done; change welfare—America wants that done; lower the financial burden on middle America so that it can do the job it is supposed to do with its own family and without a Washington caretaker—America wants that done.

Boy, you would never think that from what we have heard the last 2 days. I tell you. Where America is and where those speeches are is totally different.

A couple more things, and then I will allow the Presiding Officer to get on with his business of the day.

One, where has the President been in this debate? First, during the campaign, he said he was going to balance the budget in 5 years. I do not know what happened to that promise. He was going to balance the budget in 5 years. Then we offered a balanced budget, and he said, I am not offering any budget.

That is real leadership. That did not play very well in America.

So he says, OK, I am going to offer a budget. I will balance it in 10 years, and it will be easier to do. He has gone all over the country saying that. There is only one problem. That budget never balances, ever—not in 7 years, not in 5 years, not in 7, not in 10; never.

How do I know that? Because the Congressional Budget Office, which he told a joint session of Congress is the numbers we should use, says it will not. The only thing that says it will is the President and his own budget makers.

Mr. President, your budget does not balance, and that is not leadership, and it is not what America is asking for.

The last thing I am going to say is this, Mr. President. That is a sober message, that all our money would be gone for five things in less than 10 years; that Medicare is going bankrupt. We have to really get tough on managing our financial affairs.

That is a tough message, but America needs to know that at the end of the day, if we take charge of our business, if we run this country the way our forefathers would have us do it, the way those who went to Europe to defend it would have us do it, we will send America into the next century with more hope and more opportunity than is even describable. We will lower interest rates. That will affect everybody who buys a car or a refrigerator or a home or has to borrow money to send kids to school. We will lower the economic pressure on those families. We will leave more money for them to manage their education, their housing, their retirement. We will create millions of new jobs—millions of new jobs. We will be strong. We will be the only superpower, and we will have the muscle to defend it.

This happens very quickly if we just start taking charge of our business. If nothing else would motivate you to do it, the kinds of results that come from managing our affairs ought to make every American be calling their Congressman, their Senator, and, yes, the President and say: Get on with this. Do this for me. Do this for my family. And, yes, do this for our country.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY [LIBERTAD] ACT OF 1995

Mr. DOLE. Mr. President, I now ask the Senate resume the pending business, H.R. 927.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 927) to seek international sanctions against the Castro government in Cuba, to plan for support of a transition government leading to a democratically elected government in Cuba, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Dole amendment No. 2898, in the nature of a substitute.

CLOTURE MOTION

Mr. DOLE. I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the substitute amendment to Calendar No. 202, H.R. 927, an act to seek international sanctions against the Castro government in Cuba.

Bob Dole, Jesse Helms, Conrad Burns, Don Nickles, Frank H. Murkowski, John H. Chafee, Chuck Grassley, Paul D. Coverdell, Bob Smith, Hank Brown, Trent Lott, Larry E. Craig, Bill Frist, Jim Inhofe, Rod Grams, Mike DeWine.

MORNING BUSINESS

Mr. DOLE. Mr. President, I ask unanimous consent that there be a period for the transaction of morning business, with Senators permitted to speak therein for up to 5 minutes each.

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

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

EXECUTIVE AND OTHER COMMUNICATIONS

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

EC–1499. A communication from the Administrator of the Environmental Protection Agency, transmitting, the report of the Federal Field Work Group on Alaska rural sanitation; to the Committee on Environment and Public Works.

EC–1500. A communication from the Inspector General of the Department of Defense, transmitting, pursuant to law, the report on Superfund financial transactions for fiscal year 1994; to the Committee on Environment and Public Works.

EC–1501. A communication from the Secretary of Transportation and the Administrator of the Environmental Protection Agency, transmitting jointly, pursuant to law, the report entitled, ''Administrative Assistance to the States: Compliance with Nitrogen Oxides Requirements of the Transportation Conformity Rule''; to the Committee on Environment and Public Works.

EC–1502. A communication from the Secretary of the Department of Health and Human Services, transmitting, pursuant to law, the report entitled, ''Monitoring the Impact of Medicare Physician Payment Reform on Utilization and Access''; to the Committee on Finance.

EC–1503. A communication from the Secretary of the Department of Health and Human Services, transmitting, pursuant to law, the report on hospital and hospital health care complex cost; to the Committee on Finance.

EC–1504. A communication from the Commissioner of the Social Security Administration, transmitting, pursuant to law, an interim report testing ways of promoting vocational rehabilitation; to the Committee on Finance.

EC–1505. A communication from the Chairman of the International Trade Commission, transmitting, pursuant to law, the report entitled, ''Andean Trade Preference Act: Impact on U.S. Industries and Consumers and on Drug Crop Eradication and Crop Substitution''; to the Committee on Finance.

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. WARNER:

S. 1319. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Too Much Fun,* and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. AKAKA (for himself and Mr. INOUYE):

S. 1320. A bill to amend chapter 3 of title 28, United States Code, to provide for the appointment in each Federal judicial circuit Court of Appeals, of at least one resident of each State in such circuit, and for other purposes; to the Committee on the Judiciary.

By Mr. INOUYE:

S. 1321. A bill for the relief of Alfredo Tolentino of Honolulu, Hawaii; to the Committee on Governmental Affairs.

By Mr. DOLE (for himself, Mr. MOYNIHAN, Mr. KYL, Mr. INOUYE, Mr. D'AMATO, Mr. HELMS, Mr. BROWN, Mr. MACK, Mr. SPECTER, Mr. BOND, Mr. THURMOND, Mr. PRESSLER, Mr. FAIRCLOTH, Mr. BRADLEY, Mr. LEVIN, Mr. GRAMM, Mr. DEWINE, Mr. HARKIN, Mr. SHELBY, Mr. MCCONNELL, Mr. LOTT, Mr. HATCH, Mr. COATS, Mr. BAUCUS, Mr. THOMAS, Mr. GORTON, Mrs. BOXER, Mr. GRASSLEY, Mr. INHOFE, Mr. HOLLINGS, Mr. HEFLIN, Mr. BURNS, Mr. DOMENICI, Mr. LIEBERMAN, Mr. NICKLES, Mr. SANTORUM, Mr. COHEN, Mr. GRAMS, Ms. MOSELEY-BRAUN, Mr. ASHCROFT, Ms. SNOWE, Mr. ROBB, Mr. CONRAD, Mr. SMITH, Mr. WARNER, Mr. CRAIG, Mr. KEMPTHORNE, Mr. REID, Mr. COVERDELL, Mrs. HUTCHISON, Mr. FORD, Mr. FRIST, Mr. CAMPBELL, Mr. MURKOWSKI, Mr. COCHRAN, Mr. ROTH, Mr. FEINGOLD, Mr. STEVENS, Mr. ROCKEFELLER, Mr. BIDEN, Mr. BRYAN, and Mr. BENNETT):

S. 1322. A bill to provide for the relocation of the United States Embassy in Israel to Jerusalem, and for other purposes; read the first time.

S. 1323. A bill to provide for the relocation of the United States Embassy in Israel to Jerusalem, and for other purposes; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. WARNER:

S. 1319. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Too Much Fun,* and for other purposes; to the Committee on Commerce, Science, and Transportation.

JONES ACT WAVIER LEGISLATION

Mr. WARNER. Mr. President, I am introducing a bill today to provide for a Jones Act wavier for a boat owned by a resident of the Commonwealth of Virginia.

The owner of the boat, Mr. Chip Frederick of Virginia, intends to use the boat to begin a boat charter business.

In the 103d Congress, H.R. 3281, was introduced which provided for a Jones Act waiver for Mr. Frederick's boat. The bill was never considered by the Senate and thereafter died after the session ended.

Mr. Frederick purchased his boat from a dealer he believed to be reputable. The dealer informed him that the boat could serve as an excellent charter boat and could be licensed for both commercial and charter uses. After Mr. Frederick purchased the boat, he discovered that additional upgrades were needed to prepare the boat for commercial use. When Mr. Frederick attempted to license the boat for commercial use, he was informed that the boat could not be licensed because it was built in Taiwan. Since that time, the dealer has closed his business and cannot be located. During the past few years, this potentially successful business has been placed on hold. In anticipation of beginning this new business, Mr. Frederick had hired a crew and support staff, but as time elapsed, he has been forced to lay off several employees.

When you consider the facts of this case, Mr. Frederick has made a sizable investment in a boat he purchased with misleading information. A Jones Act waiver will allow for Mr. Frederick to begin his new business and create more jobs in his community.

ADDITIONAL COSPONSORS

S. 386

At the request of Mr. MCCONNELL, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 386, a bill to amend the Internal Revenue Code of 1986 to provide for the tax-free treatment of education savings accounts established through certain State programs, and for other purposes.

S. 1032

At the request of Mr. ROTH, the names of the Senator from Oklahoma [Mr. NICKLES] and the Senator from Pennsylvania [Mr. SANTORUM] were added as cosponsors of S. 1032, a bill to amend the Internal Revenue Code of 1986 to provide nonrecognition treatment for certain transfers by common trust funds to regulated investment companies.

S. 1271

At the request of Mr. CRAIG, the name of the Senator from Pennsylvania [Mr. SANTORUM] was added as a cosponsor of S. 1271, a bill to amend the Nuclear Waste Policy Act of 1982.

S. 1274

At the request of Mr. LOTT, the name of the Senator from Louisiana [Mr. BREAUX] was added as a cosponsor of S. 1274, a bill to amend the Solid Waste Disposal Act to improve management of remediation waste, and for other purposes.

S. 1299

At the request of Mr. PRYOR, the name of the Senator from Wyoming [Mr. THOMAS] was added as a cosponsor of S. 1299, a bill to bring opportunity to small business and taxpayers.

AMENDMENTS SUBMITTED

THE CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY [LIBERTAD] ACT OF 1995

DOLE AMENDMENTS NOS. 2920–2921

Mr. DOLE submitted two amendments intended to be proposed by him to the amendment No. 2898 proposed by him to the bill (H.R. 927) seeking international sanctions against the Castro government in Cuba, to plan for support of a transition government leading to a democratically elected government in Cuba, and for other purposes; as follows:

AMENDMENT NO. 2920

At the end of Title I concerning international sanctions against the Castro government, insert the following new section:

SEC. . It is the Sense of the Congress that the President should exercise his authority under United States law to deny entry to Fidel Castro and other senior officials of the Cuban government into the territory of the United States because of Cuban government actions in support of acts of international terrorism, as determined by the Secretary of State pursuant to section 620A of the Foreign Assistance Act of 1961.

AMENDMENT NO. 2921

At the end of Title I, insert the following new section:

SEC. . EXCLUSION OF REPRESENTATIVES OF CERTAIN FOREIGN GOVERNMENTS FROM THE UNITED STATES.

The United Nations Headquarters Agreement Act (Public Law 80–357) is amended—

(1) in section 6, after ''and its immediate vicinity'', by inserting ''except as provided in section 7 of this Act''; and

(2) by adding at the end the following new section:

''SEC. 7. Notwithstanding Article IV of the Agreement Between the United Nations and the United States of America Regarding the Headquarters of the United Nations, the President is authorized, at his discretion, to deny entry into the United States to—

(1) ''representatives of Members whose government has repeatedly provided support for acts of international terrorism as determined by the Secretary of State in accordance with section 620A of the Foreign Assistance Act of 1961, such as Cuba under Fidel Castro's rule; and

(2) ''representatives of Members which the President knows or has reason to believe based on information available to him has engaged in a terrorist activity, is likely to engage after entry in any terrorist activity, or is a member of any group which has engaged in terrorist activity.

HELMS AMENDMENTS NOS. 2922–2927

(Ordered to lie on the table.)

Mr. HELMS submitted six amendments intended to be proposed by him to amendment No. 2898 proposed by Mr. DOLE to the bill H.R. 927, supra; as follows:

AMENDMENT NO. 2922

After section 302(a)(5)(B), add the following new paragraph:

(C) Notwithstanding the provision of (a) hereof, a United States national other than U.S. nationals on whose behalf the United States has already provided and is deemed hereby to have already provided adequate notice through the Foreign Claims Settlement Commission process or otherwise of the ownership by a U.S. national of property that may become subject to a cause of action hereunder, shall be required to provide following the effectiveness hereof, notice pursuant to the rules for litigants in the United States district court in which such action ultimately is brought two years prior to initiating that action, hereunder, notice on the intended defendant of its ownership claim and a demand that the unlawful trafficking therein cease forthwith. Such damages claimed in any suite filed against the aforesaid intended defendant may only be for trafficking occurring following said period of adequate notice.

AMENDMENT NO. 2923

At the end of the substitute, insert the following new title:

TITLE IV—EXCLUSION OF CERTAIN ALIENS

SEC. 401. EXCLUSION FROM THE UNITED STATES OF ALIENS WHO HAVE CONFISCATED PROPERTY OF UNITED STATES NATIONALS.

(a) GROUNDS FOR EXCLUSION.—The Secretary of State, in consultation with the Attorney General, shall exclude from the United States any alien who the Secretary of State determines is a person who has confiscated, or has directed or overseen the confiscation of, property the claim to which is owned by a national of the United States, or converts or has converted for personal gain confiscated property the claim to which is owned by a national of the United States.

(b) This subsection shall be construed and applied consistent with the North American Free Trade Agreement, the General Agreement on Tariffs and Trade, and other applicable international agreements.

(c) EXCEPTIONS.—This subparagraph shall not apply—

(1) to claims arising from territory in dispute as a result of war between United Nations member states in which the ultimate resolution of the disputed territory has not been resolved; or

(2) where the Secretary of State deems that making such a determination would be contrary to the national interest of the United States.

(d) REPORT REQUIREMENT.—(1) The U.S. Embassy in each country shall provide the Secretary of State with a list of foreign nationals in that country who have confiscated properties of American citizens and have not fully resolved the cases with the American citizens.

(2) The Secretary of State shall submit this list to the appropriate congressional committees no later than six months after the date of the enactment of this Act.

(3) The Secretary of State, shall submit to the appropriate congressional committees a list of foreign nationals denied visas, and the Attorney General shall submit to the appropriate congressional committees a list of foreign nationals refused entry to the United States as a result of this provision.

(4) The Secretary shall submit a report under this subsection not later than one year after the date of the enactment of this Act; and not later than February 1 of each year thereafter.

AMENDMENT NO. 2924

On page 18 of the pending amendment beginning with line 34 strike all through line 27 on page 20 and insert in lieu thereof the following:

(b) IN GENERAL.—It is the sense of the Congress that—

(1) no sugar or sugar product should enter the United States unless the exporter of the sugar or sugar product to the United States has certified, to the satisfaction of the Secretary of the Treasury, that the sugar or sugar product is not a product of Cuba;

(2) the Secretary of the Treasury should establish and enforce a certification requirement sufficient to satisfy the Secretary that the exporter has taken steps to ensure that it is not exporting to the United States, sugar or sugar products that are a product of Cuba;

(3) the Customs Service should fully exercise the authorities it has under sections 581 through 641 of the Tariff Act of 1930 (19 U.S.C. 1581 through 1641) against those found in violation thereof,

(4) the Secretary of the Treasury should report to the Congress on any unlawful acts and penalties imposed for violations of the prohibition of subsection (d); and

(5) the Secretary of the Treasury should publish in the Federal Register a list containing, to the extent such information is available, the name of any person or entity located outside the customs territory of the United States whose acts result in a violation of the prohibition on exporting any sugar of Cuban origin into the Customs territory of the United States.

(c) DEFINITIONS.—For purposes of this section:

(1) ENTER, ENTRY.—The terms ''enter'' and ''entry''—mean entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(2) PRODUCT OF CUBA.—The term ''product of Cuba'' means a product that—

(A) is of Cuban origin,

(B) is or has been located in or transported from or through Cuba, or

(C) is made or derived in whole or in part from any article which is the growth, produce, or manufacture of Cuba.

(3) SUGAR, SUGAR PRODUCT.—The terms ''sugar'' and ''sugar product'' means sugars, syrups, molasses, or products with sugar content described in additional U.S. note 5 to Chapter 17 of the Harmonized Tariff Schedule of the United States.

AMENDMENT NO. 2925

On page 18 of the pending amendment beginning with line 2 strike all through line 27 on page 20.

AMENDMENT NO. 2926

After section 303 (c)(2) insert the following new paragraph.

(3) Nothing in this Act shall be deemed to establish either a precedent for a cause of action pursuant to this Act as it relates to other circumstances. Nor will anything in this Act give rise to a right or cause of action for any other confiscated property in Cuba or anywhere else in the world.

AMENDMENT NO. 2927

On page 36 of the pending amendment on lines 42 and 43 strike the words ''exclusive of costs'' and insert in lieu thereof ''exclusive of interest and costs.''

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

Mr. DOLE. Mr. President, I ask unanimous consent that the Subcommittee on Oversight and Investigations of the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Friday, October 13, 1995, for purposes of conducting a subcommittee hearing which is scheduled to begin at 10 a.m. The purpose of this hearing is to examine the role of the Council on Environmental Quality in the decisionmaking and management processes of agencies under the committee's jurisdiction—Department of the Interior, Department of Energy, and the U.S. Forest Service.

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

SUBCOMMITTEE ON TERRORISM, TECHNOLOGY AND GOVERNMENT

Mr. DOLE. Mr. President, I ask unanimous consent that the Subcommittee on Terrorism, Technology, and Government Information of the Senate Committee on the Judiciary, be authorized to meet during a session of the Senate on Friday, October 13, 1995, at 10 a.m., in Senate Hart room 216, on the Ruby Ridge incident.

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

ADDITIONAL STATEMENTS

THE FOURTH PREFERENCE FAMILY IMMIGRATION CATEGORY

● Mr. SIMON. Mr. President, immigration has been in the news a great deal over the past few months. The debate usually fails completely to account for the vast difference between legal and illegal immigration. Amidst calls for increased enforcement of our laws against illegal immigration to the United States—enforcement which I strongly support—we see proposals aimed at cutting back admissions of legal immigrants: those immigrants who play by the rules and enter our Nation the correct way.

In general, I oppose the idea of further restricting legal immigration to the United States, and particularly oppose drastic cuts in family-based immigration. Those foreigners who demonstrate the initiative to move to the United States are among the most industrious and motivated members of their own nations. Like the immigrants who arrived in America before them, they come to this country to join their families and to carve out opportunities for themselves. In doing so, they enrich our country economically, culturally, and socially. Those who support cuts in legal immigration often do so without identifying any concrete

reason for these cuts, repeating only that the ''national interest'' justifies restricting both legal and illegal immigration. I cannot see how preventing worthy immigrants from reuniting with their families is in our national interest.

Today, I would like to focus on one particular category of legal immigrants who face the threat of a locked door to the United States: the brothers and sisters of U.S. citizens, who are currently eligible for immigrant visas under the fourth family preference category in our immigration laws. Currently, 65,000 immigrants enter the United States annually under this category, and hundreds of thousands of others face a backlog. Both Barbara Jordan's Commission on Immigration Reform and various Members of Congress have proposed eliminating this family preference category outright. I have great concerns about these proposals on two levels.

First, proponents of elimination of the fourth family preference justify their proposals by emphasizing that our family-based immigration system should focus on the nuclear family, and that the sibling relationships protected by the fourth preference category are too attenuated to qualify as a priority in our immigration policy. I think that if we were to survey the American public, we would find that people of every ethnic and racial background value sibling relationships so much that they would—and do—fully support an immigration system that reunifies siblings as well as nuclear family members. While the public is undoubtedly and justifiably concerned about illegal immigration, I have seen no evidence that it devalues legal immigration generally, or sibling relationships in particular, in the manner suggested by those who propose eliminating the fourth family preference. In fact, quite the contrary.

Second, I am especially concerned about the effect of elimination of the fourth preference on those individuals who are currently in the backlog. These prospective immigrants and their sponsors—who are citizens of the United States—have expended substantial resources and funds in attaining eligibility for an immigrant visa. They have played by the rules, and waited patiently for their numbers to come up. As much as these individuals want to reunite with their siblings, they have decided against taking the rash but convenient step of entering or staying in the United States illegally. It would be fundamentally unfair for the United States to take the money and run without fulfilling its commitment to these individuals.

I submit for the RECORD a New York Times article from September 24, 1995, which tells the story of Sonya Canton, a naturalized American citizen. She has two sisters, one of whom has illegally overstayed her visa to the United States, is living here today legally under the 1986 amnesty, and will soon become eligible for citizenship; and the other of whom waits patiently in the fourth preference backlog, having paid both her fees and her dues. Mrs. Canton states: ''It is some kind of injustice when those who played by the rules can't get in, but those who broke the rules are now going to become citizens.'' I could not say it any better. At the very least, proposals to reform the fourth preference should, as a matter of fairness, provide for those in the current backlog.

I bring to this issue a personal perspective. The director of my Chicago office, Nancy Chen, has sponsored two of her brothers into the United States under the fourth preference. Both of them live near her in Illinois, and both are productive members of society with good jobs. The closeness and industry demonstrated by this family is the very behavior we should applaud and encourage. I fear that by eliminating the fourth preference category we do just the opposite, and call on my colleagues in Congress and on the administration to find a more suitable solution in this area—one that, at the very least, treats those backlogged visa applicants with the fairness they deserve.

The article follows:

[From the New York Times, September 24, 1995]

NARROWING THE U.S. IMMIGRATION GATE

(By Seth Mydans)

Seventeen years ago, Sonya Canton, an American citizen born in the Philippines, petitioned for her sister, a banker, to join her here under the family-reunification policy that has been the basic principle of United States immigration law for 30 years.

While she was waiting, a second sister, who sold exotic seashells for a living, visited the United States as a tourist, liked the place and decided to stay on illegally with her three children.

To this sister's surprise and good fortune, in 1986 Congress offered amnesty to illegal immigrants, and she and her children became legal residents, eligible for citizenship. Today she works as a saleswoman in a department store, and her children have all graduated from high school with honors.

Meanwhile, as a banker sister continues to wait, the mood of the country, and of Congress, has changed. Struggling to stem a flood of legal and illegal immigrants, Congress is preparing to cut deeply into family-reunification quotes this fall and drop people like her from eligibility.

If the changes are enacted, the United States would shut the door on about 2.4 million people—the brothers, sisters and adult children of citizens and legal residents—who have waited for years or decades to enter the country as legal immigrants. That number nearly matches the three million illegal immigrants granted amnesty in 1986.

''It is some kind of injustice when those who played by the rules can't get in, but those who broke the rules are now going to become citizens,'' said Ms. Canton, an import specialist for the United States Customs Service.

But even immigration advocates concede that the current law has become unwieldy, with a total of 3.5 million people waiting—some in lines that stretch for 40 years or more—to join relatives in the United States.

In some countries, like the Philippines, the projected wait for American visas is so long that the categories for siblings and adult children effectively no longer exist. Nonetheless, the applications keep coming in, and the lines grow longer. The solution most favored by Congress is to focus on the nuclear family and to eliminate from eligibility those with less immediate ties.

''I don't think there is any risk that family unity will be eliminated as a basis for immigration to the United States,'' said Arthur C. Helton, an immigration expert with the Open Society Institute, a lobbying group in New York that studies international issues. ''But what that means in a number of specific contexts will be redefined, and a focus on the immediate nuclear family will emerge.''

That approach became evident when a Presidential commission led by Barbara Jordan, a Democrat and former Representative from Texas, recently began drafting proposed changes in the immigration law. In an interim report issued in June, the commission recommended, among other things, allowing citizens and legal residents to bring in only spouses and minor, unmarried children—not their siblings or adult children.

Congress is now considering a number of immigration bills. The most far-reaching was submitted in June by Representative Lamar Smith, the Texas Republican who heads the House subcommittee on immigration. His bill is in the hands of the House Judiciary Committee. In the Senate, Alan K. Simpson, Republican of Wyoming, is preparing to introduce a similar bill.

The Smith and Simpson measures largely attack illegal immigration; they propose stronger border controls, workplace enforcement and deportation procedures. In addressing legal immigration, the bills drastically cut family-reunification admissions by making the siblings and grown children of legal residents and citizens no longer eligible for immigration. The Smith bill would reduce the number of legal immigrants to 535,000 a year, compared with about 800,000 last year.

The changes would reduce the waiting lists and speed the entry of the spouses and minor children of legal residents. Currently, the spouses and minor children of United States citizens can enter immediately, without a numerical quota. But about 1.1 million spouses and minor children of legal residents are caught in the backlog, along with siblings and children over 21.

Apart from family reunification, the primary avenue for immigration into the United States is employment.

The 1986 amnesty is partly responsible for the flood of applicants that has created pressure for the changes. About 80 percent of the spouses and minor children on the immigration waiting lists are relatives of those who won legal residence under that law, Government figures show.

The total family-preference waiting list of 3.5 million is twice as long as when the amnesty law took effect. Under current quotas, only 253,721 of those waiting will receive visas this year, even as the list of applicants grows longer.

The backlog includes one million applicants from Mexico and about 500,000 from the Philippines. Before the 1986 amnesty, the Philippines was the largest source of legal immigrants into the United States. Those countries are followed by India, China, Vietnam, the Dominican Republic, Taiwan, South Korea, El Salvador and Haiti.

Short of raising the ceiling for immigration, there seems to be little way to accommodate the lengthening waiting list of siblings and adult children.

''Clearly the public mood and the practical realities of today's America require that we cut down on immigration,'' said Dan Stein, executive director of the Federation for American Immigration Reform, an independent lobbying group.

Calling the Jordan, Smith and Simpson proposals ''an effort to strike a balance,'' he said, ''We have to make these decisions based on what is in our national interest.'' He added, ''We have no duty or obligation to people who have been waiting in line because the system is impractical in the first place.''

But opponents say the cuts are politically motivated and unnecessary. ''Since when did the United States become too small for the parents and children and brothers and sisters of United States citizens?'' asked Frank Sharry, executive director of the National Immigration Forum, a pro-immigration lobbying group. ''The idea of bringing in energetic newcomers who are helped by family members to get a leg up in this society is something that has worked for 300 years.''

He added, ''For a Congress that prides itself in being pro-family, it seem hypocritical to cut family immigration by 30 percent.''

One potential victim of the expected changes is Leticia Chong, a Filipino nurse who has played by the rules and prospered. She entered the country legally in 1981, became a legal resident, obtained both business and nursing degrees here and brought up five Philippines-born children to become American doctors, nurses and engineers. Today they are all either citizens or legal residents.

Her problem is her sixth and last child, an engineering student who will turn 21 this month, having waited in vain for his name to come up in the backlog of petitions for minor children of legal residents. He now enters the category of adult children, and—like Ms. Canton's banker sister—he would simply be dropped from eligibility under the proposed changes.

''He has been here since he was 11 years old,'' Mrs. Chong said. ''He has friends here. His family is here. This is his home. What will he do if he has to go back to the Philippines?''●

HONORING THE MONTSHIRE MUSEUM OF SCIENCE 1995 WINNER OF THE NATIONAL MUSEUM SERVICES AWARD

● Mr. JEFFORDS. Mr. President, on Friday, October 6, 1995, the Institute of Museum Services announced the winners of the 1995 National Awards for Museum Services. The awards were presented to five museums that demonstrated success in attracting new audiences, developing innovative programming which address educational, social, economic, and environmental issues, and entering into collaborations with other public institutions in the community. Winners received the awards at a special White House ceremony. I am so proud that one of the museums chosen to be honored this year comes from the State of Vermont. The Montshire Museum of Science in Norwich, VT is a recipient of the 1995 National Museum Service Award. Serving both Vermont and New Hampshire, the Montshire Museum is a model of creativity, usefulness, and public service.

The Montshire Museum is an outstanding science museum that has enriched the cultural and educational life of the Norwich community and surrounding environs. It has set itself apart through a commitment to special activities and exhibitions, bringing unique vitality and purpose to innovative programming. For years, the Montshire Museum has been making learning science fun and accessible for people of all ages. For example, the Montshire has developed educational exhibitions that inform visitors about recycling and ''precycling,'' or making smart purchasing decisions as part of its work in partnership with the Hartford Community Center for Recycling and Waste Management. As a result of the Montshire Museum's commitment, thousands who have come to the center to dispose of waste have had an opportunity to learn more about recycling and making smarter, more environmentally friendly purchasing decisions. In addition, the Montshire has been a leader in creating a new community computer network housed in the museum—a great asset to all served by the museum. Clearly, this small science museum has taken a leadership role in making a difference to its community.

Since it was established 20 years ago, the Montshire Museum has made an enormous impact on presenting unique educational opportunities for the people of Vermont and New Hampshire. It is truly an example of excellence in partnership and learning. My sincere congratulations to David Goudy, director of the Montshire Museum and to Bruce Pipes, chairman of the board—as well as to the all of the other committed individuals working at the Montshire Museum—for this exceptional honor. I am certain that it will continue to make a positive difference in our State that will last far into the future. ●

TRIBUTE TO MAJ. GEN. JAMES M. HURLEY, USAF, ON HIS RETIREMENT

● Mr. NUNN. Mr. President, I would like the Senate to recognize Maj. Gen. James M. Hurley on the occasion of his retirement from active duty with the U.S. Air Force. General Hurley will retire from his position as the Director of Plans and Programs at Headquarters Air Combat Command at Langley AFB, VA. Throughout his tenure in this position, General Hurley has been responsible for the development of concepts, policies, and doctrine for the employment of Combat Air Forces. In addition, he has overseen the force structure requirements and budgeting for all Combat Air Forces programs and aircraft assignments as well as the interactions between Combat Air Forces and the FAA.

During his college years at Texas A&M University, General Hurley participated in the Reserve Officer Training Corps program. After his graduation from college in May 1965, he began his career in the Air Force. He earned a command pilot rating and has logged more than 3,300 flight hours, primarily in fighter aircraft such as the F–4 and F–16. He flew 143 combat missions over North Vietnam and Laos. From January 1978 to November 1981, General Hurley commanded a squadron in the 347th Tactical Fighter Wing at Moody AFB, GA. His next assignment was at Headquarters U.S. Air Force in Washington, DC, where he served as the Chief of Flying Training for the Deputy Chief of Staff for Manpower and Personnel. From July 1987 through June 1988, General Hurley served as the vice commander and wing commander of the 474th Tactical Fighter Wing based at Nellis AFB, NV.

In 1987, General Hurley returned to Headquarters, U.S. Air Force to assume the post of Deputy Director, and later, the post of Director of Personnel Plans. From July 1989 through July 1991, he served as the Chief of Staff for NATO's 2d Tactical Air Force in Germany. In July 1991, General Hurley became the Director of Manpower and Organization at Headquarters U.S. Air Force. He remained in that position until May 1992, when he undertook his current assignment.

General Hurley has served the United States with great distinction and honor. Throughout his outstanding career in the U.S. Air Force, General Hurley has received numerous decorations and medals, including the Defense Superior Service Medal, the Legion of Merit, the Distinguished Flying Cross, the Meritorious Service Medal with 4 oak leaf clusters, the Air Medal with 11 oak leaf clusters, the Presidential Unit Citation, and the Vietnam Service Medal with 3 bronze stars.

Mr. President, on behalf of a grateful Nation, I ask my colleagues to join me in thanking Maj. Gen. James M. Hurley for his exemplary service in the U.S. Air Force. We wish him, his wife Donna, and their two daughters, Lisa and April, Godspeed and every success in their future endeavors.●

VIOLENCE POLICY CENTER'S REPORT, ''COP KILLERS: ASSAULT WEAPON ATTACKS ON AMERICA'S POLICE''

● Mr. SIMON. Mr. President, I would like to draw my colleagues' attention to a report recently released by the Violence Policy Center which refutes one of the most persistent criticisms of the assault weapon ban—that assault weapons are not used by criminals. The ban on semiautomatic assault weapons, enacted into law last year, has been the subject of intense criticism and unfortunately seems to be the target of an almost inevitable repeal effort in this Congress. This report should help clarify the real dangers posed by these weapons.

Despite the support of numerous law enforcement groups, and compelling testimony to the contrary, many opponents of the assault weapon ban claim that assault weapons are rarely used in crimes, and pose little threat to law enforcement personnel. This report, based on a survey of newspaper clips from across the nation from February to July, 1995, provides further evidence to the contrary.

The survey identifies eight police officers killed and nine wounded by assault weapons during this 5-month period. It documents 20 separate incidents in which at least 43 law enforcement officers were confronted by assailants armed with assault weapons. This figure only includes incidents where these weapons posed an imminent threat to the officers, not incidents where assault weapons were found on suspects or confiscated during the course of an investigation or arrest. Twelve of the 20 incidents involved AK–47 assault rifles or TEC–9 assault pistols, both of which are explicitly banned by the Federal legislation. The study finds that at least 1 in 10 law enforcement officers killed in the line of duty will be felled by assault weapons.

I urge my colleagues to read this report, and seriously consider the public safety and public policy issues involved in this issue. We should heed the voices of the many law enforcement groups which strongly support the ban. We should not repeal the assault weapon ban before it is given chance to make a difference. ●

CONGRESSIONAL AWARD ACT AMENDMENTS OF 1995

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 193, S. 1267.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1267) to amend the Congressional Award Act to revise and extend authorities for the Congressional Award Board.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

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

Mr. DOLE. Mr. President, I ask unanimous consent that the bill be deemed read a third time, passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the RECORD.

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

So the bill (S. 1267) was deemed read the third time and passed, as follows:

S. 1267

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 ''Congressional Award Act Amendments of 1995''.

SEC. 2. EXTENSION OF REQUIREMENTS REGARDING FINANCIAL OPERATIONS OF CONGRESSIONAL AWARD PROGRAM; NONCOMPLIANCE WITH REQUIREMENTS.

Section 5(c)(2)(A) of the Congressional Award Act (2 U.S.C. 804(c)(2)(A)) is amended by striking ''and 1994'' and inserting ''1994, 1995, 1996, and 1997''.

SEC. 3. TERMINATION.

Section 9 of the Congressional Award Act (2 U.S.C. 808) is amended by striking ''October 1, 1995'' and inserting ''October 1, 1998''.

WEEK WITHOUT VIOLENCE

Mr. DOLE. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of Senate Resolution 180, a resolution designating October 15–21, 1995 as the ''Week Without Violence''; that the Senate then proceed to its immediate consideration; that the resolution and preamble be agreed to, en bloc; that the motion to reconsider be laid upon the table; and that any statements relating thereto appear in the RECORD at the appropriate place.

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

So the resolution (S. Res. 180) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 180

Whereas the Week Without Violence, a public-awareness campaign designed to inspire alternatives to the problem of violence in our society, falls on October 15, 1995, through October 21, 1995;

Whereas the prevalence of violence in our society has become increasingly disturbing, as reflected by the fact that 2,000,000 people are injured each year as a result of violent crime, with a staggering 24,500 reported murders in 1993 and with losses from medical expenses, lost pay, property, and other crime-related costs totaling billions of dollars each year;

Whereas studies show that violence against women in their own homes causes more total injuries to women than rape, muggings, and car accidents combined and that one-half of all women who are murdered in the United States are killed by their male partners;

Whereas violence has invaded our homes and communities and is exacting a terrible toll on our country's youth;

Whereas children below the age of 12 are the victims of 1 in 4 violent juvenile victimizations reported to law enforcement, adding up to roughly 600,000 violent incidents involving children under the age of 12 each year;

Whereas studies show that childhood abuse and neglect increases a child's odds of future delinquency and adult criminality and that today's juvenile victims are tomorrow's repeat offenders;

Whereas the risk of violent victimization of children and young adults has increased in recent years;

Whereas according to FBI statistics, on a typical day in 1992, 7 juveniles were murdered;

Whereas from 1985 to 1992, nearly 17,000 persons under the age of 18 were murdered;

Whereas the YWCA, as the oldest women's membership movement in the United States, continues its long history as an advocate for women's rights, racial justice, and nonviolent approaches to resolving many of society's most troubling problems;

Whereas the chapters of the YWCA provide a wide range of valuable programs for women all across the country, including job training programs, child care, battered women's shelters, support programs for victims of rape and sexual assault, and legal advocacy;

Whereas the YWCA Week Without Violence campaign will take an active approach to confront the problem of violence head-on, with a grassroots effort to prevent violence from making further inroads into our schools, community organizations, workplaces, neighborhoods, and homes;

Whereas the Week Without Violence will provide a forum for examining viable solutions for keeping violence against women, men, and children out of our homes and communities;

Whereas national and local groups will inspire and educate our communities about effective alternatives to violence; and

Whereas the YWCA Week Without Violence is both a challenge and a clarion call to all Americans: Now, therefore, be it

Resolved, That the Senate encourages all Americans to spend 7 days without committing, condoning, or contributing to violence and proclaims the week of October 15, 1995, through October 21, 1995, as the ''Week Without Violence''.

Mr. HATCH. Mr. President, I am pleased to rise today to support passage of Senate Resolution 180, declaring next week the ''Week Without Violence.'' This week is part of what I hope will be a tremendous public awareness campaign to educate Americans about the threat of violence in our society and to offer alternatives to this grave problem.

None of us is immune from the violence in our communities. In rural and urban areas across this country, men, women, and children are at risk. They are at risk not just on the streets, but all too often in their homes or in their schools.

I enthusiastically join Senator BRADLEY and others in supporting this resolution; it calls on Americans to spend a week without committing, condoning, ignoring, or contributing to violence.

Teaching people that violence is not acceptable and educating victims of violence to seek out protection will save lives. The issue of violence deserves national attention and demands community involvement. I hope and believe that the focus of the ''Week Without Violence'' will be a small but significant step in decreasing the scourge of violence in our society.

RYAN WHITE CARE REAUTHORIZATION ACT of 1995—MESSAGE FROM THE HOUSE

Mr. DOLE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 641, a bill to reauthorize the Ryan White CARE Act of 1990, and for other purposes.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 641) entitled ''An Act to reauthorize the Ryan White CARE Act of 1990, and for other purposes'', do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Ryan White CARE Act Amendments of 1995''.

SEC. 2. REFERENCES.

Whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to that section or other provision of the Public Health Service Act (42 U.S.C. 201 et seq.).

TITLE I—EMERGENCY RELIEF FOR AREAS WITH SUBSTANTIAL NEED FOR SERVICES

SEC. 101. ESTABLISHMENT OF PROGRAM OF GRANTS.

(a) NUMBER OF CASES; DELAYED APPLICABILITY.—Effective October 1, 1996, section 2601(a) (42 U.S.C. 300ff–11) is amended—

(1) by striking ''subject to subsection (b)'' and inserting ''subject to subsections (b) through (d)''; and

(2) by striking ''metropolitan area'' and all that follows and inserting the following: ''metropolitan area for which there has been reported to the Director of the Centers for Disease Control and Prevention a cumulative total of more than 2,000 cases of acquired immune deficiency syndrome for the most recent period of five calendar years for which such data are available.''.

(b) OTHER PROVISIONS REGARDING ELIGIBILITY.—Section 2601 (42 U.S.C. 300ff–11) is amended by adding at the end thereof the following subsections:

''(c) REQUIREMENTS REGARDING POPULATION.—

''(1) NUMBER OF INDIVIDUALS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary may not make a grant under this section for a metropolitan area unless the area has a population of 500,000 or more individuals.

''(B) LIMITATION.—Subparagraph (A) does not apply to any metropolitan area that was an eligible area under this part for fiscal year 1995 or any prior fiscal year.

''(2) GEOGRAPHIC BOUNDARIES.—For purposes of eligibility under this part, the boundaries of each metropolitan area are the boundaries that were in effect for the area for fiscal year 1994.

''(d) CONTINUED STATUS AS ELIGIBLE AREA.—Notwithstanding any other provision of this section, a metropolitan area that was an eligible area under this part for fiscal year 1996 is an eligible area for fiscal year 1997 and each subsequent fiscal year.''.

(c) CONFORMING AMENDMENT REGARDING DEFINITION OF ELIGIBLE AREA.—Section 2607(1) (42 U.S.C. 300ff–17(1)) is amended by striking ''The term'' and all that follows and inserting the following: ''The term 'eligible area' means a metropolitan area meeting the requirements of section 2601 that are applicable to the area.''.

SEC. 102. HIV HEALTH SERVICES PLANNING COUNCIL.

(a) ESTABLISHMENT.—Section 2602(b)(1) (42 U.S.C. 300ff–12(b)(1)) is amended—

(1) in subparagraph (A), by inserting before the semicolon the following: '', including federally qualified health centers'';

(2) in subparagraph (D), by inserting before the semicolon the following: ''and providers of services regarding substance abuse'';

(3) in subparagraph (G), by inserting before the semicolon the following: ''and historically underserved groups and subpopulations'';

(4) in subparagraph (I), by inserting before the semicolon the following: '', including the State medicaid agency and the agency administering the program under part B'';

(5) in subparagraph (J), by striking ''and'' after the semicolon;

(6) by striking subparagraph (K); and

(7) by adding at the end the following subparagraphs:

''(K) grantees under section 2671, or, if none are operating in the area, representatives of organizations in the area with a history of serving children, youth, women, and families living with HIV; and

''(L) grantees under other HIV-related Federal programs.''.

(b) DUTIES.—Section 2602(b)(3) (42 U.S.C. 300ff–12(b)(3)) is amended—

(1) by striking ''The planning'' in the matter preceding subparagraph (A) and all that follows through the semicolon at the end of subparagraph (A) and inserting the following: ''The planning council under paragraph (1) shall carry out the following:

''(A) Establish priorities for the allocation of funds within the eligible area based on the following factors:

''(i) Documented needs of the HIV-infected population.

''(ii) Cost and outcome effectiveness of proposed strategies and interventions, to the extent that such data are reasonably available.

''(iii) Priorities of the HIV-infected communities for which the services are intended.

''(iv) Availability of other governmental and nongovernmental resources.'';

(2) in subparagraph (B)—

(A) by striking ''develop'' and inserting ''Develop''; and

(B) by striking ''; and'' and inserting a period;

(3) in subparagraph (C)—

(A) by striking ''assess'' and inserting ''Assess'';

(B) by striking ''rapidly''; and

(C) by inserting before the period the following: '', and assess the effectiveness, either directly or through contractual arrangements, of the services offered in meeting the identified needs''; and

(4) by adding at the end the following subparagraphs:

''(D) Participate in the development of the statewide coordinated statement of need initiated by the State health department (where it has been so initiated).

''(E) Obtain input on community needs through conducting public meetings.''.

(c) GENERAL PROVISIONS.—Section 2602(b) (42 U.S.C. 300ff–12(b)) is amended by adding at the end the following paragraph:

''(4) GENERAL PROVISIONS.—

''(A) COMPOSITION OF COUNCIL.—The planning council under paragraph (1) shall (in addition to requirements under such paragraph) reflect in its composition the demographics of the epidemic in the eligible area involved, with particular consideration given to disproportionately affected and historically underserved groups and subpopulations. Nominations for membership on the council shall be identified through an open process, and candidates shall be selected based on locally delineated and publicized criteria. Such criteria shall include a conflict-of-interest standard for each nominee.

''(B) CONFLICTS OF INTEREST.—

''(i) The planning council under paragraph (1) may not be directly involved in the administration of a grant under section 2601(a). With respect to compliance with the preceding sentence, the planning council may not designate (or otherwise be involved in the selection of) particular entities as recipients of any of the amounts provided in the grant.

''(ii) An individual may serve on the planning council under paragraph (1) only if the individual agrees to comply with the following:

''(I) If the individual has a financial interest in an entity, and such entity is seeking amounts from a grant under section 2601(a), the individual will not, with respect to the purpose for which the entity seeks such amounts, participate (directly or in an advisory capacity) in the process of selecting entities to receive such amounts for such purpose.

''(II) In the case of a public or private entity of which the individual is an employee, or a public or private organization of which the individual is a member, the individual will not participate (directly or in an advisory capacity) in the process of making any decision that relates to the expenditure of a grant under section 2601(a) for such entity or organization or that otherwise directly affects the entity or organization.''.

SEC. 103. TYPE AND DISTRIBUTION OF GRANTS.

(a) FORMULA GRANTS BASED ON RELATIVE NEED OF AREAS.—Section 2603(a) (42 U.S.C. 300ff–13(a)) is amended—

(1) in paragraph (1)—

(A) in the second sentence, by inserting '', subject to paragraph (4)'' before the period; and

(B) by adding at the end the following sentence: ''Grants under this paragraph for a fiscal year shall be disbursed not later than 60 days after the date on which amounts appropriated under section 2677 become available for the fiscal year, subject to any waivers under section 2605(d).'';

(2) in paragraph (2), by amending the paragraph to read as follows:

''(2) ALLOCATIONS.—Of the amount available under section 2677 for a fiscal year for making grants under section 2601(a)—

''(A) the Secretary shall reserve 50 percent for making grants under paragraph (1) in amounts determined in accordance with paragraph (3); and

''(B) the Secretary shall, after compliance with subparagraph (A), reserve such funds as may be necessary to carry out paragraph (4).''; and

(3) by adding at the end the following paragraph:

''(4) MAXIMUM REDUCTION IN GRANT.—In the case of any eligible area for which a grant under paragraph (1) was made for fiscal year 1995, the Secretary, in making grants under such paragraph for the area for the fiscal years 1996 through 2000, shall (subject to the extent of the amount available under section 2677 for the fiscal year involved for making grants under section 2601(a)) ensure that the amounts of the grants do not, relative to such grant for the area for fiscal year 1995, constitute a reduction of more than the following, as applicable to the fiscal year involved:

''(A) 1 percent, in the case of fiscal year 1996.

''(B) 2 percent, in the case of fiscal year 1997.

''(C) 3 percent, in the case of fiscal year 1998.

''(D) 4 percent, in the case of fiscal year 1999.

''(E) 5 percent, in the case of fiscal year 2000.''.

(b) SUPPLEMENTAL GRANTS.—Section 2603(b) (42 U.S.C. 300ff–13(b)) is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by striking ''Not later than'' and all that follows through ''section 2605(b)—'' and inserting the following: ''After allocating in accordance with subsection (a) the amounts available under section 2677 for grants under section 2601(a) for a fiscal year, the Secretary, in carrying out section 2601(a), shall from the remaining amounts make grants to eligible areas described in this paragraph. Such grants shall be disbursed not later than 150 days after the date on which amounts appropriated under section 2677 become available for the fiscal year. An eligible area described in this paragraph is an eligible area whose application under section 2605(b)—'';

(B) in subparagraph (D), by striking ''and'' after the semicolon;

(C) in subparagraph (E), by striking the period at the end and inserting ''; and''; and

(D) by adding at the end thereof the following subparagraph:

''(F) demonstrates the manner in which the proposed services are consistent with the local needs assessment and the statewide coordinated statement of need.''; and

(2)(A) by redesignating paragraphs (2) through (4) as paragraphs (3) through (5), respectively; and

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

''(2) PRIORITY.—

''(A) SEVERE NEED.—In determining severe need in accordance with paragraph (1)(B), the Secretary shall give priority consideration in awarding grants under this subsection to eligible areas that (in addition to complying with paragraph (1)) demonstrate a more severe need based on the prevalence in the eligible area of—

''(i) sexually transmitted diseases, substance abuse, tuberculosis, severe mental illness, or other conditions determined relevant by the Secretary, which significantly affect the impact of HIV disease;

''(ii) subpopulations with HIV disease that were previously unknown in such area; or

''(iii) homelessness.

''(B) PREVALENCE.—In determining prevalence of conditions under subparagraph (A), the Secretary shall use data on the prevalence of the conditions described in such subparagraph among individuals with HIV disease (except that, in the case of an eligible area for which such data are not available, the Secretary shall use data on the prevalences of the conditions in the general population of such area).''.

(c) ADDITIONAL REQUIREMENTS FOR GRANTS.—Section 2603 (42 U.S.C. 300ff–13) is amended by adding at the end the following subsection:

''(c) COMPLIANCE WITH PRIORITIES OF HIV PLANNING COUNCIL.—Notwithstanding any other provision of this part, the Secretary, in carrying out section 2601(a), may not make any grant under subsection (a) or (b) to an eligible area unless the application submitted by such area under section 2605 for the grant involved demonstrates that the grants made under subsections (a) and (b) to the area for the preceding fiscal year (if any) were expended in accordance with the priorities applicable to such year that were established, pursuant to section 2602(b)(3)(A), by the planning council serving the area.''.

SEC. 104. USE OF AMOUNTS.

Section 2604 (42 U.S.C. 300ff–14) is amended—

(1) in subsection (b)—

(A) in paragraph (1)(A), by striking ''including case management and comprehensive treatment services, for individuals'' and inserting the following: ''including HIV-related comprehensive treatment services (including treatment education and measures for the prevention and treatment of opportunistic infections), case management, and substance abuse treatment and mental health treatment, for individuals'';

(B) in paragraph (2)(A)—

(i) by inserting after ''nonprofit private entities,'' the following: ''or private for-profit entities if such entities are the only available provider of quality HIV care in the area,'' ; and

(ii) by striking ''and homeless health centers'' and inserting ''homeless health centers, substance abuse treatment programs, and mental health programs''; and

(C) by adding at the end the following paragraph:

''(3) PRIORITY FOR WOMEN, INFANTS AND CHILDREN.—For the purpose of providing health and support services to infants, children, and women with HIV disease, the chief elected official of an eligible area shall use, of the grants made for the area under section 2601(a) for a fiscal year, not less than the percentage constituted by the ratio of the population in such area of infants, children, and women with acquired immune deficiency syndrome to the general population in such area of individuals with such syndrome, or 15 percent, whichever is less. In expending the funds reserved under the preceding sentence for a fiscal year, the chief elected official shall give priority to providing, for pregnant women, measures to prevent the perinatal transmission of HIV.''; and

(2) in subsection (e), by adding at the end thereof the following sentence: ''In the case of entities to which such officer allocates amounts received by the officer under the grant, the officer shall ensure that, of the aggregate amount so allocated, the total of the expenditures by such entities for administrative expenses does not exceed 10 percent (without regard to whether particular entities expend more than 10 percent for such expenses).''.

SEC. 105. APPLICATION.

Section 2605 (42 U.S.C. 300ff–15) is amended—

(1) in subsection (a)—

(A) in paragraph (1)(B), by striking ''1-year period'' and all that follows through ''eligible area'' and inserting ''preceding fiscal year'';

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

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

(D) by adding at the end thereof the following paragraph:

''(6) that the applicant will participate in the process for the statewide coordinated statement of need (where it has been initiated by the State), and will ensure that the services provided under the comprehensive plan are consistent with such statement.'';

(2) in subsection (b)—

(A) in the subsection heading, by striking ''ADDITIONAL''; and

(B) in the matter preceding paragraph (1), by striking ''additional'';

(3) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(4) by inserting after subsection (b), the following subsection:

''(c) SINGLE APPLICATION.—Upon the request of the chief elected official of an eligible area, the Secretary may authorize the official to submit a single application through which the official simultaneously requests a grant pursuant to subsection (a) of section 2603 and a grant pursuant to subsection (b) of such section. The Secretary may establish such criteria for carrying out this subsection as the Secretary determines to be appropriate.''.

SEC. 106. TECHNICAL ASSISTANCE; PLANNING GRANTS.

Section 2606 (42 U.S.C. 300ff–16) is amended—

(1) by inserting before ''The Administrator'' the following: ''(a) IN GENERAL.—'';

(2) by striking ''may, beginning'' and all that follows through ''title,'' and inserting ''(referred to in this section as the 'Administrator') shall''; and

(3) by adding at the end the following subsection:

''(b) PLANNING GRANTS REGARDING INITIAL ELIGIBILITY FOR GRANTS.—

''(1) ADVANCE PAYMENTS ON FIRST-YEAR FORMULA GRANTS.—With respect to a fiscal year (referred to in this subsection as the 'planning year'), if a metropolitan area has not previously received a grant under section 2601 and the Administrator reasonably projects that the area will be eligible for such a grant for the subsequent fiscal year, the Administrator may make a grant for the planning year for the purpose of assisting the area in preparing for the responsibilities of the area in carrying out activities under this part.

''(2) REQUIREMENTS.—

''(A) IN GENERAL.—A grant under paragraph (1) for a planning year shall be made directly to the chief elected official of the city or urban county that administers the public health agency to which section 2602(a)(1) is projected to apply for purposes of such paragraph. The grant may not be made in an amount exceeding $75,000.

''(B) OFFSETTING REDUCTION IN FIRST FORMULA GRANT.—In the case of a metropolitan area that has received a grant under paragraph (1) for a planning year, the first grant made pursuant to section 2603(a) for such area shall be reduced by an amount equal to the amount of the grant under such paragraph for the planning year. With respect to amounts resulting from reductions under the preceding sentence for a fiscal year, the Secretary shall use such amounts to make grants under section 2603(a) for the fiscal year, subject to ensuring that none of such amounts are provided to any metropolitan area for which such a reduction was made for the fiscal year.

''(3) FUNDING.—Of the amounts available under section 2677 for a fiscal year for carrying out this part, the Administrator may reserve not more than 1 percent for making grants under paragraph (1).''.

TITLE II—CARE GRANT PROGRAM

SEC. 201. GENERAL USE OF GRANTS.

Section 2612 (42 U.S.C. 300ff–22) is amended to read as follows:

''SEC. 2612. GENERAL USE OF GRANTS.

''(a) IN GENERAL.—A State may use amounts provided under grants made under this part for the following:

''(1) To provide the services described in section 2604(b)(1) for individuals with HIV disease.

''(2) To provide to such individuals treatments that in accordance with section 2616 have been determined to prolong life or prevent serious deterioration of health.

''(3) To provide home- and community-based care services for such individuals in accordance with section 2614.

''(4) To provide assistance to assure the continuity of health insurance coverage for such individuals in accordance with section 2615.

''(5) To establish and operate consortia under section 2613 within areas most affected by HIV disease, which consortia shall be designed to provide a comprehensive continuum of care to individuals and families with such disease in accordance with such section.

''(b) PRIORITY FOR WOMEN, INFANTS AND CHILDREN.—For the purpose of providing health and support services to infants, children, and women with HIV disease, a State shall use, of the funds allocated under this part to the State for a fiscal year, not less than the percentage constituted by the ratio of the population in the State of infants, children, and women with acquired immune deficiency syndrome to the general population in the State of individuals with such syndrome, or 15 percent, whichever is less. In expending the funds reserved under the preceding sentence for a fiscal year, the State shall give priority to providing, for pregnant women, measures to prevent the perinatal transmission of HIV.''.

SEC. 202. GRANTS TO ESTABLISH HIV CARE CONSORTIA.

Section 2613 (42 U.S.C. 300ff–23) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by inserting ''(or private for-profit providers or organizations if such entities are the only available providers of quality HIV care in the area)'' after ''nonprofit private,''; and

(B) in paragraph (2)(A)—

(i) by inserting ''substance abuse treatment, mental health treatment,'' after ''nursing,''; and

(ii) by inserting after ''monitoring,'' the following: ''measures for the prevention and treatment of opportunistic infections, treatment education for patients (provided in the context of health care delivery),''; and

(2) in subsection (c)(2)—

(A) in clause (ii) of subparagraph (A), by striking ''and'' after the semicolon;

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

(C) by adding after subparagraph (B) the following subparagraph:

''(C) grantees under section 2671, or, if none are operating in the area, representatives in the area of organizations with a history of serving children, youth, women, and families living with HIV.''.

SEC. 203. PROVISION OF TREATMENTS.

Section 2616(a) (42 U.S.C. 300ff–26(a)) is amended—

(1) by striking ''may use amounts'' and inserting ''shall use a portion of the amounts'';

(2) by striking ''section 2612(a)(4)'' and inserting ''section 2612(a)(2)''; and

(3) by inserting before the period the following: '', including measures for the prevention and treatment of opportunistic infections''.

SEC. 204. ADDITIONAL REQUIREMENTS FOR GRANTS.

(a) FINDINGS.—The Congress finds as follows:

(1) Research studies have demonstrated that administration of antiviral medication during pregnancy can significantly reduce the transmission of the human immunodeficiency virus (commonly known as HIV) from an infected mother to her baby.

(2) The Centers for Disease Control and Prevention have recommended that all pregnant

women receive HIV counseling; voluntary, confidential HIV testing; and appropriate medical treatment (including antiviral therapy) and support services.

(3) The provision of such testing without access to such counseling, treatment, and services will not improve the health of the woman or the child.

(4) The provision of such counseling, testing, treatment, and services can reduce the number of pediatric cases of acquired immune deficiency syndrome, can improve access to and provision of medical care for the woman, and can provide opportunities for counseling to reduce transmission among adults.

(5) The provision of such counseling, testing, treatment, and services can reduce the overall cost of pediatric cases of acquired immune deficiency syndrome.

(6) The cancellation or limitation of health insurance or other health coverage on the basis of HIV status should be impermissible under applicable law. Such cancellation or limitation could result in disincentives for appropriate counseling, testing, treatment, and services.

(7) For the reasons specified in paragraphs (1) through (6)—

(A) mandatory counseling and voluntary testing of pregnant women should be the standard of care; and

(B) the relevant medical organizations as well as public health officials should issue guidelines making such counseling and testing the standard of care.

(b) ADDITIONAL REQUIREMENTS FOR GRANTS.—Part B (42 U.S.C. 300ff–21 et seq.) is amended—

(1) in section 2611, by adding at the end the following sentence: ''The authority of the Secretary to provide grants under this part is subject to section 2673D (relating to the testing of pregnant women and newborn infants).''; and

(2) by inserting after section 2616 the following section:

''SEC. 2616A. REQUIREMENT REGARDING HEALTH INSURANCE.

''(a) IN GENERAL.—Subject to subsection (c), the Secretary shall not make a grant under this part to a State unless the State has in effect a statute or regulations regulating insurance that imposes the following requirements:

''(1) That, if health insurance is in effect for an individual, the insurer involved may not (without the consent of the individual) discontinue the insurance, or alter the terms of the insurance (except as provided in paragraph (3)), solely on the basis that the individual is infected with HIV disease or solely on the basis that the individual has been tested for the disease.

''(2) That paragraph (1) does not apply to an individual who, in applying for the health insurance involved, knowingly misrepresented any of the following:

''(A) The HIV status of the individual.

''(B) Facts regarding whether the individual has been tested for HIV disease.

''(C) Facts regarding whether the individual has engaged in any behavior that places the individual at risk for the disease.

''(3) That paragraph (1) does not apply to any reasonable alteration in the terms of health insurance for an individual with HIV disease that would have been made if the individual had a serious disease other than HIV disease.

''(b) REGULATION OF HEALTH INSURANCE.—A statute or regulation shall be deemed to regulate insurance for purposes of this section only to the extent that it is treated as regulating insurance for purposes of section 514(b)(2) of the Employee Retirement Income Security Act of 1974.

''(c) APPLICABILITY OF REQUIREMENT.—

''(1) IN GENERAL.—Except as provided in paragraph (2), this section applies upon the expiration of the 120-day period beginning on the date of the enactment of the Ryan White CARE Act Amendments of 1995.

''(2) DELAYED APPLICABILITY FOR CERTAIN STATES.—In the case of the State involved, if the Secretary determines that a requirement of this section cannot be implemented in the State without the enactment of State legislation, then such requirement applies to the State on and after the first day of the first calendar quarter that begins after the close of the first regular session of the State legislature that begins after the date of the enactment of the Ryan White CARE Act Amendments of 1995. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of such session is deemed to be a separate regular session of the State legislature.''.

(c) TESTING OF NEWBORNS; PRENATAL TESTING.—Part D (42 U.S.C. 300ff–71 et seq.) is amended by inserting before section 2674 the following sections:

''SEC. 2673C. TESTING OF PREGNANT WOMEN AND NEWBORN INFANTS; PROGRAM OF GRANTS.

''(a) PROGRAM OF GRANTS.—The Secretary may make grants to States described in subsection (b) for the following purposes:

''(1) Making available to pregnant women appropriate counseling on HIV disease.

''(2) Making available to such women testing for such disease.

''(3) Testing newborn infants for such disease.

''(4) In the case of newborn infants who test positive for such disease, making available counseling on such disease to the parents or other legal guardians of the infant.

''(5) Collecting data on the number of pregnant women and newborn infants in the State who have undergone testing for such disease.

''(b) ELIGIBLE STATES.—Subject to subsection (c), a State referred to in subsection (a) is a State that has in effect, in statute or through regulations, the following requirements:

''(1) In the case of newborn infants who are born in the State and whose biological mothers have not undergone prenatal testing for HIV disease, that each such infant undergo testing for such disease.

''(2) That the results of such testing of a newborn infant be promptly disclosed in accordance with the following, as applicable to the infant involved:

''(A) To the biological mother of the infant (without regard to whether she is the legal guardian of the infant).

''(B) If the State is the legal guardian of the infant:

''(i) To the appropriate official of the State agency with responsibility for the care of the infant.

''(ii) To the appropriate official of each authorized agency providing assistance in the placement of the infant.

''(iii) If the authorized agency is giving significant consideration to approving an individual as a foster parent of the infant, to the prospective foster parent.

''(iv) If the authorized agency is giving significant consideration to approving an individual as an adoptive parent of the infant, to the prospective adoptive parent.

''(C) If neither the biological mother nor the State is the legal guardian of the infant, to another legal guardian of the infant.

''(3) That, in the case of prenatal testing for HIV disease that is conducted in the State, the results of such testing be promptly disclosed to the pregnant woman involved.

''(4) That, in disclosing the test results to an individual under paragraph (2) or (3), appropriate counseling on the human immunodeficiency virus be made available to the individual (except in the case of a disclosure to an official of a State or an authorized agency).

''(c) LIMITATION REGARDING AVAILABILITY OF GRANT FUNDS.—With respect to an activity described in any of paragraphs (1) through (4) of subsection (b), the requirement established by a State under such subsection that the activity be carried out applies for purposes of this section only to the extent that the following sources of funds are available for carrying out the activity:

''(1) Federal funds provided to the State in grants under subsection (a).

''(2) Funds that the State or private entities have elected to provide, including through entering into contracts under which health benefits are provided. This section does not require any entity to expend non-Federal funds.

''(d) DEFINITIONS.—For purposes of this section, the term 'authorized agency', with respect to the placement of a child (including an infant) for whom a State is a legal guardian, means an entity licensed or otherwise approved by the State to assist in such placement.

''(e) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there is authorized to be appropriated $10,000,000 for each of the fiscal years 1996 through 2000.

''SEC. 2673D. TESTING OF PREGNANT WOMEN AND NEWBORN INFANTS; CONTINGENT REQUIREMENT REGARDING STATE GRANTS UNDER PART B.

''(a) DETERMINATION BY SECRETARY.—During the first 30 days following the expiration of the 2-year period beginning on the date of the enactment of the Ryan White CARE Act Amendments of 1995, the Secretary shall publish in the Federal Register a determination of whether it has become a routine practice in the provision of health care in the United States to carry out each of the activities described in paragraphs (1) through (4) of section 2673C(b). In making the determination, the Secretary shall consult with the States and with other public or private entities that have knowledge or expertise relevant to the determination.

''(b) CONTINGENT APPLICABILITY.—

''(1) IN GENERAL.—If the determination published in the Federal Register under subsection (a) is that (for purposes of such subsection) the activities involved have become routine practices, paragraph (2) applies on and after the expiration of the 18-month period beginning on the date on which the determination is so published.

''(2) REQUIREMENT.—Subject to subsection (c), the Secretary shall not make a grant under part B to a State unless the State meets not less than one of the following requirements:

''(A) The State has in effect, in statute or through regulations, the requirements specified in paragraphs (1) through (4) of section 2673C(b).

''(B) The State demonstrates that, of the newborn infants born in the State during the most recent 1-year period for which the data are available, the HIV antibody status of 95 percent of the infants is known.

''(c) LIMITATION REGARDING AVAILABILITY OF FUNDS.—With respect to an activity described in any of paragraphs (1) through (4) of section 2673C(b), the requirements established by a State under subsection (b)(2)(A) that the activity be carried out applies for purposes of this section only to the extent that the following sources of funds are available for carrying out the activity:

''(1) Federal funds provided to the State in grants under part B.

''(2) Federal funds provided to the State in grants under section 2673C.

''(3) Funds that the State or private entities have elected to provide, including through entering into contracts under which health benefits are provided. This section does not require any entity to expend non-Federal funds.''.

SEC. 205. STATE APPLICATION.

Section 2617(b)(2) (42 U.S.C. 300ff–27(b)(2)) is amended—

(1) in subparagraph (A), by striking ''and'' after the semicolon;

(2) in subparagraph (B), by striking ''and'' after the semicolon; and

(3) by adding at the end thereof the following subparagraphs:

''(C) a description of the activities carried out by the State under section 2616; and

''(D) a description of how the allocation and utilization of resources are consistent with a

statewide coordinated statement of need, developed in partnership with other grantees in the State that receive funding under this title and after consultation with individuals receiving services under this part.''.

SEC. 206. ALLOCATION OF ASSISTANCE BY STATES; PLANNING, EVALUATION, AND ADMINISTRATION.

Section 2618(c) (42 U.S.C. 300ff–28(c)) is amended—

(1) by striking paragraph (1);

(2) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively; and

(3) in paragraph (3) (as so redesignated), by adding at the end the following sentences: ''In the case of entities to which the State allocates amounts received by the State under the grant (including consortia under section 2613), the State shall ensure that, of the aggregate amount so allocated, the total of the expenditures by such entities for administrative expenses does not exceed 10 percent (without regard to whether particular entities expend more than 10 percent for such expenses).''.

SEC. 207. TECHNICAL ASSISTANCE.

Section 2619 (42 U.S.C. 300ff–29) is amended by inserting before the period the following: '', including technical assistance for the development and implementation of statewide coordinated statements of need''.

TITLE III—EARLY INTERVENTION SERVICES

SEC. 301. ESTABLISHMENT OF PROGRAM.

Section 2651(b) (42 U.S.C. 300ff–51(b)) is amended—

(1) in paragraph (1), by inserting before the period the following: '', and unless the applicant agrees to expend not less than 50 percent of the grant for such services that are specified in subparagraphs (B) through (E) of such paragraph''; and

(2) in paragraph (4), by inserting after ''nonprofit private entities'' the following: ''(or private for-profit entities, if such entities are the only available providers of quality HIV care in the area)''.

SEC. 302. MINIMUM QUALIFICATIONS OF GRANTEES.

Section 2652(b)(1)(B) (42 U.S.C. 300ff–52(b)(1)(B)) is amended by inserting after ''nonprofit private entity'' the following: ''(or a private for-profit entity, if such an entity is the only available provider of quality HIV care in the area)''.

SEC. 303. MISCELLANEOUS PROVISIONS; PLANNING AND DEVELOPMENT GRANTS.

Section 2654 (42 U.S.C. 300ff–54) is amended by adding at the end thereof the following subsection:

''(c) PLANNING AND DEVELOPMENT GRANTS.—

''(1) IN GENERAL.—The Secretary may provide planning grants, in an amount not to exceed $50,000 for each such grant, to public and nonprofit private entities for the purpose of enabling such entities to provide early intervention services.

''(2) REQUIREMENT.—The Secretary may award a grant to an entity under paragraph (1) only if the Secretary determines that the entity will use such grant to assist the entity in qualifying for a grant under section 2651.

''(3) PREFERENCE.—In awarding grants under paragraph (1), the Secretary shall give preference to entities that provide HIV primary care services in rural or underserved communities.

''(4) LIMITATION.—Not to exceed 1 percent of the amount appropriated for a fiscal year under section 2655 may be used to carry out this section.''.

SEC. 304. ADDITIONAL REQUIRED AGREEMENTS.

Section 2664(a)(1) (42 U.S.C. 300ff–64(a)(1)) is amended—

(1) in subparagraph (A), by striking ''and'' after the semicolon; and

(2) by adding at the end the following subparagraph:

''(C) evidence that the proposed program is consistent with the statewide coordinated statement of need and that the applicant will participate in the ongoing revision of such statement of need.''.

SEC. 305. AUTHORIZATION OF APPROPRIATIONS.

Section 2655 (42 U.S.C. 300ff–55) is amended by striking ''$75,000,000'' and all that follows and inserting ''such sums as may be necessary for each of the fiscal years 1996 through 2000.''.

TITLE IV—GENERAL PROVISIONS

SEC. 401. COORDINATED SERVICES AND ACCESS TO RESEARCH FOR WOMEN, INFANTS, AND CHILDREN.

(a) IN GENERAL.—Section 2671 (42 U.S.C. 300ff–71) is amended—

(1) in subsection (a), by amending the subsection to read as follows:

''(a) IN GENERAL.—

''(1) PROGRAM OF GRANTS.—The Secretary, acting through the Administrator of the Health Resources and Services Administration and in consultation with the Director of the National Institutes of Health, shall make grants to public and nonprofit private entities that provide primary care (directly or through contracts) for the purpose of—

''(A) providing through such entities, in accordance with this section, opportunities for women, infants, and children to be participants in research of potential clinical benefit to individuals with HIV disease; and

''(B) providing to women, infants, and children health care on an outpatient basis.

''(2) PROVISIONS REGARDING PARTICIPATION IN RESEARCH.—With respect to the projects of research with which an applicant under paragraph (1) is concerned, the Secretary may not make a grant under such paragraph to the applicant unless the following conditions are met:

''(A) The applicant agrees to make reasonable efforts—

''(i) to identify which of the patients of the applicant are women, infants, and children who would be appropriate participants in the projects; and

''(ii) to offer women, infants, and children the opportunity to so participate (as appropriate), including the provision of services under subsection (f).

''(B) The applicant agrees that the applicant, and the projects of research, will comply with accepted standards of protection for human subjects (including the provision of written informed consent) who participate as subjects in clinical research.

''(C) For the third or subsequent fiscal year for which a grant under such paragraph is sought by the applicant, the Secretary has determined that—

''(i) a significant number of women, infants, and children who are patients of the applicant are participating in the projects (except to the extent this clause is waived under subsection (k)); and

''(ii) the applicant, and the projects of research, have complied with the standards referred to in subparagraph (B).

''(3) PROHIBITION.—Receipt of services by a patient shall not be conditioned upon the consent of the patient to participate in research.

''(4) CONSIDERATION BY SECRETARY OF CERTAIN CIRCUMSTANCES.—In administering the requirement of paragraph (2)(C)(i), the Secretary shall take into account circumstances in which a grantee under paragraph (1) is temporarily unable to comply with the requirement for reasons beyond the control of the grantee, and shall in such circumstances provide to the grantee a reasonable period of opportunity in which to reestablish compliance with the requirement.'';

(2) in subsection (c), by amending the subsection to read as follows:

''(c) PROVISIONS REGARDING CONDUCT OF RESEARCH.—With respect to eligibility for a grant under subsection (a):

''(1) A project of research for which subjects are sought pursuant to such subsection may be conducted by the applicant for the grant, or by an entity with which the applicant has made arrangements for purposes of the grant. The grant may not be expended for the conduct of any project of research.

''(2) The grant may not be made unless the Secretary makes the following determinations:

''(A) The applicant or other entity (as the case may be under paragraph (1)) is appropriately qualified to conduct the project of research. An entity shall be considered to be so qualified if any research protocol of the entity has been recommended for funding under this Act pursuant to technical and scientific peer review through the National Institutes of Health.

''(B) The project of research is being conducted in accordance with a research protocol to which the Secretary gives priority regarding the prevention and treatment of HIV disease in women, infants, and children. After consultation with public and private entities that conduct such research, and with providers of services under this section and recipients of such services, the Secretary shall establish a list of such protocols that are appropriate for purposes of this section. The Secretary may give priority under this subparagraph to a research protocol that is not on such list.'';

(3) by striking subsection (i);

(4) by redesignating subsections (g) and (h) as subsections (h) and (i), respectively;

(5) by inserting after subsection (f) the following subsection:

''(g) ADDITIONAL PROVISIONS.—The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees as follows:

''(1) The applicant will coordinate activities under the grant with other providers of health care services under this Act, and under title V of the Social Security Act.

''(2) The applicant will participate in the statewide coordinated statement of need under part B (where it has been initiated by the State) and in revisions of such statement.'';

(6) by redesignating subsection (j) as subsection (m); and

(7) by inserting before subsection (m) (as so redesignated) the following subsections:

''(j) COORDINATION WITH NATIONAL INSTITUTES OF HEALTH.—The Secretary shall develop and implement a plan that provides for the coordination of the activities of the National Institutes of Health with the activities carried out under this section. In carrying out the preceding sentence, the Secretary shall ensure that projects of research conducted or supported by such Institutes are made aware of applicants and grantees under this section, shall require that the projects, as appropriate, enter into arrangements for purposes of this section, and shall require that each project entering into such an arrangement inform the applicant or grantee under this section of the needs of the project for the participation of women, infants, and children.

''(k) TEMPORARY WAIVER REGARDING SIGNIFICANT PARTICIPATION.—

''(1) IN GENERAL.—In the case of an applicant under subsection (a) who received a grant under this section for fiscal year 1995, the Secretary may, subject to paragraph (2), provide to the applicant a waiver of the requirement of subsection (a)(2)(C)(i) if the Secretary determines that the applicant is making reasonable progress toward meeting the requirement.

''(2) TERMINATION OF AUTHORITY FOR WAIVERS.—The Secretary may not provide any waiver under paragraph (1) on or after October 1, 1998. Any such waiver provided prior to such date terminates on such date, or on such earlier date as the Secretary may specify.

''(l) TRAINING AND TECHNICAL ASSISTANCE.—Of the amounts appropriated under subsection (m) for a fiscal year, the Secretary may use not more than five percent to provide training and technical assistance to assist applicants and grantees under subsection (a) in complying with the requirements of this section.''.

(b) CONFORMING AMENDMENTS.—Section 2671 (42 U.S.C. 300ff–71) is amended—

(1) in the heading for the section, by striking ''**DEMONSTRATION**'' and all that follows and inserting ''**COORDINATED SERVICES AND ACCESS TO RESEARCH FOR WOMEN, INFANTS, AND CHILDREN.**'';

(2) in subsection (b), by striking ''pediatric patients and pregnant women'' and inserting ''women, infants, and children''; and

(3) in each of subsections (d) through (f), by striking ''pediatric'', each place such term appears.

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 2671 (42 U.S.C. 300ff–71) is amended in subsection (m) (as redesignated by subsection (a)(6)) by striking ''there are'' and all that follows and inserting the following: ''there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1996 through 2000.''.

SEC. 402. PROJECTS OF NATIONAL SIGNIFICANCE.

(a) IN GENERAL.—Part D of title XXVI (42 U.S.C. 300ff–71 et seq.) is amended by inserting after section 2673 the following section:

''SEC. 2673A. DEMONSTRATION PROJECTS OF NATIONAL SIGNIFICANCE.

''(a) IN GENERAL.—The Secretary shall make grants to public and nonprofit private entities (including community-based organizations and Indian tribes and tribal organizations) for the purpose of carrying out demonstration projects that provide for the care and treatment of individuals with HIV disease, and that—

''(1) assess the effectiveness of particular models for the care and treatment of individuals with such disease;

''(2) are of an innovative nature; and

''(3) have the potential to be replicated in similar localities, or nationally.

''(b) CERTAIN PROJECTS.—Demonstration projects under subsection (a) shall include the development and assessment of innovative models for the delivery of HIV services that are designed—

''(1) to address the needs of special populations (including individuals and families with HIV disease living in rural communities, adolescents with HIV disease, Native American individuals and families with HIV disease, homeless individuals and families with HIV disease, hemophiliacs with HIV disease, and incarcerated individuals with HIV disease); and

''(2) to ensure the ongoing availability of services for Native American communities to enable such communities to care for Native Americans with HIV disease.

''(c) COORDINATION.—The Secretary may not make a grant under this section unless the applicant submits evidence that the proposed program is consistent with the applicable statewide coordinated statement of need under part B, and the applicant agrees to participate in the ongoing revision process of such statement of need (where it has been initiated by the State).

''(d) REPLICATION.—The Secretary shall make information concerning successful models developed under this section available to grantees under this title for the purpose of coordination, replication, and integration.

''(e) FUNDING; ALLOCATION OF AMOUNTS.—

''(1) IN GENERAL.—Of the amounts available under this title for a fiscal year for each program specified in paragraph (2), the Secretary shall reserve 3 percent for making grants under subsection (a).

''(2) RELEVANT PROGRAMS.—The programs referred to in subsection (a) are the program under part A, the program under part B, the program under part C, the program under section 2671, the program under section 2672, and the program under section 2673.''.

(b) STRIKING OF RELATED PROVISION.—Section 2618 (42 U.S.C. 300ff–28) is amended by striking subsection (a).

SEC. 403. SPECIAL TRAINING PROJECTS.

(a) TRANSFER OF PROGRAM.—The Public Health Service Act (42 U.S.C. 201 et seq.) is amended—

(1) by transferring section 776 from the current placement of the section;

(2) by redesignating the section as section 2673B; and

(3) by inserting the section after section 2673A (as added by section 402(a)).

(b) MODIFICATIONS.—Section 2673B (as transferred and redesignated by subsection (a)) is amended—

(1) in subsection (a)(1)—

(A) by striking subparagraphs (B) and (C);

(B) by redesignating subparagraphs (A) and (D) as subparagraphs (B) and (C), respectively;

(C) by inserting before subparagraph (B) (as so redesignated) the following subparagraph:

''(A) to train health personnel, including practitioners in programs under this title and other community providers, in the diagnosis, treatment, and prevention of HIV disease, including the prevention of the perinatal transmission of the disease and including measures for the prevention and treatment of opportunistic infections;'';

(D) in subparagraph (B) (as so redesignated), by adding ''and'' after the semicolon; and

(E) in subparagraph (C) (as so redesignated), by striking ''curricula and'';

(2) by striking subsection (c) and redesignating subsection (d) as subsection (c); and

(3) in subsection (c) (as so redesignated)—

(A) in paragraph (1)—

(i) by striking ''is authorized'' and inserting ''are authorized''; and

(ii) by inserting before the period the following: '', and such sums as may be necessary for each of the fiscal years 1996 through 2000''; and

(B) in paragraph (2)—

(i) by striking ''is authorized'' and inserting ''are authorized''; and

(ii) by inserting before the period the following: '', and such sums as may be necessary for each of the fiscal years 1996 through 2000''.

SEC. 404. EVALUATIONS AND REPORTS.

Section 2674 (42 U.S.C. 300ff–74) is amended—

(1) in subsection (b)—

(A) in the matter preceding paragraph (1), by striking ''not later than 1 year'' and all that follows through ''title,'' and inserting the following: ''not later than October 1, 1996,'';

(B) by striking paragraphs (1) through (3) and inserting the following paragraph:

''(1) evaluating the programs carried out under this title; and''; and

(C) by redesignating paragraph (4) as paragraph (2); and

(2) by adding at the end the following subsection:

''(d) ALLOCATION OF FUNDS.—The Secretary shall carry out this section with amounts available under section 241. Such amounts are in addition to any other amounts that are available to the Secretary for such purpose.''.

SEC. 405. COORDINATION OF PROGRAM.

Section 2675 of the Public Health Service Act (42 U.S.C. 300ff–75) is amended by adding at the end the following subsection:

''(d) ANNUAL REPORT.—Not later than October 1, 1996, and annually thereafter, the Secretary shall submit to the appropriate committees of the Congress a report concerning coordination efforts under this title at the Federal, State, and local levels, including a statement of whether and to what extent there exist Federal barriers to integrating HIV-related programs.''.

TITLE V—ADDITIONAL PROVISIONS

SEC. 501. AMOUNT OF EMERGENCY RELIEF GRANTS.

Paragraph (3) of section 2603(a) (42 U.S.C. 300ff–13(a)(3)) is amended to read as follows:

''(3) AMOUNT OF GRANT.—

''(A) IN GENERAL.—Subject to the extent of amounts made available in appropriations Acts, a grant made for purposes of this paragraph to an eligible area shall be made in an amount equal to the product of—

''(i) an amount equal to the amount available for distribution under paragraph (2) for the fiscal year involved; and

''(ii) the percentage constituted by the ratio of the distribution factor for the eligible area to the sum of the respective distribution factors for all eligible areas.

''(B) DISTRIBUTION FACTOR.—For purposes of subparagraph (A)(ii), the term 'distribution factor' means the product of—

''(i) an amount equal to the estimated number of living cases of acquired immune deficiency syndrome in the eligible area involved, as determined under subparagraph (C); and

''(ii) the cost index for the eligible area involved, as determined under subparagraph (D).

''(C) ESTIMATE OF LIVING CASES.—The amount determined in this subparagraph is an amount equal to the product of—

''(i) the number of cases of acquired immune deficiency syndrome in the eligible area during each year in the most recent 120-month period for which data are available with respect to all eligible areas, as indicated by the number of such cases reported to and confirmed by the Director of the Centers for Disease Control and Prevention for each year during such period; and

''(ii) with respect to—

''(I) the first year during such period, .06;

''(II) the second year during such period, .06;

''(III) the third year during such period, .08;

''(IV) the fourth year during such period, .10;

''(V) the fifth year during such period, .16;

''(VI) the sixth year during such period, .16;

''(VII) the seventh year during such period, .24;

''(VIII) the eighth year during such period, .40;

''(IX) the ninth year during such period, .57; and

''(X) the tenth year during such period, .88.

''(D) COST INDEX.—The amount determined in this subparagraph is an amount equal to the sum of—

''(i) the product of—

''(I) the average hospital wage index reported by hospitals in the eligible area involved under section 1886(d)(3)(E) of the Social Security Act for the 3-year period immediately preceding the year for which the grant is being awarded; and

''(II) .70; and

''(ii) .30.

''(E) UNEXPENDED FUNDS.—The Secretary may, in determining the amount of a grant for a fiscal year under this paragraph, adjust the grant amount to reflect the amount of unexpended and uncanceled grant funds remaining at the end of the most recent fiscal year for which the amount of such funds can be determined using the required financial status report. The amount of any such unexpended funds shall be determined using the financial status report of the grantee.

''(F) PUERTO RICO, VIRGIN ISLANDS, GUAM.—For purposes of subparagraph (D), the cost index for an eligible area within Puerto Rico, the Virgin Islands, or Guam shall be 1.0.''.

SEC. 502. AMOUNT OF CARE GRANTS.

Section 2618 (42 U.S.C. 300ff–28), as amended by section 402(b), is amended by striking subsection (b) and inserting the following subsections:

''(a) AMOUNT OF GRANT.—

''(1) IN GENERAL.—Subject to subsection (b) (relating to minimum grants), the amount of a grant under this part for a State for a fiscal year shall be the sum of—

''(A) the amount determined for the State under paragraph (2); and

''(B) the amount determined for the State under paragraph (4) (if applicable).

''(2) PRINCIPAL FORMULA GRANTS.—For purposes of paragraph (1)(A), the amount determined under this paragraph for a State for a fiscal year shall be the product of—

''(A) the amount available under section 2677 for carrying out this part, less the reservation of funds made in paragraph (4)(A) and less any other applicable reservation of funds authorized or required in this Act (which amount is subject to subsection (b)); and

''(B) the percentage constituted by the ratio of—

''(i) the distribution factor for the State; to

''(ii) the sum of the distribution factors for all States.

''(3) DISTRIBUTION FACTOR FOR PRINCIPAL FORMULA GRANTS.—For purposes of paragraph (2)(B), the term 'distribution factor' means the following, as applicable:

''(A) In the case of each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico, the product of—

''(i) the number of cases of acquired immune deficiency syndrome in the State, as indicated by the number of cases reported to and confirmed by the Secretary for the 2 most recent fiscal years for which such data are available; and

''(ii) the cube root of the ratio (based on the most recent available data) of—

''(I) the average per capita income of individuals in the United States (including the territories); to

''(II) the average per capita income of individuals in the State.

''(B) In the case of a territory of the United States (other than the Commonwealth of Puerto Rico), the number of additional cases of such syndrome in the specific territory, as indicated by the number of cases reported to and confirmed by the Secretary for the 2 most recent fiscal years for which such data is available.

''(4) SUPPLEMENTAL AMOUNTS FOR CERTAIN STATES.—For purposes of paragraph (1)(B), an amount shall be determined under this paragraph for each State that does not contain any metropolitan area whose chief elected official received a grant under part A for fiscal year 1996. The amount determined under this paragraph for such a State for a fiscal year shall be the product of—

''(A) an amount equal to 7 percent of the amount available under section 2677 for carrying out this part for the fiscal year (subject to subsection (b)); and

''(B) the percentage constituted by the ratio of—

''(i) the number of cases of acquired immune deficiency syndrome in the State (as determined under paragraph (3)(A)(i)); to

''(ii) the sum of the respective numbers determined under clause (i) for each State to which this paragraph applies.

''(5) DEFINITIONS.—For purposes of this subsection and subsection (b):

''(A) The term 'State' means each of the 50 States, the District of Columbia, and the territories of the United States.

''(B) The term 'territory of the United States' means each of the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the Republic of the Marshall Islands.

''(b) MINIMUM AMOUNT OF GRANT.—

''(1) IN GENERAL.—Subject to the extent of the amounts specified in paragraphs (2)(A) and (4)(A) of subsection (a), a grant under this part for a State for a fiscal year shall be the greater of—

''(A) the amount determined for the State under subsection (a); and

''(B) the amount applicable under paragraph (2) to the State.

''(2) APPLICABLE AMOUNT.—For purposes of paragraph (1)(B), the amount applicable under this paragraph for a fiscal year is the following:

''(A) In the case of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico—

''(i) $100,000, if it has less than 90 cases of acquired immune deficiency syndrome (as determined under subsection (a)(3)(A)(i)); and

''(ii) $250,000, if it has 90 or more such cases (as so determined).

''(B) In the case of each of the territories of the United States (other than the Commonwealth of Puerto Rico), $0.0.''.

SEC. 503. CONSOLIDATION OF AUTHORIZATIONS OF APPROPRIATIONS.

(a) IN GENERAL.—Part D of title XXVI (42 U.S.C. 300ff–71) is amended by adding at the end thereof the following section:

''SEC. 2677. AUTHORIZATION OF APPROPRIATIONS.

''(a) IN GENERAL.—For the purpose of carrying out parts A and B, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1996 through 2000. Subject to section 2673A and to subsection (b), of the amount appropriated under this section for a fiscal year, the Secretary shall make available 64 percent of such amount to carry out part A and 36 percent of such amount to carry out part B.

''(b) DEVELOPMENT OF METHODOLOGY.—With respect to each of the fiscal years 1997 through 2000, the Secretary may develop and implement a methodology for adjusting the percentages referred to in subsection (a).''.

(b) REPEALS.—Sections 2608 and 2620 (42 U.S.C. 300ff–18 and 300ff–30) are repealed.

(c) CONFORMING AMENDMENTS.—Section 2605(d)(1) (as redesignated by section 105(3)), is amended by striking ''2608'' and inserting ''2677''.

SEC. 504. ADDITIONAL PROVISIONS.

(a) DEFINITIONS.—Section 2676(4) (42 U.S.C. 300ff–76(4)) is amended by inserting ''funeral-service practitioners,'' after ''emergency medical technicians,''.

(b) MISCELLANEOUS AMENDMENT.—Section 1201(a) (42 U.S.C. 300d(a)) is amended in the matter preceding paragraph (1) by striking ''The Secretary,'' and all that follows through ''shall,'' and inserting ''The Secretary shall,''.

(c) TECHNICAL CORRECTIONS.—Title XXVI (42 U.S.C. 300ff–11 et seq.) is amended—

(1) in section 2601(a), by inserting ''section'' before ''2604'';

(2) in section 2603(b)(4)(B), by striking ''an expedited grants'' and inserting ''an expedited grant'';

(3) in section 2617(b)(3)(B)(iv), by inserting ''section'' before ''2615'';

(4) in section 2618(b)(1)(B), by striking ''paragraph 3'' and inserting ''paragraph (3)'';

(5) in section 2647—

(A) in subsection (a)(1), by inserting ''to'' before ''HIV'';

(B) in subsection (c), by striking ''section 2601'' and inserting ''section 2641''; and

(C) in subsection (d)—

(i) in the matter preceding paragraph (1), by striking ''section 2601'' and inserting ''section 2641''; and

(ii) in paragraph (1), by striking ''has in place'' and inserting ''will have in place'';

(6) in section 2648—

(A) by converting the heading for the section to boldface type; and

(B) by redesignating the second subsection (g) as subsection (h);

(7) in section 2649—

(A) in subsection (b)(1), by striking ''subsection (a) of''; and

(B) in subsection (c)(1), by striking ''this subsection'' and inserting ''subsection'';

(8) in section 2651—

(A) in subsection (b)(3)(B), by striking ''facility'' and inserting ''facilities''; and

(B) in subsection (c), by striking ''exist'' and inserting ''exists'';

(9) in section 2676—

(A) in paragraph (2), by striking ''section'' and all that follows through ''by the'' and inserting ''section 2686 by the''; and

(B) in paragraph (10), by striking ''673(a)'' and inserting ''673(2)'';

(10) in part E, by converting the headings for subparts I and II to Roman typeface; and

(11) in section 2684(b), in the matter preceding paragraph (1), by striking ''section 2682(d)(2)'' and inserting ''section 2683(d)(2)''.

TITLE VI—EFFECTIVE DATE

SEC. 601. EFFECTIVE DATE.

Except as provided in section 101(a), this Act takes effect October 1, 1995.

Amend the title so as to read: ''An Act to amend the Public Health Service Act to revise and extend programs established pursuant to the Ryan White Comprehensive AIDS Resources Emergency Act of 1990.''.

Mr. DOLE. Mr. President, I move that the Senate disagree to the House amendments and request a conference on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer appointed Mrs. KASSEBAUM, Mr. JEFFORDS, Mr. FRIST, Mr. KENNEDY, and Mr. DODD conferees on the part of the Senate.

APPOINTMENT OF CONFEREES—H.R. 2076

The PRESIDING OFFICER. Mr. President, I understand that pursuant to the order of September 29, 1995, the Chair is authorized to appoint conferees on the part of the Senate for H.R. 2076, the Commerce, Justice, State appropriations bill for fiscal year 1996.

The PRESIDING OFFICER appointed Mr. GREGG, Mr. HATFIELD, Mr. STEVENS, Mr. DOMENICI, Mr. MCCONNELL, Mr. JEFFORDS, Mr. COCHRAN, Mr. HOLLINGS, Mr. BYRD, Mr. INOUYE, Mr. BUMPERS, Mr. LAUTENBERG, and Mr. KERREY of Nebraska conferees on the part of the Senate.

JERUSALEM EMBASSY RELOCATION IMP

DING OFFICER appointed Mr. GREGG, Mr. HATFIELD, Mr. S

Mr. DOLE. Mr. President, I understand that S. 1322, introduced earlier by myself is at the desk.

The PRESIDING OFFICER. The Senator is correct.

The clerk will read the bill for the first time.

The bill (S. 1322) was read the first time.

Mr. DOLE. Mr. President, I ask for its second reading.

Mr. BYRD. Mr. President, I have been asked to object and do object.

The PRESIDING OFFICER. Objection is heard.

Mr. DOLE. Mr. President, as indicated, I have introduced S. 1322, the Jerusalem Embassy Relocation Act of 1995. I am pleased to do so with the distinguished senior Senator from New York, Senator MOYNIHAN, as the lead cosponsor. As the Senate knows, Senator MOYNIHAN has been the expert and the leader on Jerusalem for his entire career. I am pleased that he has joined with Senator KYL, Senator INOUYE and other cosponsors in this important legislation. I would like to take special note of the roles of Senator KYL and Senator INOUYE in developing this legislation, and in agreeing to the changes included today.

This legislation is very similar to S. 770, introduced on May 9, 1995. S. 770

currently has 62 cosponsors—and 61 of them are included on the legislation I am introducing today. There is one major change between S. 770 and S. 1322—the provision requiring groundbreaking in 1996 for construction of a new Embassy has been deleted, and minor or conforming changes have been made. All major provisions are identical: Findings on the importance of Jerusalem, statement of policy on recognizing Jerusalem as the capital of Israel, semiannual reporting requirements, and, most important, the requirement that the American Embassy be open in Jerusalem no later than May 31, 1999.

A number of Members expressed concern about the potential impact of the requirement for breaking ground on construction next year. Clearly 62 percent of the Senate was comfortable with the provision. The lead cosponsor, Senator KYL, felt particularly strongly about some action occurring next year—the 3000th anniversary of Jerusalem. But Senator KYL and the other cosponsors have agreed to remove the requirement in the interests of gaining even broader support.

All of us in the Senate are aware of the possible impact our actions could have on the peace process in the Middle East. We want the peace process to succeed. As I said upon introducing S. 770, ''the peace process has made great strides and our commitment to that process in unchallengeable.'' Last spring, the fate of the declaration of principles ''Phase II'' agreement was very much up in the air. The July deadline was missed. The August deadline was missed. Fortunately, the Oslo II accord was signed last month. Implementation is underway. While always subject to disruption and always under attack from extremists, the pace process is working. The toughest issues are yet to be resolved in final status talks, including Jerusalem.

In my view, the United States does not have to wait for the end of final status talks to begin the process of moving the United States Embassy to Jerusalem. As both S. 770 and today's legislation state: ''Jerusalem should be recognized as the capital of Israel and the United States Embassy should be officially open in Jerusalem no later than May 31, 1999.'' In my view, we should begin the process of moving now and we should conclude it by May 31, 1999. That is the bottom line, and that is what S. 1322 does.

In the 5 months since the introduction of S. 770, the Clinton administration has done nothing to bridge our differences. A questionable legal opinion was offered and a veto threat was made, but no substantive contacts have occurred. Not one. I am disappointed the administration has ignored what is obviously a strong bipartisan majority in the Senate. I am disappointed the administration has made no effort at all to communicate with the lead sponsors of this legislation. Our hope is to unify, not to divide, on the sensitive issue of Jerusalem. Our hope is to move ahead on this issue. Our hope is the administration will support the legislation to move the Embassy. In 2 weeks, Prime Minister Rabin, mayor of Jerusalem Olmert and hundreds of others will assemble in the rotunda of the U.S. Capitol to commemorate the 3000th anniversary of Jerusalem. Many of us noted that the American Ambassador to Israel could not find the time to attend opening ceremonies for the 3000th anniversary of Jerusalem in Israel. I am confident that the Congress will celebrate this historic event in a much more appropriate manner.

In the coming days I expect additional cosponsors will be added to the Jerusalem embassy legislation. I also expect decisions to be made in the administration and in the Congress about how and when to proceed with this legislation.

I ask unanimous consent that a legal analysis supporting the constitutionality of this legislation along with a comparison of S. 770 and S. 1322, be printed in the RECORD following my remarks.

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

[From the Legal Time, Oct. 9, 1995]

CAN CONGRESS MOVE AN EMBASSY?

(By Malvina Halberstam)

This year marks 3,000 years since Jerusalem was first established as the capital of a Jewish state, by King David. Although the city has been ruled by many empires and states since then, it has never been the capital of any other country. It was formally reestablished as the capital of Israel in 1950. In a fitting tribute to the 3,000th anniversary, Sens. Robert Dole (R–Kan.) and Jon Kyl (R–Ariz.) introduced a bill on May 9 of this year to move the U.S. embassy from Tel Aviv to Jerusalem.

Besides the policy issue, which have been the subject of considerable debate, the Dole-Kyl bill raises interesting questions concerning the scope of congressional and executive authority in the conduct of foreign affairs, and the extent to which Congress can use its appropriations power to influence executive action in this area.

The proposed Jerusalem Embassy Relocation Implementation Act, which has 60 cosponsors, makes a number of findings, including that Jerusalem has been the Israeli capital since 1950 and that the United States maintains its embassy in the functioning capital of every country except Israel. The bill declares it to be U.S. policy to recognize Jerusalem as the capital of Israel, to begin breaking ground for construction of the embassy in Jerusalem no later than Dec. 31, 1996, and officially to open the embassy no later than May 31, 1999.

The provides that at least $5 million in 1995, $25 million in 1996, and $75 million in 1997 of the funds authorized to be appropriated for the State Department's acquisition and maintenance of buildings abroad shall be made available for the construction and other costs associated with the relocation. It further provides that not more than 50 percent of those funds appropriated in 1997 may be obligated until the secretary of state reports to Congress that construction has begun and that not more than 50 percent of the funds appropriated in 1999 may be obligated until the secretary reports to Congress that the Jerusalem embassy has officially opened.

President Bill Clinton has opposed the legislation on policy grounds, and the Justice Department has prepared a memorandum arguing that the bill is unconstitutional. Essentially, the department argues (1) that the bill interferes with the president's power to conduct foreign affairs and make decisions pertaining to recognition, and (2) that the bill is an inappropriate exercise of Congress' appropriations power because it includes an unconstitutional condition.

THE ''FOREIGN AFFAIRS'' POWER

Contrary to popular impression, the Constitution does not vest the foreign affairs power in the president. It does not vest the foreign affairs power in any branch. Indeed, it makes no reference to ''foreign affairs.''

The Constitution vests some powers that impact on foreign affairs in the president, others in the president and the Senate jointly, and still others in Congress. It provides that the president ''shall receive ambassadors.'' It gives him the power to appoint ambassadors, but only with the advice and consent of the Senate, and to make treaties, provided two-thirds of the senators concur.

The Constitution also gives Congress a number of powers affecting foreign affairs, including the power to ''regulate commerce with foreign nations''; to ''establish uniform rules of naturalization''; to ''coin money and regulate the value thereof, and of foreign coin''; to ''define and punish piracies and felonies committed on the high seas, and offenses against the law of nations''; to ''declare war, grant letters of marque and reprisal, and make rules concerning capture on land and water''; and to ''raise and support armies,'' and ''provide and maintain a navy.'' As Edward Corwin put it in The President: Office and Powers, 1787–1984, ''the Constitution . . . is an invitation to struggle for the privilege of directing American foreign policy.''

Probably the most comprehensive Supreme Court discussion of the foreign affairs power is Justice George Sutherland's opinion in United States v. Curtiss-Wright Export Corp. (1936). In that case, the Court sustained a statute authorizing the executive to order an embargo on arms to Brazil—a delegation of congressional authority unacceptable at that time with respect to domestic regulation. Sutherland argued that in foreign affairs, as distinct from domestic affairs, the authority of the federal government does not depend on a grant of power from the states. Turning to the specific issue before the Court, the president's authority to declare an embargo, Sutherland stated, ''We are dealing here not alone with an authority vested in the President by exercise of legislative power, but with such an authority plus the very delicate plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations.''

In addition to making no reference to ''foreign affairs,'' the Constitution also makes no reference to ''recognition'' of foreign states. The provision that the president ''shall receive ambassadors,'' now considered the basis of the president's power over recognition, was described by Alexander Hamilton in Federalist No. 69 as ''more a matter of dignity than of authority'' and ''a circumstance which will be without consequence.''

Historically, however, presidents have made decisions on recognition, starting with George Washington's recognition of the French Republic. In United States v. Belmont (1937) and United States v. Pink (1942), the Supreme Court implicitly accepted the executive's authority over recognition when it held that an executive agreement recognizing the Soviet government and providing for settlement of claims between the

United States and the Soviet Union superseded inconsistent state law.

Both the Court's reference to the president's broad foreign affairs powers in Curtiss-Wright (and other cases cited in the Justice Department memo), and the Court's implied acceptance of the executive's authority to recognize foreign governments to Belmont and Pink were made in situations in which Congress either delegated authority to the executive or was silent. None involved a conflict between Congress and the president.

FLUCTUATING AUTHORITY

Indeed, the Supreme Court has never held that Congress could not exercise one of its constitutional powers because doing so would interfere with the president's conduct of foreign affairs. The Court has held the converse: that presidential action, which might have been constitutional if Congress had not acted, was unconstitutional because it was inconsistent with legislation enacted by Congress. In Youngstown Sheet and Tube Co. v. Sawyer (1952), the Court held that, notwithstanding his constitutional power as commander in chief, President Harry Truman's seizure of the steel mills to ensure that a threatened strike did not stop the production of steel needed for the Korean War, was illegal because it was inconsistent with the Taft-Hartley Act for resolving labor disputes. Justice Robert Jackson, who had been President Franklin Roosevelt's attorney general and was a strong proponent of broad executive authority, concurred in what has become the classic statement on the relationship between executive and legislative power. Jackson wrote: Presidential powers are not fixed but fluctuate, depending upon their disjunction or conjunction with those of Congress. . . .

1. When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all the Congress can delegate. In these circumstances, and in these only, may he be said (for what it may be worth) to personify the federal sovereignty. If his act is held unconstitutional under these circumstances, it usually means that the Federal Government as an undivided whole lacks power. . . .

2. When the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution in uncertain. Therefore, congressional inertia, indifference or quiescence may sometimes, at least as a practical matter, enable, if not invite, measures on independent presidential responsibility. In this area, any actual test of power is likely to depend on the imperatives of events and contemporary imponderables rather than on abstract theories of law.

3. When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter. Courts can sustain exclusive presidential control in such a case only by disabling the Congress from acting upon the subject. Presidential claim to a power at once so conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system.

Justice Jackson cited Curtiss-Wright as an example of the first class of cases and noted that ''that case involved not the President's power to act without Congressional authority, but the question of his authority to act under and in accord with an Act of Congress.'' Jackson concluded, ''It was intimated that the President might act in external affairs without congressional authority, but not that he might act contrary to an Act of Congress.''

Admittedly, the Dole-Kyl bill does not explicitly require the president to relocate the embassy to Jerusalem. However, the findings that Jerusalem is the Israeli capital and that Israel is the only state in which the U.S. embassy is not in the capital, the assertion that it is U.S. policy that the embassy be in Jerusalem, the allocation of funds for relocation and construction of an embassy there, and the prohibition on the use of some funds appropriated to the State Department if construction is not started by December 1996 and completed by May 1999, all clearly indicate the purpose of Congress to commence construction of a U.S. embassy in Jerusalem no later than December 1996 and to open that embassy no later than May 1999.

THE JACKSON ANALYSIS

Under the Jackson analysis, were the president to take ''measures incompatible with the expressed or implied will of Congress,'' his power would be ''at its lowest ebb.'' He could ''rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter.'' Such exclusive presidential control could be sustained ''only by disabling the Congress from acting upon the subject.'' While the question has never been decided, it is unlikely that a court would hold that the president's authority to receive ambassadors (his power to appoint ambassadors requires the advice and consent of the Senate), minus the power of Congress under the necessary and proper clause and the spending clause of Article I, is sufficient to disable Congress from acting upon the subject.

Both the necessary and proper clause and the spending clause have been broadly interpreted to permit Congress to legislate on a wide range of matters. Neither limits congressional action to the matters enumerated in Article 1, §8.

The necessary and proper clause authorizes Congress to make not only all laws necessary and proper to implement the enumerated powers of Congress, but all laws necessary and proper to execute all powers vested in the government of the United States or in any department or office thereof. Thus, even if recognition were deemed an executive power—on the basis of historical precedent, if not constitutional provision—Congress has the power under this clause to enact legislation concerning the location of U.S. embassies.

The Dole-Kyl bill is also clearly a proper exercise of Congress' spending power. That the use of the spending power is not limited to those areas that Congress can otherwise regulate was made clear in United States v. Butler (1936). Justice Owen Roberts, writing for the majority, stated, [The first clause of Article I, §8] confers a power separate and distinct from these later enumerated, is not restricted in meaning by the grant of them, and Congress consequently has a substantive power to tax and to appropriate, limited only by the requirement that it shall be exercised to provide for the general welfare of the United States [emphasis added].

The Justice Department memo argues, correctly, that Congress cannot use the spending power to impose unconstitutional conditions. Thus, the Supreme Court has held that Congress cannot use the appropriations power to violate the establishment clause of the First Amendment, Flast v. Cohen (1968); the compensation clause in Article III, United States v. Will (1980); or the prohibition on bills of attainder in Article I, §9, United States v. Lovett (1946). The principle that has emerged is that Congress cannot use the spending power to achieve that which the Constitution prohibits. But neither appropriating funds for relocation and construction of an embassy nor limiting expenditure of funds appropriated for the acquisition and maintenance of buildings abroad if construction is not started and completed on specified dates violates any prohibition of the Constitution.

The Justice memo relies on Butler, the only case in which the Court has held a federal appropriation invalid because of the unconstitutionality of a condition that did not involve infringement of individual rights. In that case, decided more than half a century ago, the majority took the position that Congress could not use federal funds to induce states to enact regulations that Congress could not enact under its enumerated powers. Within a year of that decision, however, the Court (in Steward Machine Co. v. Davis and Helvering v. Davis (1937) sustained conditional appropriations in areas outside the scope of Congress' enumerated powers. Since then, Congress has enacted numerous statutes in which it used the spending power to achieve results that it could not have achieved by regulating directly.

Most recently, in South Dakota v. Dole (1987), the Supreme Court rejected a state argument that Congress could not use federal highway funding to achieve a national minimum drinking age because the 21st Amendment gave the states the power to make that decision. After reviewing its earlier decisions, the Court stated, These cases establish that the ''independent constitutional bar'' limitation on the spending power is not, as petitioner suggests, a prohibition on the indirect achievement of objectives which Congress is not empowered to achieve directly. Instead, we think that the language in our earlier opinions stands for the unexceptionable proposition that the power may not be used to induce the States to engage in activities that would themselves be unconstitutional.

CONGRESS' POWER OF THE PURSE

Moreover, in Butler the Court held that Congress could not use the spending power to limit states' rights. The Court has never held that Congress cannot limit the proper exercise of power by another branch of the federal government through the use of its appropriations authority unless the matter falls within Congress' enumerated powers. Such a holding would vitiate one of the most important—if not the most important—of the checks and balances: Congress' power of the purse. As the U.S. District Court for the District of Columbia stated in United States v. Oliver North (1988), [t]hough the parameters of Congress' powers may be contested, Congress surely has a role to play in aspects of foreign affairs, as the Constitution expressly recognizes and the Supreme Court of the United States has affirmed. The most prominent among those Congressional powers is of course the general appropriations power.

That Congress can use the spending power to limit the executive's constitutional powers is well established. Consider, for example, the president's power as commander in chief. Although the Constitution provides that the president shall be commander in chief, and the Supreme Court stated almost 150 years ago that this encompasses the power ''to direct the movements of the naval and military forces at his command and to employ them in the manner he may deem most effectual to harass and conquer and subdue the enemy'' (*Fleming v. Page* (1850)), Congress has repeatedly used its funding power to limit military action by the president. Indeed, in some of the challenges to the

Vietnam War, courts have stated that Congress' failure to prohibit the president from using funds for the war (or for certain aspects of it) constituted authorization. If Congress can exercise its appropriations power to limit the president's power as commander in chief—a power specifically provided for in the Constitution—a fortiori it can exercise the appropriations power to limit the president's foreign affairs power—a power not expressly vested in the president, but implied from other powers and shared with Congress.

Since World War II, Congress has consistently used appropriations as a means of controlling some aspects of foreign policy. In 1989, commentator Louis Fisher characterized the assertion that Congress cannot control foreign affairs by withholding appropriations as ''*the* most startling constitutional claim emanating from the Iran contra hearings'' (''How Tightly Can Congress Draw the Purse Strings?'' *American Journal of International Law*). Or, as Professor John Hart Ely put it in his 1993 book, *War and Responsibility: Constitutional Lessons of Vietnam and Its Aftermath*, assertions ''that foreign affairs just aren't any of Congress's business . . . bear no relation to the language or purposes of the founding document, or the first century and a half of our history.''

EVEN KISSINGER CONCEDED

Even strong proponents of broad executive power in foreign affairs agree that Congress can use the appropriations power to affect the conduct of foreign affairs. Professor Louis Henkin, chief reporter for the latest Restatement of U.S. Foreign Relations Law, has written, ''Congress has insisted and presidents have reluctantly accepted that in foreign affairs as in domestic affairs, spending is expressly entrusted to Congress. . . .'' And then Secretary of State Henry Kissinger conceded, following the executive confrontations with Congress during the Vietnam War: The decade long struggle in this country over executive dominance in foreign affairs is over. The recognition that Congress is a coequal branch of government is the dominant fact of national politics today. The executive accepts that Congress must have both the sense and the reality of participation foreign policy must be a shared enterprise.

Whatever the respective powers of Congress and the president to decide whether to recognize a foreign state—a question on which the Constitution is silent and the Supreme Court has never ruled—that issue is not raised by the Dole-Kyl bill. Rather, the issues are whether Congress can enact legislation that may affect U.S. foreign policy interests, and whether it can achieve its ends through use of the appropriations power. Long-established practice, the writings of scholars and statesmen, and judicial decisions all indicate that the answer to both is clearly yes.

COMPARISON OF S. 770 AND S. 1322

The withholding of funds pending groundbreaking for a new embassy in Jerusalem in 1996 has been deleted (Section 3(a)(2) and section 3(b) of S. 770).

A new finding concerning a 1990 resolution on Jerusalem passed by Congress has been added (finding 9 of S. 1322).

The statement of policy has been amended to include reference to Jerusalem being undivided and open to all ethnic and religious groups.

The statement of policy has been re-worded to use ''relocated'' rather than ''officially open'' in reference to the Embassy (section 3).

Fiscal Year 1995 funding (section 4 of S. 770) has been deleted.

Funding for relocation costs in fiscal year 1996 and fiscal year 1997 has been modified to be discretionary rather than mandatory (section 4 of S. 1322).

Mr. LIEBERMAN. Mr. President, I rise today to join with Senators DOLE, MOYNIHAN, KYL and INOUYE and most of my other colleagues in introducing the Jerusalem Embassy Relocation Implementation Act, S. 1322. I hope that this bill will gain the support of all of my colleagues in the Senate.

Mr. President, Jerusalem is and always shall be the capital of Israel. Jerusalem is a unified city in which the rights of all faiths have been respected. The Embassy of the United States of America to Israel should be in that country's capital, the city of Jerusalem.

Earlier this year, I joined with many of my colleagues in sending a letter to the Secretary of State encouraging the administration to begin planning for relocation of the U.S. Embassy to the city of Jerusalem. This process must move forward.

The bill we are introducing today establishes U.S. policy that Jerusalem should be recognized as the capital of the state of Israel.

The bill also establishes a timetable for construction and relocation of the U.S. Embassy to Israel in Jerusalem by May 31, 1995. The Secretary of State is required to present an implementation plan to the Senate within 30 days of enactment and provide a progress report every 6 months. The bill allocates substantial initial funding for the project—$25 million in fiscal 1996 and $75 million in fiscal 1997.

Like the President and many of my colleagues, I believe we can and should move forward to establish the U.S. Embassy in Jerusalem in a manner consistent with the continued negotiation and implementation of the peace process which achieved another significant step last month. The modification to this legislation from the version earlier introduced, S. 770, will ensure that this can be accomplished. There is no change in the real result of the bill: The opening of the U.S. Embassy in Jerusalem by May 31, 1999.

Mr. President, the Jerusalem 3,000 celebration underway in Israel and throughout the world commemorates the 3,000th anniversary of King David's entry into Jerusalem. There could be no more fitting occasion than this celebration to commit America to finally establish our Embassy in Jerusalem by the end of the decade.

With the adoption of the Jerusalem Embassy Relocation Implementation Act and continued progress in the peace process, we can enter the 21st century with the U.S. Embassy in Jerusalem, the capital of a safe and secure Israel, at peace with her Arab neighbors, in an economically prosperous Middle East.

ORDERS FOR TUESDAY, OCTOBER 17, 1995

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9:45, Tuesday, October 17, 1995; that following the prayer, the Journal of the proceedings be deemed approved to date, the time for the two leaders be reserved for their use later in the day, and that there then be a period for morning business until the hour of 12:30 p.m., with Senators permitted to speak therein for 5 minutes each, with the exception of the following: Mr. LOTT, 30 minutes; Mr. THOMAS, 60 minutes; Mr. HARKIN and Mr. SIMON, 45 minutes; Mr. BURNS, 10 minutes; Mr. FRIST, 15 minutes.

I further ask unanimous consent that at the hour of 12:30 p.m., the Senate stand in recess until the hour of 2:15 p.m. for the weekly policy luncheons to meet.

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

Mr. DOLE. Mr. President, I ask unanimous consent that the vote on the motion to invoke cloture on the substitute amendment to H.R. 927, the Cuban sanctions bill, occur at a time to be determined by the majority leader after consultation with the minority leader; I further ask unanimous consent that in accordance with the provisions of rule XXII, Senators have until the hour of 12:30 on Tuesday to file any second-degree amendments to the substitute amendment to H.R. 927.

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

PROGRAM

Mr. DOLE. Mr. President, for the information of all Senators, if cloture is invoked on Tuesday, the Senate can be expected to be in session into the evening in order to complete action on the Cuban sanctions bill. A third cloture motion was filed today. Therefore, if cloture is not invoked on Tuesday, a third vote will occur during Wednesday's session.

Also during next week's session, the Senate can be expected to consider any of the following items: Labor HHS appropriations bill, if a consent agreement can be reached after brief consideration; NASA authorization; Amtrak authorization; available appropriations conference reports.

I am also going to announce that the first cloture vote will not be before 5 p.m. on Tuesday. To clarify, there will not be any votes until 5 p.m.

Let me also announce that under the able leadership of Senator ROTH of the Senate Finance Committee, the Republicans have completed action on the tax part of the reconciliation package—$245 billion in tax cuts; as far as family tax credits, $500. It is permanent.

There are a lot of good features in this bill: capital gains rate reduction, estate tax, family, health, businesses, a number of provisions that I think the American people will certainly find to their liking. I want to compliment the distinguished chairman of the Finance Committee. This is his first tax bill.

Last week, we were working on our goal to reach the reconciliation package on the budget resolution. I congratulate Senator ROTH from Delaware. He has done an outstanding job in a very short time.

It is my understanding that hopefully some time next week the full Senate Finance Committee will meet for markup on the tax provisions of the bill, and we will be able to take up the reconciliation package on the Senate floor, hopefully on Tuesday, October 24, under a 20-hour time agreement. So we should finish it without much difficulty that week.

I will say that everybody wants us to complete action on welfare reform. It is my hope on Tuesday we will be in a position to appoint conferees. I am advised by the Democratic leader that that may be possible on Tuesday. I hope that is the case.

We need to work very quickly on trying to reach some accommodation with the House and hopefully have the same strong bipartisan support we had on the vote in the Senate when the vote was 87 to 12, with one absentee. I hope we can come back to the Senate with a bill that can be supported by every one of the 87, plus maybe some of the others.

RECESS UNTIL 9:45 A.M., TUESDAY, OCTOBER 17, 1995

Mr. DOLE. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 3:52 p.m., recessed until Tuesday, October 17, 1995, at 9:45 a.m.

NOMINATIONS

Executive nominations received by the Senate October 13, 1995:

DEPARTMENT OF STATE

DAVID P. RAWSON, OF MICHIGAN, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF MALI.

GERALD WESLEY SCOTT, OF OKLAHOMA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF THE GAMBIA

RALPH R. JOHNSON, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE SLOVAK REPUBLIC.

ROBERT E. GRIBBIN III, OF ALABAMA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF RWANDA.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

SUBJECT TO QUALIFICATIONS PROVIDED BY LAW, THE FOLLOWING FOR PERMANENT APPOINTMENT TO THE GRADES INDICATED IN THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.

To be captains

ANDREW M. SNELLA
EVELYN J. FIELDS
KENNETH W. PERRIN
TERRANCE D. JACKSON

To be commanders

MARLENE MOZGALA
ERIC SECRETAN
ROBERT W. MAXSON
GARY D. PETRAE
JAMES C. GARDNER, JR.
RICHARD R. BEHN
DANIEL R. HERLIHY
GARY P. BULMER
DAVID J. KRUTH
DENNIS A. SEEM
PAUL E. PEGNATO
GEORGE E. WHITE
JONATHAN W. BAILEY
TIMOTHY B. WRIGHT
BRADFORD L. BENGGIO
RICHARD S. BROWN
MICHAEL W. WHITE
GRADY H. TUELL
PAUL T. STEELE
GARNER R. YATES, JR.
CRAIG N. MCLEAN
PHILIP M. KENUL

To be lieutenant commanders

MICHAEL R. LEMON
JEFFREY A. FERGUSON
PHILIP S. HILL
WILLIAM B. KEARSE
JOHN E. HERRING
JAMES S. VERLAQUE
WILTIE A. CRESWELL. III
JAMES D. RATHBUN
MATTHEW H. PICKETT
CHRISTOPHER A. BEAVERSON
BRIAN J. LAKE
CARL R. GROENEVELD
GUY T. NOLL

To be Lieutenants

WILBUR E. RADFORD, JR.
JAMES A. ILLG
STEVEN A. LEMKE
DOUGLAS G. LOGAN
CHRISTOPHER J. WARD
MICHAEL J. HOSHLYK
DENISE J. GRUCCIO
MICHELE A. FINN
MATTHEW J. WINGATE
CYNTHIA M. RUHSAM
PHILIP A. GRUCCIO
BARRY K. CHOY
MICHAEL D. FRANCISCO
RALPH R. ROGERS
MARK P. MORAN
KIMBERLY R. CLEARY
PAMELA K. HAINES
GEOFFREY S. SANDORF
KATHARINE A. MCNITT
ALAN C. HILTON
RICHARD R. WINGROVE
BJORN K. LARSEN
HAROLD E. ORLINSKY
MICHAEL S. WEAVER
DOUGLAS D. BAIRD, JR.
THOMAS R. JACOBS
GRAHAM A. STEWARD
STEPHEN C. TOSINI
JAMES S. BOSSHARDT
JULIANA PIKULSKY
STEPHEN S. MEADOR
LAWRENCE E. GREENE
DANIEL S. MORRIS, JR.
CARRIE L. HADDEN
KELLY G. TAGGART
JOHN C. GEORGE
PATRICK V. GAJDYS
KARL F. MANGELS
DANTE B. MARAGNI
HEIDI L. JOHNSON
DAVID A. SCORE
STEPHEN F. BECKWITH
KENNETH A. BALTZ
VICTOR B. ROSS, III
MARK S. HICKEY
RANDALL J. TEBEEST
MARK J. BOLAND
HEATHER A. PARKER
CAROLYN M. SRAMEK
JAMES E. DAVIS-MARTIN
STEPHEN J. THUMM
KURT F. SHUBERT
JONATHAN M. KLAY
JOSEPH G. EVJEN
ANITA L. LOPEZ
ANNE K. NIMERSHIEM
RICHARDO RAMOS
MICHAEL WILLIAMSON
NEIL D. WESTON
JENNIFER A. YOUNG

To be ensigns

JEFFREY C. HAGAN
ERIC J. SIPOS
PETER C. FISCHEL
WILLIAM R. ODELL
JAMES M. CROCKER
JEREMY M. ADAMS
CHRISTOPHER E. H. PARRISH
JOEL R. BECKER
JESSICA J. WALKER
JOEL T. MICHALSKI
DAWN M. WELCHER
CHRISTINE M. SHIBLEY
LESLIE A. REDMOND
RICHARD H. ALDRIDGE
RAYMOND A. SANTOS
KURT A. ZEGOWITZ
MARK A. SRAMEK
NATALIE G. BENNETT
ERIC J. CHRISTENSEN
RUSSELL C. JONES
JENNIFER D. GARTE