town voted in 1973 to abandon the selectmen-town meeting form of government for a town manager and representative town council. After the regime was instated, some displaced political groups organized the Citizens for Better Government (C.C.B.G.) and sponsored a non-binding referendum that resulted in a two to one majority against retaining the new administration. When C.C.B.G. pressed for a binding referendum, the council appealed to the court, which granted the vote. With only six weeks between the court decision and the actual vote, 150 supporters of the council system rallied to form, the People for Representative Government (P.R.G.), which distributed information and solicited support from the business community.

The town was badly split over this issue, but communication channels were opened as never before in Southbridge; both C.C.B.G. and P.R.G. sponsored open forums and radio debates, and contributed to a spritely dialogue in the (Southbridge) Evening News, which helped the newspaper win a national award for its coverage.

At the June meeting the town voted 1910 to 1182 in favor of remaining as one of only four towns in the Commonwealth with the town manager form of government.

In the meantime, two incidents occured, which jolted the conscience of the townpeople: the landmark Y.M.C.A., an imposing Romanesque structure that had existed for eight decades, was razed, destroying the continuity of Victorian architecture along Main Street. Then a zone change in the central business district enabled a fast-food restaurant to locate directly across from the beautiful Notre Dame Cathedral and adjacent to another church.

Local leaders took action. The Tri-Community Chamber of Commerce, which represents Southbridge plus the neighboring communities of Sturbridge and Charlton, formed the Architectural Preservation Task Force. Under chairman Paul Mills, vice-president of J.I. Morris Company and member of the Southbridge Historic Commission, the group raised private donations to hire Vision, Inc. of Cambridge to do an architectural evaluation and formulate plans for downtown. The firm recommended unifying the center city by restoring the Victorian characteristics to the facades of historic buildings—a plan that met resistance from building owners, who hesitated to make an investment in a failing area.

To further the cause of revitalization, the Historic Commission applied to place the Main Street buildings on the National Register of Historic Places, the Evening News began a series of articles pointing out the town's rediscovered architectural treasures.

But the major turnabout in downtown decline resulted from visual improvements made possible by a half million dollar grant for streetscaping and a quarter million dollar study grant. From June 1978 until this October, the town underwent a cosmetic transformation: the sidewalks were resurfaced, benches and decorative gas lights were installed, and alternate uses were found for vacant second and third floors. A change in attitude has closely followed the improvements. Merchants report a return of business and commercial interest in downtown.

Rounding out Southbridge's renaissance was the formation of the Gateway Players Theatre in 1975, which now draws 11,000 people to its four yearly shows. Because of the theater's success, the Chamber and other civic groups incorporated the Quinebaug Valley Council for the Arts and Humanities (Q.V.C.A.H.), and hired a full-time director.

To house the council, benefactress Ruth Dyer Wells, wife of Albert Wells of American Optical Corporation, donated the Dresser estate for use as a cultural facility. Through a C.E.T.A. grant the council was able to hire a staff and workers to renovate the building. The Chamber and Q.V.C.A.H. now occupy the second floor of the estate; local service clubs are underwriting the costs of renovating the ground floor into two art galleries and a library-lounge. To provide a permanent residence for the Gateway Players, the council is converting the barn in back of the mansion into a theater.

Southbridge's quick progress has created a new-found community pride, which makes it easier to initiate new projects and has increased citizen participation in town affairs. But Southbridge has accrued another reward—national recognition. Being chosen as a finalist for the All American City Award (A.A.C.A.) has reinforced the town's direction. Several weeks ago, a group of men and women from Southbridge traveled to Louisville, Ky., to explain before a panel of judges why their town should be among the 12 winners cited for effective citizen action and community improvement. Until April, when the winners are announced, investigators from the National Municipal League, the contest's sponsor, will visit Southbridge to verify its success story.

Being recognized as an All American City would be sheer glory, according to Paul Mills, who has chaired the ad hoc A.A.C.A. committee. But the real payoff, he said, has been defeating the defeatist attitude of the townspeople. "Winning the All American Award is less important than feeling confident enough to win it."●

SENATE—*Monday, April 9, 1979*

(Legislative day of Thursday, February 22, 1979)

The Senate met at 12 o'clock meridian, on the expiration of the recess, and was called to order by Hon. MAX BAUCUS, a Senator from the State of Montana.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Let us pray.

Eternal Father, may this Holy Week teach us that all life is holy when lived in Thy keeping. Show us the way of the cross—that without the shedding of blood there is no remission of sins, that only as life is out-poured is life uplifted. Lead us over the hard road to the lonely garden of decision where life's painful purpose is certified. Save us from the cowardly betrayal of the loveliest and best in life. As He turned not from His cross so may we be prepared for any cross laid upon us. May we follow the way of faith and duty though it be with a crown of thorns and a cross.

When the Passover has been spent and the Resurrection Day has passed may the spirit of redemptive love dwell in our hearts to make this Nation a blessing to the whole world.

We pray in the name of the selfless Son of God. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. MAGNUSON).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., April 9, 1979.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MAX BAUCUS, a Senator from the State of Montana, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

Mr. BAUCUS thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the majority leader is recognized.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that following the orders for the recognition of the two leaders, or their designees, today there be a period for the transaction of routine morning business of not to exceed 1 hour with statements limited therein to 10 minutes each.

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

Mr. ROBERT C. BYRD. Mr. President, I, for the moment, reserve the remainder of my time.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the minority leader is recognized.

Mr. BAKER. Mr. President, I yield to the distinguished assistant minority leader.

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

NATIONAL OCEANS WEEK

Mr. STEVENS. Mr. President, on behalf of Mr. HOLLINGS, Mr. MAGNUSON, Mr. WEICKER, and myself, I send a resolution to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The joint resolution will be stated by title.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 61) to authorize the President to issue a proclamation designating the week beginning May 20 through May 26, 1979, as "National Oceans Week."

Mr. STEVENS. Mr. President, I ask unanimous consent that it be in order to consider this joint resolution at this time.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. ROBERT C. BYRD. I have no objection.

The ACTING PRESIDENT pro tempore. Without objection, the joint resolution will be considered as having been read the second time at length, and the Senate will proceed to its consideration.

The joint resolution (S.J. Res. 61) was considered, ordered to a third reading, read the third time, and passed, as follows:

S.J. RES. 61

Whereas the oceans are playing an increasingly important role in the food, energy, and mineral production of the United States as well as the transportation of United States goods; and

Whereas it will be beneficial for the American public to learn of the interrelationship of the United States and the world's oceans; and

Whereas the declaration of a National Oceans Week would help Americans learn about the importance of the oceans: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that the President of the United States is authorized and requested to issue a proclamation designating the week of May 20 through May 26, 1979 as "National Oceans Week" and calling upon the people of the United States to observe such same week with appropriate activities.

Mr. STEVENS. I thank both leaders for their cooperation.

Mr. BAKER. Mr. President, I thank the distinguished assistant minority leader.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

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

The motion to lay on the table was agreed to.

AN INDEPENDENT SPECIAL PROSECUTOR

Mr. BAKER. Mr. President, it has been almost a month now since I joined several of my colleagues in the Congress in calling for an independent special prosecutor to investigate allegations of financial improprieties at the Carter peanut warehouse in Georgia.

It has been almost 3 weeks since Attorney General Griffin Bell responded by appointing a special counsel with limited powers and a very limited investigative mandate.

Syndicated columnist Patrick Buchanan, in a column published in the April 2 edition of the Knoxville Journal, has called the administration's handling of this situation a "modified, limited hangout" reminiscent of an earlier administration's effort to contain the scope of another sensitive investigation.

Mr. Buchanan also raises some thought-provoking questions which ought to be answered, but which go far beyond the mandate given the new special counsel. Unless those questions are answered in the course of a full and independent investigation, the foundation of trust to which this administration has been so outspokenly committed will sink in the quicksand of public suspicion.

It is most unfortunate, Mr. President, that the tradition of a nonpolitical Department of Justice, headed by a nonpolitical Attorney General began and ended in the Ford administration with the appointment of Attorney General Edward Levi.

We are a long way now from the time when Presidential candidate Jimmy Carter pledged to remove the Department of Justice from the Cabinet itself and make it an independent agency totally removed from politics.

The fact that the President has instead appointed a close friend and loyal political ally as Attorney General cannot fail to raise serious questions about the independence and scope of this in-house warehouse investigation.

I renew my call for an independent prosecutor to be appointed in compliance with the Ethics in Government Act, and I would urge my colleagues to read Mr. Buchanan's compelling column with the utmost care. For that purpose, I ask unanimous consent that the text of the column be printed in the RECORD.

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

JIMMY'S MODIFIED, LIMITED HANGOUT

(By Patrick J. Buchanan)

WASHINGTON.—Let the mind wander back a decade.

Assume Richard M. Nixon, President, were the senior partner and prime profiteer in a business jointly owned with brother Don. The business had been, during the critical months of the campaign, beneficiary of millions in loans from banker-best friend, Bebe Rebozo. Don takes the "Fifth" about the handling of the dough; Bebe is looking down the gun barrel of a federal indictment, and Richard M. refuses to reveal the tax returns from the "family" enterprise.

Then the President's good friend at the Justice Department, John Mitchell, names a "special counsel" with a restricted franchise to look over the business under the watchful eye of department deputy, Richard Kleindienst.

Now, would the politicians on Capitol Hill have bought that with the same disinterest they have shown President Carter's "modified, limited hangout" with the appointment of special counsel Paul Curran?

Perhaps, as with Bobby Baker, the Democrats will succeed again where the Republicans so dismally failed, perhaps the country will yawn at a special counsel with a restricted franchise, denied the final authority to indict or even to grant witness immunity. But the odor above this city will not be cleared away; it is like an overflowing septic tank, backed up for two years.

When the nation needs a Doberman Pinscher with full prosecutorial powers, we have been given a Republican spaniel on a short leash, given the run of the yard—but not the neighborhood. However, there remains questions for Carter's men that cry out for answers.

1. Why, for example, has it taken 18 months to get a go or no-go decision on the indictment of Bert Lance, while the statute of limitations for potential campaign violations has run out?

2. What and who produced the long delay in the Federal Election Commission audit of the Carter campaign, which ended almost 30 months ago?

3. When Peter Bourne, the President's drug abuse adviser departed the White House under a yellow cloud, he stated that there was a "high incidence" of marijuana use and the "occasional" use of cocaine on the White House staff.

A White House correspondent corroborated Bourne's statement by admitting that he, another reporter and White House staffers had used dope together. A leader of the legalized marijuana movement suggested others in the White House had vulnerabilities.

Why have they all not been taken before a grand jury to establish the truth of the story? Why has there not been a thorough investigation of the White House staff—by outside prosecutors—to run down the middlemen and the source of the illicit drugs? If organized crime has a longshoreman's hook in the White House, do not "the people have a right to know"?

4. Who is responsible for the delay in following up on Billy Carter's refusal to answer questions before a federal grand jury in the Lance case. If the individual involved is Phillip Heymann, chief of the criminal division at Justice, what is Heymann doing with veto power over the Curran investigation?

5. Will Charles Kirbo be called to answer under oath if the President has provided him or Billy, directly or indirectly, with instructions regarding the investigation, the Lance case, the disposition of the peanut warehouse or the handling of assets supposedly placed in the blind trust?

Or, like John Dean, is he the "President's lawyer," with a lawyer-client privilege?

6. In 1977, a frantic Pennsylvania congressman phoned President Carter, urging him to fire the Republican prosecutor in Philadelphia. Carter urgently phoned Griffin Bell, who carried out the contract. The congressman was subsequently indicted, convicted and given a suspended sentence—the sort of punishment not granted to Rep. Charles Diggs who apparently lacked a similar pipeline into the White House.

Ought not this chain of events, which raises a question of obstruction of justice, be the subject of an investigation of the very Department of Justice looking over Curran's shoulder?

7. According to published reports, fugitive financier Robert Vesco hired a middleman with a promise of millions if he could get the Department of Justice off his case. In the files at Justice, there popped up a handwritten note from the President to the attorney general, directing him to meet the alleged middleman. Bell does not recall receiving the note; Carter does not recall writing it.

None of the above is to suggest that Paul Curran is not an honorable man. But he has accepted a limited franchise. And this case does not call for a nice-guy Republican. It calls for an independent special prosecutor with the savvy of the late Murray Chotiner, the enthusiasm for combat of the young Charles Colson, and the freedom of action given Archie Cox.

Several Senators addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

Mr. ROBERT C. BYRD. If the distinguished Senator will allow me now to use some of my time, if he needs some, I will yield to him.

Mr. BAKER. I will be happy to yield to the distinguished Senator from Kansas whatever remains of my leader's time after the distinguished majority leader proceeds.

Mr. ROBERT C. BYRD. I thank the distinguished Republican leader and I thank the distinguished Senator from Kansas.

OUR ENERGY FUTURE

Mr. ROBERT C. BYRD. Mr. President, our energy problem is urgent. Despite a welter of conflicting statistics, the core of the problem is incontrovertible and easily defined. The United States is now importing about 50 percent of all the oil we use, at a cost of almost $50 billion this year alone. Mr. President, that is $50 for every minute since Jesus Christ was born. That is what it is costing this country to keep the oil flowing, to keep the gas tanks filled. This is an increase of almost 25 percent since the 1973 Arab oil embargo. We are relying on an unstable and increasingly expensive source of energy and this has profound national security and economic risks. We are dependent on a lifeline of oil tankers stretching around the world. Higher oil prices, continued flow of dollars to OPEC, and diminished capacity to control our own political destiny will be the inevitable result of our reliance on foreign oil. Argument over production figures or inventory estimates is simply missing the point. We must act now to free ourselves from this costly addiction.

Last Thursday President Carter, pursuant to the authority granted to him by Congress in 1975, announced a gradual end of price controls on domestic oil. I believe he took the proper approach by announcing a program of phased decontrol, which will help to defuse the drastic inflationary impact which immediate decontrol would have.

This action will provide price incentives for those categories of oil where the maximum amount of new exploration and production can be anticipated. It will end the policy of subsidizing foreign oil at the expense of our own domestic production. It will bring dollars back to this country to promote employment and economic development.

It will encourage conservation and protect the public against the awesomely high prices that could result if the United States imports more and more foreign oil. It should encourage the development of new energy sources as the cost of such methods becomes competitive.

The President has asked the Congress to enact a windfall profits tax to protect against excessive oil company revenues which may result from the lifting of domestic price controls and from future price increases by OPEC. The tax, as proposed by the administration, would still leave a significant portion of the newly derived revenues in the hands of the oil companies to be plowed back into exploration and development of new oil reserves.

Most important, the tax would be used to create an Energy Security Fund, to provide necessary moneys to ease the burden of high energy costs on the poor, to aid mass transit, and to allow adequate investment in alternate energy sources which will provide a realistic transition away from our ever-growing and evermore dangerous dependence on foreign oil.

Developments such as coal liquefaction and gasification or solar heating will give us, if we begin now, the energy security and independence so vital for our national survival.

Mr. President, whether one agrees with the President or disagrees with him with respect to the lifting of controls, I believe that Congress should pass an excess profits tax because I believe that we have an obligation to the American people to do so. There is no painless solution, no painless solution to our energy problems, and everyone will be asked to bear a part of the burden. If we are going to ask the American people to sacrifice, then the energy producers will have to make some sacrifices also, and let us keep our eye on the ball. The tax is not on the people. The tax is on the oil companies.

Everyone expects the oil companies to make a profit. I have never been among those who are constantly lashing out at the oil companies, making the oil companies a whipping boy. And they are entitled to make a profit. This is a very high-risk enterprise. But what we are talking about here are unwarranted profits.

By words and deed, Americans continue to express their disbelief that there is, in fact, an energy shortage.

Mr. President, all they have to remember is that there is that $50 billion going out this year to keep the oil flowing in the gas tanks, and again I say just lay down a $50 bill for every minute since Jesus Christ was born and you will get some idea of how much money this country is paying out for imports of oil every year, a $50 bill for every minute since Jesus Christ was born. Mr. President, everyone should understand that. That is in plain terms.

There should not be any argument as to whether or not there is an energy problem. There is one, and it is real. A bewildering array of statistics and studies has been released recently which could support any view. We have debated among ourselves and with the administration the validity of reports on oil inventories and shortfalls. On the one hand, we are told that the Iranian cutoff caused a shortage of 400,000 barrels a day leading to depleted stocks of gasoline and other refined products. On the other hand, it is revealed that more foreign oil than ever reached our shores during the height of the disruption and that oil companies may be stockpiling supplies awaiting higher prices.

So one may not know whom to believe. The American public does not know whom to believe so they have taken the simplest route—they believe no one.

It is incumbent on the Congress to provide leadership, therefore, to provide responsible solutions. The sacrifices have to be passed around. I know there are differences of opinion about the excess profits tax here in the Senate and in the House. Many Members of the Senate have advised that such a tax would be necessary if decontrol were initiated. Those who are concerned about concessions to the oil companies should be more than willing to support the tax. They should be in the vanguard, they should be in the lead, in support of this tax.

There are no easy answers to these complex problems. But I believe that enactment of an excess profits tax with use of the funds to ease the burden on citizens and to further energy research and development and to help develop additional mass transit will be an investment in the Nation's energy future.

If I have any time left I yield it to the distinguished Senator from North Carolina (Mr. MORGAN).

Mr. MORGAN. Mr. President, I commend my distinguished majority leader for speaking out on this very important issue.

I traveled to my home State this weekend and talked to literally hundreds of citizens with regard to the President's proposal. I also listened to a number of my colleagues yesterday on various news programs, and I read about them in the papers. I found a good many of them critical of the President's proposal but, Mr. President, I did not hear anybody coming up with any suitable alternatives.

I join with my majority leader. The President has said he is going to decontrol oil, and if he is going to decontrol oil, the American people are going to demand that we put some kind of safeguards on what would be termed excessive profits by the oil companies. If someone has a better way to solve the energy problem I hope he will come up with it.

We in the Congress have the expertise of our committee staffs, we have the resources to call before us people from all over the country who are experts, and if someone knows better, a better way to alleviate the energy problem than that which has been proposed by the President, then I hope he will come forth with it and give us an opportunity to consider it.

But three Presidents now have talked about the energy crisis and the energy program, and we simply have not been able to do anything about it. I think we are reaching crisis proportions. So I encourage my majority leader and the President. I want us to debate it, but I do feel very strongly, and the people of my State to whom I talked this weekend feel very strongly, that we cannot allow the oil companies to take advantage of the crisis that exists in America to reap excess, excessive, profits. They are entitled to profits, fair profits, a fair return on their money, to have additional money to reinvest and explore for oil. But the people are going to demand that there be some limits.

I support my majority leader.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from North Carolina for his statement of support.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee.

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

The ACTING PRESIDENT pro tempore. Approximately 6½ minutes.

Mr. BAKER. I thank the Senator. I yield now 1 minute to the Senator from North Carolina.

APRIL IS POULTRY AND EGG MONTH IN NORTH CAROLINA

Mr. HELMS. Mr. President, I am very proud of the many citizens of my State who earn their livelihood in the poultry industry. It is a great industry, and it is very fitting that April is officially declared "Poultry and Egg Month" in North Carolina.

The contribution poultry makes to our State and to the employment of so many thousands of our citizens is already substantial, and is increasing every year.

Poultry is North Carolina's fastest growing food industry. In terms of gross farm income it has increased from about $90 million in 1947 to nearly $700 million in 1978—almost a 777 percent increase in 30 years. Moreover, nearly $175 million in marketing services have been added to this farm value, thereby increasing the gross economic impact to approximately $875 million.

Payment for these marketing services provides jobs for countless thousands of our people in poultry and egg processing plants, markets for carton and packing material manufacturers, trucking, and shipping, to name just a few.

Obviously, our poultry industry is a fine example of the free enterprise system at work. Let me illustrate:

Last year, North Carolina poultry farmers provided consumers with approximately 1.4 billion pounds of dressed, ready-to-cook poultry with the highest quality in history.

The retail price of chicken is about the same as it was 20 years ago, while most other consumer prices have more than doubled.

Tar Heel consumers have the opportunity of purchasing the freshest poultry available because they live within one of the largest broiler producing areas of the country.

North Carolina's broiler industry meets the needs of 28.5 million consumers. Turkeys shipped from North Carolina graced the tables of 24 million consumers, and North Carolina now ranks No. 2 in turkey production annually.

Mr. President, the egg aspect of the poultry industry is just as impressive as broiler and turkey production. In 1977 North Carolina poultrymen sent almost 3 billion eggs to market. And eggs continue to be one of the best buys among protein foods.

The North Carolina poultry industry has many dedicated leaders who are recognized nationally. The North Carolina Poultry Federation is a very effective promotion arm of the industry, and all poultrymen receive excellent support from the North Carolina Department of Agriculture and Agricultural Extension Service.

We are proud of our citizens who earn their livelihood in the production of broilers, turkeys, and eggs, and who have demonstrated that the American free enterprise system does work to benefit producers and consumers with a plentiful supply of quality products at a very reasonable price.

I commend the North Carolina poultry industry and offer my congratulations for a job well done.

Mr. BAKER. Mr. President, I thank the Senator, and I now yield whatever time I have remaining under the standing orders to the distinguished Senator from Kansas.

Mr. DOLE. I thank my colleague.

WINDFALL PROFITS TAX

Mr. DOLE. Mr. President, I would only say in response to the distinguished Senator from West Virginia that I assume the issue of whether or not there will be a windfall profits tax or tax credits or whatever might be involved will come to the Senate Committee on Finance, where the distinguished Senator from Louisiana (Mr. LONG), and others on that side, and the Senator from Kansas, as the ranking Republican, will be able to take a hard look at it.

I am not so certain that I disagree with much of what the distinguished Senator from West Virginia said, except to this extent.

The recent proposal announced by the administration to impose a tax on the increased oil revenue that will be generated by oil decontrol has been called a windfall profits tax. However, windfall profits is a misnomer. The President's proposal is an excise tax on crude oil—not a tax on profits. It is a warmed-over version of the crude oil equalization tax which Congress rejected last year.

Mr. President, the Senator from Kansas opposed the crude oil equalization tax in the 95th Congress. I remain opposed to oil taxes that are designed to punish consumers and raise revenue for the Government without any assurances of new energy production.

This is where I believe the administration's plan is again seriously deficient. It fails to address the production side of the energy issue. However, the Senate should not reject the concept of an oil production levy.

The decontrol of oil will increase revenues to the oil companies. Decontrol will reduce the morass of regulations on American industry. It will end the subsidy on foreign oil which artificial domestic prices have created. However, decontrol, by itself, is not the answer.

The American people, as the distinguished Senator from North Carolina just pointed out, are the very wary of both the oil companies and the Government. Many Americans do not believe we face a serious energy supply problem. I believe the country has adequate energy resources. We need, though, to provide the proper incentives for energy development. Taking money—by fiat—from producers will not result in new production. Mr. President, I favor a properly structured tax on the revenues released by decontrol which will insure new supplies. I also favor a legitimate windfall profits tax. I believe Congress should enact a production incentive levy to insure new exploration and development.

If the oil companies do not expand exploration, I believe the Government should direct the money to energy development and to help ease the financial burdens for many Americans which increased prices will impose. New supplies will benefit all Americans. They will create competition for the OPEC cartel which will particularly help crude-deficient areas of the country.

Most of the oil companies have already announced their opposition to the administration's excise tax. They have also stated that the Congress should not concern itself because most of the new revenues will be put back into production. I believe we should insure this result. The oil companies should endorse a tax that backs up their intentions. If they are being honest with the Congress and the American people, they should not be afraid of a production incentive levy because under such a plan, the tax would be reduced for new development expenses.

So, finally, I commend the President for his action on price decontrol. Although the second part of his plan, COET II, is flawed, Congress can still salvage the situation.

It just seems to this Senator, as a member of the Committee on Finance, that we ought to make certain that the oil companies mean what they say and if, in fact, they want to put their revenues back into more development, more exploration, alternate sources, that is one thing. If not, then we should enact a true windfall profits tax but, I think more importantly, the American people are concerned about producing energy and not producing more taxes.

I hope when we grapple with this in the Committee on Finance that we can come up with some realistic proposal that will pass the Congress, along the line of, or at least in accord with, the wishes of the distinguished majority leader and, I think, many other Senators in this body.

THE SELLING OF SALT

Mr. DOLE. Mr. President, the debate on strategic arms control has already begun with major SALT-selling speeches in recent days by the administration's National Security Adviser and Chairman of the Joint Chiefs of Staff on back-to-back platforms. In fact, for the past several months, President Carter's negotiators have leaked key treaty provisions in an attempt to defuse the controversy each successive compromise with the Soviets represents. Although we in the Senate have tried to keep pace and understand these disclosures, gleaned mostly from the press, the Members of this body in general have not been privy to the results and progress of the negotiations. Nevertheless, we must deal with this vital national security issues, both in our overall considerations on military and strategic forces and specifically when the SALT II treaty is sent to the Senate for advice and consent.

EXPERTS CONSULTED ON SALT

As a result of our urgent need to carefully analyze the terms and ramifications of SALT, several of my colleagues have joined the Senator from Kansas in a series of seminars with past and present administration experts to discuss strategic issues. These included former Secretary of State Henry Kissinger, who spoke about the geopolitical context for

the SALT debate and NATO commander Alexander Haig, who presented allied concerns and military perspectives

The Senator from Kansas believes it is essential for our ultimate security interests to draw upon the advice of a broad spectrum of informed opinion in this country. Only in this way, given the complex technical aspects of the strategic arms issue, can we hope to properly evaluate the proposed SALT treaty.

The Honorable J. William Middendorf II, former Secretary of the Navy, is an outstanding example of the kind of expert whose informed testimony the Senate must consult during its considerations for this historic debate. I recently asked Secretary Middendorf for his views on the SALT II treaty as we currently know it, and as he was kind enough to reply in some detail, I would like to share the information he provided with the rest of my colleagues. Accordingly, Mr. President, I ask unanimous consent that the text of Secretary Middendorf's letter be printed in the RECORD following my remarks, with only those portions of the letter with personal reference to myself having been deleted.

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

WASHINGTON, D.C.,
March 29, 1979.

DEAR SENATOR DOLE: In regard to your request for my views on SALT II, I am pleased to have the opportunity to offer these thoughts.

When the Senate gave its consent to SALT I in October 1972, it offered advice to the President in the form of the Jackson Amendment. The Amendment noted the numerical advantage granted to the Soviets in the Interim Agreement, and it urged the President to correct that mistake in a new agreement which would ensure that the United States was not required to accept lower levels of strategic forces. This plea was justified on the grounds that an agreement based on the principle of equal force levels would preclude the development by either side of a first-strike capability and thereby generate a stable balance of power. In the interim, the Amendment also urged both the Executive and Legislative branches to press forward with a vigorous R&D program that would ensure high quality in our strtegic weapons and, by implication, would also prevent our being by-passed technologically.

In keeping with the spirit of the Jackson Amendment, President Ford sought to design with Chairman Brezhnev a formula which would give both nations equal force levels in strategic weapons. The Vladivostok Accord established the principle of "equal aggregates."

However, the SALT II Treaty, negotiated on behalf of the United States by Paul Warnke, violates both the thrust of the Jackson Amendment and the principle of equal aggregates. Ingeniously, the new Treaty appears to embody equal force levels. In certain aggregates, it does. But a careful analysis will reveal that in several critical areas it does not.

For example, the Treaty provides the Soviets the unilateral privilege of "heavy" ICBMs. Specifically, the Treaty allows the Soviets to have 308 enormously large ballistic missiles, plus 18 more at test facilities, for a total of 326. The United States, on the other hand, is specifically denied the right to have such weapons. Of critical importance about these weapons is that the newest Soviet heavy ICBM is the SS-18, a missile that has been tested with ten MIRVed warheads, each in excess of a megaton in explosive power. Intelligence estimates forecast that the full contingent of SS-18s will be in the Soviet inventory by 1982, possibly a year earlier. Latest tests show the accuracy of these warheads to be a tenth of a mile (600 feet, CEP). Soviet SS-18s could, therefore, deliver on U.S. ICBM silos an attack involving better than 2,000 warheads, which all analysts agree would be sufficient to destroy better than ninety percent of our ICBM force. Some analysts even contend that the Soviets could feel high confidence with a one-on-one silo, because of the size and accuracy of the SS-18 warheads.

The Soviet heavy missile force alone represents a first-strike capability, the very thing which the Jackson Amendment sought to prevent.

Moreover, the two other new Soviet missiles, the SS-17 and the SS-19, are considerably heavier than their predecessors. And those weapons, along with other ICBMs and SLBMs, could devastate the United States in a second-wave attack, if a President of the United States elected to retaliate after a Soviet first-strike.

In essence, SALT II codifies the two conditions the Jackson Amendment sought to prevent: an unstable balance of power and a first-strike capability.

In addition to this deplorable feature of the SALT II Treaty, the Treaty violates the principle of equal aggregates by allowing the Soviets the right to have several strategic weapons which are not included in the SALT count. The most gratuitous exclusion to the Soviets is the Backfire bomber. U.S. negotiators have acquiesced in the Soviet declaration that the Backfire is a theater weapon which will not be used against the United States. The range of the Backfire is admittedly debatable, but there is no argument in the U.S. intelligence community about the fact that the aircraft is air-refuelable, and that it could strike the U.S. on one-way missions (with recovery in Cuba, for example) without refueling.

Current estimates are that the Soviets will build not less than 400 Backfires; some estimates place the figure as high as 700 because the Soviets have recently doubled the floor space of the production facilities for the Backfire. Even with a force of only 400 Backfires, the Soviets would be increasing the level of their deliverable megatonnge by thirty-five to forty percent. It is of some interest that by canceling the B-1, the United States reduced its deliverable megatonnage by at least that amount.

The most charitable interpretation of the Backfire's role is that it would be used against NATO targets, including the United States military personnel.

In addition to the exclusion of the Backfire bomber, the Soviet SS-20 missile is not counted in the SALT aggregates. The SS-20 is a particularly troublesome weapon because it has been tested in a mobile mode, using a large tracked vehicle. The weapon is believed to be armed with three MIRVed warheads of approximately a half-megaton in size. Analysts contend that if one of those warheads was removed, the weapon could strike the U.S. It would be an ICBM, not an IRBM.

Moreover, the SS-20 can be augmented by a third stage, converting it to the SS-16, a true ICBM. And the SS-16 can be launched from the same tracked vehicle used to launch the SS-20. The United States has no confident estimates of the number of third-stage SS-16 boosters the Soviets have built and stored under cover. Intelligence estimates, however, do forecast a production of at least 1,000 SS-20s, a figure clearly in excess of their "theater" needs. One has to presume, therefore, that some of the SS-20s are to be converted to SS-16s, a process which cannot be identified by our national technical means of verification.

It is not too much to say that the combined forces of Backfires and SS-20s and SS-16s, excluded from the SALT count, represents a grant to the Soviet Union of a second strategic air force.

The advantage being authorized to the Soviets in strategic power in the SALT II Treaty should be viewed in light of the full spectrum of conflict, ranging from a nuclear exchange, through conventional war, to guerrilla conflict, and down to terrorism. At all levels below the strategic level, the Soviets have unchallenged superiority. Only at the strategic level has the United States ever had superiority in recent years. And, now, superiority is being granted to the Soviet Union at the strategic level through the medium of the Strategic Arms Limitation Treaty.

So long as the United States was in a position to escalate any conflict to the strategic level if necessary, United States leaders could feel confident that they could "manage" crises at the lower levels of conflict, even those that might involve Soviet and Soviet-surrogate forces. Now, escalation is no longer a rational U.S. option. Indeed, now that the Soviets enjoy superiority at all levels of conflict intensity, we can expect their leaders to be more adventurous in the months ahead with conventional and guerrilla forces in areas of their choosing. As the result of SALT II, the United States is entering an era in which it could be the object of diplomatic coercion. For that matter, one might conclude from recent events in Africa and the Middle East that we have already entered that era.

Even if the SALT II Treaty were what the Administration purports it to be—an agreement based on the principle of equal aggregates—the case can be easily made that the agreement would be detrimental to the security of the United States because of the difference in U.S. and Soviet military strategies. The U.S. strategy seeks to deter war by maintaining a strategic force capable of inflicting unacceptable damage on an attacker in a retaliation. The U.S. strategy of deterrence denies to us the right of first-strike. Current military doctrine calls for our "riding out" an initial attack. Soviet strategy, on the other hand, does not preclude a first strike. Indeed, it stresses the enormous advantage which would accrue from a first-strike. And the numbers and characteristics of Soviet strategic weapons testify to their strategy.

Parity in numbers of strategic weapons is, therefore, not necessarily a guarantee of national security because parity plus initiative equals superiority.

Although no rational man can object to arms control negotiations as such, a rational man can and must object to a strategic arms limitation agreement which does not provide equal security to both sides but, to the contrary, grants to one side—and denies to the other—weapons and strategic options of critical importance.

Finally, one should recognize that the SALT II formula is essentially a quantitative, bean-count, approach to the problem of arms control. Admittedly, some effort has been made in the Treaty and in the Protocol to limit new weapons. But the agreement in no way restricts research and development, nor does it preclude the possibility that technology may provide one side or the other with weapons capable of upsetting the current "balance", such as it is. The evidence now suggests that new weapons are on the horizon, weapons that could make a mockery of SALT II; and there is good reason to believe that some of these new weapons could be developed within the timeframe of SALT II. In short, technology is moving faster than diplomacy.

In the euphoria of a SALT II agreement one cannot imagine this Administration in

sisting on the development of new types and classes of weapons as a hedge against the Soviets' exploiting their SALT-codified advantage or developing new and devastating weapons of their own, such as the particle-beam weapon.

My recommendation would be that the Senate reject the new SALT Treaty, and offer its most forceful advice to the President to send the negotiators back to the table to design a new and acceptable formula. The Soviets will, of course, be outraged. But their outrage now would be minor as compared to the diplomatic and military problems the United States would face at the conclusion of this SALT II term when the Soviets would have unquestionable military superiority at all levels of conflict. Indeed, now may be our last opportunity to put the SALT negotiations back on the right track. And if the Soviets refuse to negotiate a reasonable and fair agreement, then we must face the need to resort to our own capabilities. Even that is a more palatable prospect than facing unquestionable Soviet military superiority.

Sincerely,

J. WILLIAM MIDDENDORF, II.

Mr. DOLE. Mr. President, I yield back to the minority leader the remainder of my time.

Mr. BAKER. Mr. President, I have no further requirements of my time, and no further requests for time. If there is any time remaining under the standing order, I yield it back.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

ADJOURNMENT FOR 1 SECOND

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate stand in adjournment for 1 second.

The motion was agreed to; and (at 12:22 and 14 seconds p.m.) the Senate adjourned for 1 second.

The Senate reassembled at 12:22 and 15 seconds p.m., when called to order by the Acting President pro tempore (Mr. BAUCUS).

AFTER ADJOURNMENT

MONDAY, APRIL 9, 1979

The Senate met at 12:22:15 p.m., pursuant to adjournment, and was called to order by Hon. MAX BAUCUS, a Senator from the State of Montana.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the reading of the Journal be dispensed with.

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

SUPREME COURT JURISDICTION ACT OF 1979

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate proceed to the consideration of Calendar Order No. 42.

The ACTING PRESIDENT pro tempore. The question is on agreeing to motion of the Senator from West Virginia.

Mr. HELMS. Mr. President, will the Chair call the numbers of these pieces of legislation, so that all Senators may understand what we are considering?

Mr. ROBERT C. BYRD. Calendar Order No. 42, S. 450.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 450) to improve the administration of justice by providing greater discretion to the Supreme Court in selecting the cases it will review, and for other purposes.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from West Virginia. The motion is nondebatable.

The motion was agreed to.

Mr. ROBERT C. BYRD. Mr. President, the Senate now has before it a bill that would improve the administration of justice by providing greater discretion to the Supreme Court in selecting the cases it will review.

Mr. President, this is an appropriate vehicle for an amendment such as that offered by the distinguished Senator from North Carolina (Mr. HELMS) on Thusday to the Department of Education bill. I voted for that amendment, and I voted against tabling it; but Mr. President, I feel that this legislation would be a more appropriate vehicle.

I am afraid that that amendment, if it stays on the education bill, will endanger the possible future enactment of that legislation. The amendment deals with Federal court jurisdiction. The bill that I have called up, which is now before the Senate, is not only an appropriate vehicle, but the amendment would be, in my judgment, an enhancement of that legislation. I would hope that the Senator from North Carolina would consider offering such an amendment, and I would hope we could attach it to this bill, and then hopefully the Senate would reconsider its action in voting for the amendment as an amendment to the Department of Education bill, and not attach the amendment to that bill.

I yield the floor.

Mr. HELMS. Mr. President, I appreciate the interest of the distinguished majority leader. I appreciate his support for my amendment on Thursday, and I appreciate his voting against the motion to lay on the table.

However, some Senators are concerned that this is the surest way to kill the prayer amendment. I have consulted with our colleagues on the House side this morning, and there is some question about whether Chairman RODINO, as one Senator put it, will bury the DeConcini bill so deep that it will require 14 bulldozers just to scratch the surface. I am not sure that I feel that Chairman RODINO will do that—but there is concern that he may.

The point is this: A move to add the prayer amendment to the Deconcini bill and strike the prayer amendment from the Department of Education bill is regarded by some as effectively a move to kill the prayer amendment. Needless to say, I do not want to run that risk, real or imagined. Therefore, I must object to what the majority leader proposes.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. HELMS. Yes.

Mr. ROBERT C. BYRD. Will he offer his amendment to this bill?

Mr. HELMS. Well, with the understanding that I am not agreeing to vitiate the amendment on the other bill, I will be willing to think about it.

However, I will say to the Senator that I know this could be interpreted as giving a lot of Senators an out. They can go home and say, "Well, I voted for it on the DeConcini bill, which is a more appropriate vehicle," and that sort of thing.

I hope Senators will not make that mistake. To the limit of my capability, I will say to the able Senator from West Virginia, I will try to make it clear all across the country just what occurred on the Senate floor. Senators should not seek to avoid the responsibility of voting for a prayer amendment that has a good chance of survival on the DeConcini bill, which I think the Senator from West Virginia will acknowledge, because there is great doubt that the House will even have an opportunity to vote on it once it goes to the House Judiciary Committee.

Mr. ROBERT C. BYRD. Mr. President, will the Senator offer his amendment? I hope he will.

Mr. HELMS. Mr. President, I do not at the moment have a copy of it at hand. If the Senator will indulge me a few moments for a quorum call, I will think about it. It may be that I will suggest that the distinguished majority leader submit my amendment.

Mr. ROBERT C. BYRD. All right.

Mr. HELMS. I suggest the absence of a quorum.

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

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. HELMS. Will the Senator yield for one unanimous-consent request?

Mr. ROBERT C. BYRD. I yield.

ORDER TO PLACE S. 519 AND S. 520 ON THE CALENDAR

Mr. HELMS. Mr. President, I ask unanimous consent that S. 520 and S. 519, which have been held at the desk, be considered as having been read the second time and be placed on the calendar.

Mr. ROBERT C. BYRD. Reserving the right to object, what are the two bills?

The ACTING PRESIDENT pro tempore. The clerk will state the first bill.

The legislative clerk read as follows:

A bill (S. 519) to preserve the academic freedom and the autonomy of institutions of higher education and to condition the authority of officials of the United States to issue rules, regulations, or orders with respect to institutions of higher education.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, has that bill, S. 519, been called up previously and a reading asked for?

The ACTING PRESIDENT pro tempore. The Chair informs the Senator that that bill has had its first reading. Both bills have had their first reading.

Mr. ROBERT C. BYRD. I have no objection, Mr. President, because the mechanism was started earlier by virtue of which bills would eventually have been placed on the calendar. I have no objection.

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

SUPREME COURT JURISDICTION ACT OF 1979

The Senate continued with the consideration of the bill S. 450.

UP AMENDMENT NO. 70

Mr. ROBERT C. BYRD. Now, Mr. President, I offer an amendment to the bill and I send the amendment to the desk. I ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The legislative clerk read as follows:

The Senator from West Virgina (Mr. ROBERT C. BYRD) proposes an unprinted amendment numbered 70

On page 4, after line 15 add the following:

That (a) chapter 81 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1259. Appellate jurisdiction; limitations

"(a) Nothwithstanding the provision of sections 1253, 1254, and 1257 of this chapter the Supreme Court shall not have jurisdiction to review, by appeal, writ of certiorari, or otherwise, any case arising out of any State statute, ordinance, rule, regulation, or any part thereof, or arising out of an Act interpreting, applying, or enforcing a State statute, ordinance, rule, or regulation, which relates to voluntary prayers in public schools and public buildings.".

(b) The section analysis at the beginning of chapter 81 of such title 28 is amended by adding at the end thereof the following new item:

"§ 1250. Appellate jurisdiction; limitations.".

SEC. 2. (a) Chapter 85 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1364. Limitations on jurisdiction

"Notwithstanding any other provision of law, the district courts shall not have jurisdiction of any case or question which the Supreme Court does not have jurisdiction to review under section 1259 of this title.".

(b) The section analysis at the beginning of the chapter 85 of such title 28 is amended by adding at the end thereof the following new item:

"§ 1364. Limitations on jurisdiction.".

SEC. 3. The amendments made by the first two sections of this Act shall take effect on the date of the enactment of this Act, except that such amendments shall not apply with respect to any case which, on such date of enactment, was pending in any court of the United States.

WAIVER OF PASTORE RULE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Senators may be allowed to speak up to 2 minutes out of order, notwithstanding the Pastore rule, and that such a limitation extend not beyond 20 minutes. There are some Senators on the floor who have wanted to introduce bills by virtue of the action which has been taken. I ask that Senators may be permitted to use up 2 minutes to introduce bills, resolutions, memorials, and make statements.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. KENNEDY. I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. ROBERT C. BYRD. Now, Mr. President, we are on the amendment.

Mr. HELMS. May I ask the distinguished majority leader a question?

Mr. ROBERT C. BYRD. Yes.

Mr. HELMS. The amendment he has just proposed is the so-called Helms amendment, is that correct?

Mr. ROBERT C. BYRD. It is the same.

Mr. DECONCINI. Will the majority leader answer a question for me?

Mr. ROBERT C. BYRD. Yes.

Mr. DECONCINI. What is the pending bill?

Mr. ROBERT C. BYRD. The bill that is now pending, to which the amendment has been introduced, is a bill which came out of the Committee on the Judiciary and which the distinguished Senator from Arizona (Mr. DECONCINI) and, also, Mr. BUMPERS, are authors of. It is S. 450.

Mr. DECONCINI. I thank the distinguished majority leader.

Mr. KENNEDY. Mr. President, we are in the morning hour, is that correct?

The ACTING PRESIDENT pro tempore. The pending business is S. 450 and the amendment of the Senator from West Virginia is the pending business.

Mr. KENNEDY. Are we limited on time?

The ACTING PRESIDENT pro tempore. There is no time agreement.

Mr. KENNEDY. Mr. President, I seek recognition.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I want to indicate at the outset my desire to cooperate in every way with the majority leader and with the floor manager of the previously pending legislation, in the establishment of the Department of Education bill, a proposition which I support. But I do feel that the issue of the Helms amendment is a matter of enormous consequence and importance to the Members of the Senate. I want to make some comments on this issue. Then I shall be glad to work with my colleagues in seeing that the Senate will at least have an opportunity to express its will.

Mr. President, I, like others, late on Thursday, was faced with the issue, virtually without any notice, of the amendment of the distinguished Senator from North Carolina, an amendment which would have a greater impact and assault on the Supreme Court of the United States and its jurisdiction than has taken place in this country over the 200 years of its history. I am mindful that the debate was virtually free of any discussion by those expressing opposition to it. A motion was made to table, and then, immediately following that, there were additional votes.

I do think it is important that the membership on the floor of the Senate have some awareness and understanding of the extraordinary significance of this measure. Some of the most important decisions, perhaps the two most important decisions that have been made by the Supreme Court, were those that were understood by every student in law school—they learn it early—and by most college students, the Marbury against Madison decision, which permitted the Supreme Court's judicial review of acts of Congress, and the Martin against Hunter's Lessee decision, which recognized the Supreme Court's jurisdiction to rule on State laws. Those are, really, the two bedrock decisions which have established the importance of Supreme Court judicial decisionmaking.

We are asked this afternoon to impede the second of those decisions by eliminating or restricting the judicial authority and power of the Supreme Court on one particular issue—school prayer decisions. At sometime in the future, I—and I am sure my colleagues—would be willing to debate the appropriateness of the previous Supreme Court decisions, or the state of the law, or what this body ought to be doing on that issue. However, the Helms amendment reaches a significance far beyond this issue of prayer. Some can make the declaration or the statement that, on its face, it is unconstitutional. I believe that to be so, but I do not think that we really have to debate this issue. It is basically, I believe, extremely bad, and poor policy. I do think the Helms amendment reaches the foundation of this Nation in one of the most important decisions that our Founding Fathers made. That is on the separation of powers.

No one really questions that we in this body have the power effectively to destroy the judiciary. We could do that by curtailing or eliminating the authorizations and appropriations for U.S. attorneys, for the Federal judges, for magistrates, for the court buildings, for all the mechanisms which permit our Federal system to function. No one denies that we have at least that power.

The question is, Mr. President, whether, by the exercise of that power, we should reduce and impact the jurisdiction of the judiciary. We understand that, under the Constitution, there are clearly housekeeping issues which affect the merits of decisions, which permit Congress to establish appropriate jurisdictional definitions—whether certain courts are going to be able to consider antitrust matters or not—and other similar items. But this, Mr. President, is virtually the first assault on the Supreme Court of the United States in over a 100 years, trying to define its jurisdiction in such a way as to affect the merits or the outcome of a particular Supreme Court decision.

It is for that reason and because this particular amendment affects the issues of the establishment clause and the free exercise clause of the Constitution of the United States that virtually every major religious group in this country is strongly opposed to the Helms amendment. We can ask ourselves, why are they opposed to this amendment?

It is because they see, Mr. President, that if the Congress of the United States is prepared to exclude jurisdiction of the Supreme Court in one particular area, in the area of voluntary prayer, why cannot the Congress of the United States—maybe not this year, maybe not next year, maybe not in 20 years, but, say, in 30 years or 50 years—virtually establish a religion in the United States of America and provide for the Supreme Court exclusion from ruling on the appropriateness of that enactment.

Or, on the other hand, with acceptance of the Helms amendment, what it is going to prevent the Congress in some future years, from violating the free exercise clause of the Constitution by tagging on a little line, and effectively saying that the Supreme Court of the United States

will be prohibited from making any jurisdictional finding on the issue?

It is a fact of history, not only of this country but of democracies throughout the history of mankind, that religions have been more persecuted than protected under democracies, and the great religions have expressed strong reservations about tampering with the Constitutional provisions that deal either with the establishment clause or the free exercise clause.

Mr. President, I would think that others in this body would be somewhat leery of this particular procedure. It might not be long before Members of this body, at some future time, might say, "We are going to confiscate certain business properties in this country," and then, after the confiscation process add one little, final clause, and say that no Federal court or Supreme Court will have jurisdiction over this matter, or over compensation, or due process for businesses.

I can see that, sometime in the future, the free press might be under assault or attack. Maybe we are just going to take this one, small action dealing with the free press, and then we are going to take the old Helms language and exclude the press from the jurisdiction of the Supreme Court of the United States. The Helms amendment establishes a precedent for all types of mishief.

Make no mistake about it. It is not just on the issue of the voluntary prayer. The Helms amendment reaches one of the most basic and fundamental issues, and that is the appropriateness of the Supreme Court to be the interpreter of the Constitution of the United States, an issue which I thought was resolved many years ago.

The problems that we will be facing should be understood by all Members. It would exclude the Supreme Court from making judgments in this particular area. We are going to run into a situation in which 50 States could have 50 different interpretations of what the law of the land is—one ruling in Connecticut, another in Massachusetts, another in Rhode Island—all affecting one of the most fundamental tenets of our society, and one which has had an important role in the shaping and formulation of our Union. Fifty States could have at least 50 different interpretations about what is permitted and what is not permitted. That certainly is one of the logical extensions of the Helms amendment.

On the other hand, if enacted we might get into a situation in which those who bring the cases under the various State jurisdictions are going to claim that the State prayer program in schools is not truly voluntary and that, therefore, the Helms amendment does not even apply; that because there is an element of compulsion, we will advance it into the Federal courts and back into the Supreme Court.

There very well may be some means within the Constitution of the United States to achieve our particular desirable goal of voluntary prayer; but I dare say that by the adoption of this amendment, we are not moving in that direction. Also, we will not effectively free the district courts or the supreme courts from dealing wth this matter, because the allegation will be made that no matter what system is established within a State there is some aspect of compulsion involved.

Mr. President, without getting into the merits again, I hope we understand the extraordinarily dangerous aspect and precedent of this amendment. There will not be a group or an interest in this country, if we accept this amendment, that is not going to be back here, talking to the Members, talking to us as individuals, talking to us as parties, and advocating some other provision to limit the jurisdiction of the Federal court systems.

This amendment is bad policy. It seeks to refute one of the fundamental aspects on which this country was established—separation of powers. It is extremely dangerous, and should be rejected.

Mr. President, I should like to mention some letters I have received in the past year. I received a letter from James E. Wood, representing the Baptist Joint Committee on Public Affairs. It reads as follows:

> This letter is being written to you in opposition to a possible amendment to S. 3100 to limit the jurisdiction of the Supreme Court of the United States and of the district courts to enter any judgment on the constitutionality of state-sponsored prayers in the public schools.
>
> Through the years the Baptist Joint Committee on Public Affairs, comprised of eight national Baptist bodies of the U.S.A. with a combined membership of 27 million, has expressed unalterable opposition to any efforts to circumvent or circumscribe the historic decisions of the U.S. Supreme Court of 1962 and 1963. Any such efforts we view as an abridgment of the First Amendment and in no way as an aid to religion or the religious exercise of prayer. It is lamentable that more than a decade and a half after the landmark decisions of the U.S. Supreme Court many Americans have still failed to understand the limits or the reasoning of the Court's decisions. As in the past, we contend that the court clearly did not rule out religion from the curriculum of the public schools but, in effect, affirmed that the public school is not a place for worship, but for learning.
>
> It is our hope that you will give serious consideration to opposing any jurisdictional amendment which would limit the U.S. Supreme Court and the district courts from entering any judgment on the constitutionality of school-sponsored prayers as unnecessary and dangerous to the concept of a free society—as injurious to both a free church and a free state.

I received a similar letter which was signed by representatives of the Lutheran Council, United Presbyterian Church, Church of the Brethren, American Jewish Congress, United Church of Christ, Unitarian Universalist Association, and the United Methodist Church.

They talk about altering and changing the jurisdiction of the United States Supreme Court on the question of protection of religion. The particular question being discussed is State-sponsored prayers; but the letters reflect very clearly that their principal concern is altering and changing the jurisdiction of the Supreme Court of the United States on the issues involving the establishment clause and the free exercise clause. I think it is appropriate that those fators be mentioned at this time.

On the other part of the bill affecting the jurisdiction of the Supreme Court, I strongly support it. Quite clearly, we have mandated that the Supreme Court take many matters of jurisdiction.

S. 450 sponsored by the distinguished Senator from Arizona Mr. DECONCINI would assure the appropriate use of the time of the jurists on the Supreme Court, as well as insure fair consideration of matters which should be decided by the Supreme Court. It eliminates certain required areas of jurisdiction. It is a worthy goal and has strong support, and it is a goal I support.

I hope this amendment by the Senator from North Carolina will be defeated.

Mr. DECONCINI. Mr. President, the bill before us is S. 450, which is a bill amending the jurisdiction of the Supreme Court. I am well aware there has been an amendment by the distinguished majority leader which is known as the so-called Helms amendment which also deals with jurisdiction. And when we deal with jurisdiction of the Supreme Court, it is proper, in my judgment, that they be on germane bills. It makes a lot of sense to have the Helms amendment considered with S. 450.

Mr. President, I wish to address a few remarks to S. 450.

The main thrust of S. 450, the Supreme Court Jurisdiction Act, is to eliminate the last vestige of the Supreme Court's mandatory jurisdiction over cases arising under certain sections of the code and substitute for the obligatory jurisdiction, a review by writ of certiorari.

The line between the mandatory jurisdiction and discretionary jurisdiction does not necessarily identify cases in which the Supreme Court should render a decision on the merits. The line may well have been a rational meaningful line in earlier times but today's issues of national importance to which the Court should give its attention arise all across the dockets in unprecedented actions.

I received on June 22, 1978, a letter signed by the nine Justices of the Supreme Court endorsing S. 450 and urging its adoption and passage. I believe it is dispositive of the issue when men of such diverse views as the present members of the Supreme Court can unite in one opinion on the subject matter.

The letter is as follows:

> SUPREME COURT OF THE UNITED STATES,
> *Washington, D.C., June 22, 1978.*
>
> Re S. 3100.
>
> DEAR SENATOR DECONCINI: In response to your invitation and inquiries, we write to comment on proposed limitations of the Supreme Court's mandatory jurisdiction, specifically those contained in S. 3100. Various Justices have spoken out publicly on the issue on prior occasions, all stating essentially the view that the Court's mandatory jurisdiction should be severely limited or eliminated altogether. Your invitation, however, enables all of us, after discussions within the Court, to express our common view on the matter.
>
> We endorse S. 3100 without reservation and urge the Congress to enact it promptly.
>
> Our reasons are similar to those so ably presented in hearings before the Senate on June 30, 1978, by Solicitor General McCree, Assistant Attorney General Meador, Professor Gressman and others. First, any provision for mandatory jurisdiction by definition permits litigants to bring cases to this Court as of right and without regard to whether

those are of any general public importance or concern. Thus, the Court is required to devote time and other finite resources to deciding on the merits cases which do not, in Chief Justice Taft's words, "involve principles, the application of which are of wide public importance or governmental interest, and which should be authoritatively declared by the final court." To the extent that we are obligated by statute to devote our energies to these less important cases, we cannot devote our time and attention to the more important issues and cases constantly pressing for resolution in an increasing volume—as witness the current Term now in its closing weeks.

The problem we describe is substantial. We are attaching to this letter an appendix consisting of statistical tables covering the October 1976 Term. As these tables indicate, during the 1976 Term almost half of the cases decided by this Court on the merits were cases brought here as of right under the Court's mandatory jurisdiction. Although presumably the percentage decreased during the 1977 Term because of Congressional action in 1976 severely limiting the jurisdiction of three-judge federal district courts, the burden posed by appeals as of right remained substantial and unduly expended the Court's resources on cases better left to other courts.

Second, the retention of mandatory jurisdiction at a time when the Court's caseload is heavy and growing requires the Court to resort to the generally unsatisfactory device of summary dispositions of appeals. There is no necessary correlation between the difficulty of the legal questions in a case and its public importance. Accordingly, the Court often is required to call for full briefing and oral argument in difficult cases of no general public importance. The Court cannot, however, accord plenary review to all appeals; to have done so during the October 1976 Term, for example, would have required at least 13 additional weeks of oral argument, almost a doubling of the argument calendar—an utterly impossible assignment. As a consequence, the Court must dispose summarily of a substantial portion of cases within the mandatory jurisdiction, often without written opinion. However, because these summary dispositions are decisions on the merits, they are binding on state courts and other federal courts. See *Mandel* v. *Bradley*, 432 U.S. 173 (1977); *Hicks* v. *Miranda*, 422 U.S. 332 (1975). Yet, as we know from experience, our summary dispositions often are uncertain guides to the courts bound to follow them and not infrequently create more confusion than clarity. From this dilemma we perceive only one escape consistent with past Congressional decisions defining the Court's mandatory jurisdiction: Congressional action eliminating that jurisdiction. Accordingly, we endorse S. 3100 and urge its adoption.

Cordially and respectfully,

WARREN E. BURGER, WILLIAM J. BRENNAN, POTTER STEWART, BYRON R. WHITE, THURGOOD MARSHALL, HARRY A. BLACKMUN, LEWIS F. POWELL, WILLIAM H. REHNQUIST, JOHN P. STEVENS.

At hearings on the bill, support was again unanimous and in questions to the witnesses attempting to identify any group of people who might object to this legislation, we could not find any.

Supporters include all members of the Supreme Court, as I mentioned, the Justice Department, former Solicitor General Griswold, and Prof. Paul Freund, Dean Pollack, and a host of other people.

Mr. President, if the Supreme Court Jurisdiction Act is enacted into law it will be the culmination of a long and historic process converting the appellate jurisdiction of the Supreme Court from one totally obligatory in nature to one that, with a few minor exceptions, will be almost totally discretionary. In the modern era of burgeoning litigation, when the Court is overwhelmed with caseloads and workloads, the maintenance of any substantial amount of obligatory decisionmaking is inexcusable and counterproductive. It detracts from the Court's ability to control its own docket and to effectuate its constitutional mission of resolving only those matters that are of truly national significance. That essentially is why Chief Justice Burger, like so many other observers, has repeatedly proposed that "all mandatory jurisdiction of the Supreme Court that can be, should be eliminated by statute."

To understand why the enactment of this bill is so desirable and indeed so essential, one must examine the role that obligatory jurisdiction has played in the Supreme Court's execution of its appellate functions. It is a jurisdiction steeped in history, but productive of confusion and mismanagement. History has shown that imposing such mandatory functions on the Supreme Court tends to weaken the Court's capacity both to control its own docket and to confine its labors to the frontiers of national law. And history has further shown that the Court, in an effort to counteract the workload problems of this compulsory jurisdiction, has increasingly disposed of "insubstantial" appeals in summary ways that the bar, the lower courts and many commentators often find confusing and opaque, if not inconsistent with the nondiscretionary theory underlying the disposition of appeals. Much of the criticism of the Court's treatment of appeals has emanated from some of those on the Court who have participated in the execution of these mandatory functions.

There are six major reasons for abolishing the Supreme Court's obligatory jurisdiction. First, it is unnecessary to the Court's performance of its role in our society.

Second, it impairs the Court's ability to select the right time and the right case for the definitive resolution of recurring issues.

Third, it imposes burdens on the Justices that may hinder the Court in the performance of its function as expositor of the national law.

Fourth, the existence of the obligatory jurisdiction has made it necessary for the Court to hand down summary dispositions that create confusion for lawyers, for lower court judges and for citizens who must conform their conduct to the requirements of Federal law.

Fifth, the obligatory jurisdiction creates burdens for lawyers seeking Supreme Court review.

Finally, even if the idea of having an obligatory jurisdiction were sound, there is no practical way of describing, in legislation, the kinds of cases that should fall within it.

Congress would do well to eliminate, as proposed in this bill, the last large vestiges of a jurisdiction that has proved unnecessary, burdensome, and controversial. Whatever justification may once have existed for forcing the Court to decide the merits of all cases falling within certain arbitrary classifications, regardless of their importance or lack thereof, has long since disappeared.

The long historic experiment of imposing on the Supreme Court an obligation to resolve appeals taken to it as of right has utterly failed. The modern problems and practices of the Court simply do not permit the luxury of determining the merits of all cases within any designated jurisdictional class. To survive as a viable institution, to control its docket to perform its great mission, the Supreme Court must be given total freedom to select for resolution those few hundred cases—out of the several thousands that are filed each year—that are found truly worthy of review. The Supreme Court Jurisdiction Act will help to achieve that goal by reducing the needless mandatory burdens virtually to the vanishing point.

For all of these reasons, I urge the Senate's support of the enactment of this bill which would eliminate substantially all of the Supreme Court's mandatory appellate jurisdiction, leaving the Court with discretionary control of its appellate docket.

Mr. President, the amendment that we will be voting on I think has some merit. I understand the argument by the distinguished Senator from Massachusetts, the chairman of the committee, but I think it is proper for us to consider this and have a vote on it, and I certainly believe that if to pass a school prayer amendment is the will of the Senate then it is far more germane that it be on S. 450, a bill dealing with the jurisdiction of the Supreme Court, rather than the education bill or any other bill.

Mr. President, I yield the floor.

Mr. MATHIAS addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Maryland.

Mr. MATHIAS. Mr. President, I oppose this amendment.

There is no question in my own mind, but there may be a question in the minds of some as to whether or not the proposed amendment is constitutional. But, I do not think there could be any question in anyone's mind about the fact that the amendment is simply a means of bypassing the constitutionally prescribed amendatory process.

What the amendment is really trying to do is find a back door for changing the organic law of the country. It bypasses article V of the Constitution.

Constitutional interpretations are subject to change either by the process provided within the Constitution itself or when the Supreme Court alters one of its prior constitutional holdings.

Every one of us has taken an oath to uphold, support, and defend the Constitution, and it seems to me that by supporting this kind of amendment we do violence to that oath because we blatantly ignore the process which the Constitution itself provides for amendment.

This, of course, like most legal subjects, is not always clear to one as it is to another. But in this particular case we have a considerable amount of guidance.

Mr. HELMS. Mr. President, will the Senator yield at that point for 30 seconds?

Mr. MATHIAS. I am happy to yield to my friend.

Mr. HELMS. I thank my friend from Maryland.

Mr. MATHIAS. Is this for a question or a statement?

Mr. HELMS. Yes.

He mentioned the constitutional duties of the Members of the Senate to uphold the Constitution, and part of that duty is to protect the people of this country against usurpation by the Supreme Court, and that is all this amendment does.

I thank the Senator.

Mr. MATHIAS. Of course, the Senator from North Carolina and I, I think, would disagree that the amendment does only that. The amendment does exactly what was before the Court in the case of the United States against Klein where it was held that Congress may not enact legislation to eliminate an area of jurisdiction in order to control the results in a particular case, and to manipulate jurisdiction to accomplish a result it could not reach by direct means.

In the Klein case, there was a suit brought in the Court of Claims under an 1863 statute which allowed the recovery of land captured or abandoned during the Civil War if the claimant could prove that he had not aided the rebellion.

Relying on an earlier Supreme Court decision that a Presidential pardon proved conclusively that he had not aided the rebellion, Klein won his case in the Court of Claims. While the case was pending, Congress passed a statute providing that a Presidential pardon would not support a claim for captured property, that acceptance without disclaimer of a pardon for participation in the rebillion was conclusive evidence that the claimaint had aided the enemy, and that when the Court of Claims based: Its judgment in favor of the claimant of such a pardon the Supreme Court lacked jurisdiction on appeal. The court held that Congress could not by amending the law alter the grounds for the case, and could not eliminate a particular area of jurisdiction in order to control the results of a particular case.

It is a situation which is very close to what is the real purpose and intent of this amendment.

But I think we have to look beyond the immediate intent of this amendment to the violence that we would do to our whole constitutional system by adopting this amendment. We would substitute for the very carefully wrought amendatory process the legislative enactments of Congress, and that is not our system. It has not been our system.

One of the great strengths of the American system is that we have not allowed the organic law of the Nation to be pulled and hauled with each ebb and flow of the tide of public opinion. That is exactly what we would be doing if we passed this amendment, and I hope the Senate will vote it down.

Mr. KENNEDY. Mr. President, will the Senator from Maryland yield for a question?

Mr. MATHIAS. I am happy to yield to the Senator from Massachusetts.

Mr. KENNEDY. Does the Senator foresee that at some future time this or a similar device could be used to limit the Federal courts' jurisdiction over other areas? Will the Senator not agree with me that, while the Senate now is in this area of a voluntary prayer, if we limit the courts' jurisdiction here we could equally limit the courts from protecting other important constitutional rights?

Would the Senator not agree with me that if this device, this technique, is successfully utilized under this process that there could be other instances in the future involving a wide range of different areas of public policy which could be sufficiently emotional at the particular time in our country's history where the Congress might take action and virtually exclude the Supreme Court or the Federal courts from reviewing the constitutionality of such action? And would this not effectively undermine in a most significant and serious way the Constitution of the United States as the most effective blueprint for the protection of individual rights and liberties that has ever been charted by mankind?

Mr. MATHIAS. The Senator's contention that this principle could be applied to preclude Federal court review of other protected rights I think, is supported by the case that I just cited, United States against Klein.

In Klein the Court said, in effect that you could not manipulate the jurisdiction of the Federal courts to achieve a result Congress could not achieve directly. The Court told Congress we could not do that in Klein, and we should not make the same mistake again. If we do, this method of circumventing the amendatory process, can, as my colleague notes, be used to affect other important constitutional rights.

If once you go down this road, once you lay out this route, then it is only the ingenuity of man that limits the areas to which this could be applied. I think this is a perfect example of the fact that Congress has to exercise its power to limit jurisdiction in a manner which is consistent with the independence of the judiciary, and it must be consistent with the amendatory process. If it is not so, then nothing will be sacred in this country. There is no subject that cannot be reached by a simple act of Congress altering the jurisdiction of the courts to control the outcome of cases. This would be a chaotic situation which could be really destructive of the basic values of the Republic.

Mr. KENNEDY. To carry it to a legitimate and logical extension, you could then be in a position where any action that was taken by Congress could have a final clause that said "This action will not be reviewed by the Federal courts or the Supreme Court of the United States." This would be a way to insulate congressional action from judicial review, whether it affects individual rights or liberties, whether it affects religion, whether it affects private property, whether it affects any actions that could possibly be taken.

Mr. MATHIAS. It would have the effect of wiping the name of John Marshall from the annals of the courts.

Mr. ROBERT C. BYRD. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. BOREN). Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. KENNEDY. Mr. President, as a member of the Judiciary Committee, I am always interested in the efforts by my colleagues on that committee when we are considering legislation that is of enormous importance and of enormous consequence to have additional days of hearings. I can remember, as does my good friend, the chairman of the Constitutional Rights Subcommittee, Chairman BAYH, the issue of the electoral college, where just last month many of the voices now pleading that we adopt this very significant constitutional change without any hearings were then pleading in the Judiciary Committee "Let us have 2 more days of hearings. Let us have 5 more days of hearings. Let us have 10 more days of hearings," despite the dozens of days of hearings already held on the issue of direct election of the President. We are now beginning to tamper with some of the most fundamental aspects of our constitutional process, where the time and deliberation on those issues should be extensive and exhaustive. And yet, Mr. President, I see that some members of our own committee, who have spent such time and effort and interest and energy on matters affecting the judiciary process and the judicial system and the functioning of it, are prepared to see such a dramatic and significant alteration and change in the fundamental tenets of our Government affecting the jurisdiction of the Supreme Court of the United States, its ability to interpret laws, without any hearings or serious deliberation. I believe this action begins us down a path which is extremely dangerous and foreboding for the people of this Nation.

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. HELMS. Will the Senator withhold that?

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

Mr. KENNEDY. I object.

The PRESIDING OFFICER. There is objection. Objection is heard.

The clerk will continue the call of the roll.

Mr. HELMS. I cannot believe that the Senator would object to my responding to him. I have seen a lot of things in this Senate but I cannot believe that comity is in disarray.

The assistant legislative clerk proceeded to continue to call the roll.

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

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

Mr. HELMS. Mr. President, I listened with great interest to the comments by the distinguished Senator from Massachusetts in which he said that since this proposal has not been considered by the committee, we ought to have hearings, and so forth.

Mr. President, this matter has been referred to the Judiciary Committee time and time and time again. This Senator knows who has put his foot on

proposals to restore voluntary prayers in the schools.

The Senator from North Carolina has been pleading for hearings for at least 5 years, and not a syllable of interest has been shown by the distinguished Senator from Massachusetts. If I am incorrect about that, let him say so now.

Mr. KENNEDY. Well, the Senator is incorrect. I do so say. The Senator is very incorrect.

Mr. HELMS. Well, the Senator himself is incorrect, because the matter has been referred to the Senate Judiciary Committee, time and time again. But even so, I am not going to get into a lawyers' argument with my friend from Massachusetts or anybody else.

I just cannot understand the objection to giving school children an opportunity to participate in voluntary prayer. If one were to believe the ringing rhetoric that has been heard in this Chamber today, it would bring us to the absurd conclusion that we are proposing to bring down the pillars of justice, when as a matter of fact almost every Senator, if not every Senator in this Chamber, probably engaged in voluntary prayer throughout his school days. I want any Senator to name just one child—one child—who has been harmed by being exposed to voluntary prayer.

Moreover, I think it can be graphed out to demonstrate that the troubles in the schools of this country parallel almost precisely the unfortunate and unwise decisions by the Supreme Court in 1962 and 1963.

As for all of this rhetoric about what we are doing to the Constitution, I would borrow a saying from my friend from New York (Mr. JAVITS), who often comments, "We are not children around here." Sometimes I think we are, but hopefully we are not really.

Mr. Justice Felix Frankfurter himself said:

> Congress need not give this Court any appellate power. It may withdraw appellate jurisdiction once conferred, and it may do so even while a case is in progress.

So we are not bringing down the pillars of justice, Mr. President. We are talking about a fundamental moral aspect of American life. That is all. Nothing more and nothing less. And if it were not so serious a matter, I would find laughable some of the suggestions that have been made to the contrary.

The opponents of the right of voluntary prayer in the schools, I think, Mr. President, have seriously misrepresented the intent and the effect of the so-called Helms amendment. They have suggested that this amendment would induce State court judges to violate the supremacy clause of the Constitution, and even that Senators would violate their oath of office if they support voluntary prayer in our schools.

In any case, the suggestion by the opponents of the so-called Helms amendment does not correctly describe the intent, nor does it describe the effect, of the amendment which was approved by the Senate this past Thursday.

The amendment now before the Senate, submitted at my suggestion by my friend from West Virginia, the distinguished majority leader is of course the Helms amendment. As I said earlier, I appreciate the support of the distinguished majority leader both today and on last Thursday. But the curious interpretations I have heard concerning my amendment rest on a misinterpretation and misapplication of the supremacy clause of the Constitution. That clause states, Mr. President:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.

Obviously, State supreme court justices must respect a decision by the U.S. Supreme Court regarding the parties to the case which the Court has decided. And that is what the supremacy clause seeks to accomplish.

Contrary to what the opponents of the pending amendment would have us believe, the two functions of the supremacy clause are first, to maintain the supremacy of Federal law and second, to provide for the ultimate resolution of inconsistent or conflicting interpretations of Federal law by State and Federal courts.

This amendment today is premised on the understanding that the right to voluntary school prayer is a right which the framers of the first amendment intended not as a matter of Federal law but as a matter of State law. The authors of the first amendment intended that State legislatures and State courts would decide the issue of State encouragement of prayer. My amendment presents no conflict between the power of Congress to regulate the jurisdiction of the Supreme Court and the obligation of State judges under the supremacy clause.

This misguided interpretation of the supremacy clause put forward by the opponents of the amendment is not mandated by the Supreme Court's landmark decision involving the supremacy clause, Cooper against Aaron. That case involved the actions of the Governor of Arkansas to block the desegregation of public schools in Little Rock, Ark. Chief Justice Earl Warren succintly framed the issue to be decided by the Supreme Court in that case. He stated that the Court would decide the "claim by the Governor and legislature of the State that there is no duty on State officials to obey Federal court orders resting on this Court's considered interpretation of the United States Constitution." Indeed, the decision of the Supreme Court in Cooper against Aaron did not involve the obligations of State judges under the supremacy clause at all. It is an elementary rule of constitutional law that the decision of a court is limited to the facts and to the parties to the case.

The opinion of a court cannot automatically be applied to future cases.

Mr. President, it has also been suggested that an 1872 decision of the Supreme Court in the case of United States against Klein will cast doubt on the power of Congress to limit the jurisdiction of the Court in the manner I am suggesting today. But while striking down the law involved in that case, the Court itself observed:

> It seems to us that this is not an exercise of the acknowledged power of Congress to make exceptions and prescribe regulations to the appellate power.

Let us repeat that, Mr. President, for the benefit of those who say that the Congress would act improperly if it sought to exercise its constitutional responsibility in this matter. The Court itself said:

> It seems to us that this is not an exercise of the acknowledged power of Congress to make exceptions and prescribe regulations to the appellate power.

If that does not leave the opponents of this amendment out in left field, Mr. President, I do not know what possibly could, because even the Court on this instance, and in many others, has clearly said that the Congress has the authority to do precisely what this amendment proposes. Instead, the Court struck down the statute on the basis that it "prescribed a rule for the decision of a case in a particular day." Of course, Congress cannot do that, and this amendment does not propose to do that.

The statute which was voided by the Court in Klein was indeed intended by Congress to restrain the Court, but not by means of limiting its jurisdiction, and this decision cannot be taken as a precedent regarding my proposal.

Mr. President, the Court's opinion in Marbury against Madison established that it is a judicial function to decide what the law has been and is now in pending cases. I agree that an act of Congress which seeks to determine the outcome of a case pending before the Court would indeed be an encroachment upon the essential function of the judiciary under our doctrine of separation of powers. This was the problem present in the Klein case, not the issue of Court jurisdiction.

In Klein, the plaintiff's decedent had been the owner of property sold by agents of the Federal Government during the Civil War. The plaintiff sued for the proceeds of the sale in the Court of Claims and recovered under legislation establishing such a right upon proof of loyalty. The Supreme Court had held in earlier cases that a person's loyalty could be proved by a Presidential pardon. While this case was on appeal in the Supreme Court, Congress passed an act crucially altering the rights of the parties in that case. The act provided that in all pending cases no pardon would be permissible to show loyalty and, to the contrary, a pardon would constitute conclusive proof of disloyalty.

That is the case, Mr. President, that has been cited here this morning, and that is the kind of misinterpretation to which this amendment and its effect has been subjected.

The Court, of course, held the statute unconstitutional on the ground that, by prescribing a rule of decision for pending cases, "Congress has inadvertently passed the limit which separates the legislative from the judicial power."

Such an intervention by Congress to determine legislatively the outcome of a controversy between parties to a lawsuit is substantially different from removing

the power of a court to hear the controversy in the first place.

Mr. President, I suspect that some potential difficulty with this amendment may result from a lack of knowledge regarding its legislative precedence. Some have described it as an "unprecedented" proposal. I heard that on the radio this morning. Nothing could be more incorrect.

Following the Baker against Carr and the Reynolds against Simms decisions by the Supreme Court in 1962 and 1964, the House of Representatives passed a bill sponsored by Representative Tuck, of Virginia, which similarly limited the jurisdiction of the Supreme Court in any case regarding the apportionment or reapportionment of any legislature of any State.

Similarly, the late distinguished former minority leader of this Senate, Everett Dirksen, proposed a companion bill, S. 3069, during the 88th Congress to deal with the reapportionment decisions of the Supreme Court.

The Senate Judiciary Committee's version of the 1968 Omnibus Crime Control bill responded to the Supreme Court's decision in the case of Miranda against Arizona by similarly including a provision that neither the Supreme Court nor any other article III court "shall have jurisdiction to review or to revise, vacate, modify or disturb in any way, a ruling of any trial court of any State in any criminal prosecution admitting in evidence as voluntarily made an admission or confession of any accused."

So what do the opponents of this amendment mean when they say that this is unprecedented? I will lay aside the sophistry that we are bringing down the pillars of justice when we say that school children ought to have the right of voluntary prayer, but where do these lawyers who have argued against this amendment get the misimpression that this is unprecedented and that it therefore must not happen?

I would point out that for more than 100 years Congress limited the Supreme Court's jurisdiction so that there was no right of appeal to that Court in criminal cases, except upon a certification of division by the circuit court.

In addition, Congress greatly limited the jurisdiction of Federal courts in labor disputes in 1932 when it enacted the Norris-LaGuardia Act.

What has happened to the memory of today's legal experts, these constitutional authorities, who raise their hands in such horror to a proposal to let little schoolchildren have the right of voluntary prayer in schools? I do not understand it, Mr. President. I just do not understand it.

Another precedent: Congress limited the jurisdiction of Federal courts when it feared that a Federal price control program might be nullified by court injunction. Congress did that when it enacted the Emergency Price Control Act of 1942. The examples of similar or even stronger action by the Congress permit it.

I would suggest that before somebody concludes that amendment, known here today as the Helms amendment—and I am proud of it—before they conclude that this amendment is a violation of the supremacy clause or, as they put it, obviously outside the constitutional power of Congress under article III, or, as somebody put it, obviously an unprecedented proposal, that he study these past actions by Congress.

Mr. President, I am not a lawyer, but I can read history. I think I can understand the English language. I certainly understand a few moral principles, and the last is what I am primarily interested in. I want any Senator to stand up and identify one child in this country who has even been harmed because he or she was permitted to participate in voluntary prayer in a school. I do not think any Senator is going to attempt it. Again, I prayerfully suggest that Senators consider the moral aspects of this matter and not try to build a specious legal argument based on misrepresentation of an amendment submitted in good faith by a Senator who has long been concerned about the Supreme Court's denial of the right of voluntary prayer in our schools.

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

The PRESIDING OFFICER. The clerk will call the roll.

Mr. KENNEDY addressed the Chair.

Mr. HELMS. Mr. President, I just asked for a quorum.

The PRESIDING OFFICER. Does the Senator withhold?

Mr. HELMS. No; I think not. Not for the moment.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

Mr. THURMOND. I object.

The PRESIDING OFFICER. Objection is heard. The clerk will call the roll.

The assistant legislative clerk continued to call the roll.

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

Mr. KENNEDY. I object.

The PRESIDING OFFICER. Objection is heard.

The clerk will call the roll.

The assistant legislative clerk continued to call the roll.

Mr. KENNEDY. 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. KENNEDY. Mr. President, I intend to speak briefly, to respond to some of the points of the Senator from North Carolina in reference to the commentary of Justice Frankfurter dealing with appellate division and the supremacy clause and the question of precedents.

I had claimed earlier that this action by the Senator from North Carolina in this proposition was a precedent, and he questioned whether this really was a precedent. He talked about the provision of the omnibus crime bill and other actions that were taken, recommended by various committees in the Senate or the House of Representatives.

The fact is that none of those is law. With respect to the kinds of restrictions on the jurisdiction of the Supreme Court of the United States and the actions taken in the committee, or introduction of legislation, or even those that pass one house or the other, the Senator from North Carolina would be unable to give us any action by Congress which would take away the jurisdiction to deal with constitutional issues.

What we are talking about here are constitutional issues, not nonconstitutional issues. It is a different criterion. We are talking about constitutional issues. He would be unable to mention any action that has been taken that would deal with this issue in the way we have outlined.

Second, Mr. President, I do not question the points that are raised about Felix Frankfurter talking about various appellate jurisdictions. Of course, there is a question in the issue about how many appeals individual causes have. There has been flexibility. There is imagination. There are a number of considerations now about the whole process of appellate jurisdiction.

The statement he read has absolutely no relevancy, basically, to the question at hand. If he is talking about appellate jurisdiction, the appellate jurisdiction that Felix Frankfurter was talking about is the series of appellate jurisdictions to which individuals would be entitled.

Under the Helms amendment, there is no jurisdiction; the jurisdiction is removed from the Federal court. So, on a constitutional issue, you are going to have 50 different interpretations in 50 courts. The Senator from North Carolina can say, "Well, all 50 courts are going to follow whatever the Supreme Court has said on that." That is a nice, gentle, and generous statement. But who will be the interpreter to find out whether that is so?

Mr. President, I ask unanimous consent to have printed in the RECORD a letter to all members of the committee by the Attorney General of the United States, in strong opposition to the Helms amendment.

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

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C. April 9, 1979.

Hon. ABRAHAM RIBICOFF,
Chairman, Committee on Government Operations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to your request for my views on the amendment offered by Senator Helms to S. 210, the Department of Education bill. This amendment, which is identical to S. 438 introduced by Senator Helms earlier in this session, is designed to eliminate the jurisdiction of the Federal courts over cases relating to voluntary prayer in public schools and public buildings. In my view, enactment of this proposal would be ill-advised as a matter of constitutional law and of public policy.

Whether Congress may wholly divest the Supreme Court of appellate jurisdiction over a constitutional claim is a complex question that has been the subject of much heated and inconclusive scholarly debate. The Supreme Court itself has never been faced with the question. Article III of the Constitution extends the "judicial power of the United States" to "all cases . . . arising under this Constitution." The Supreme Court is given

appellate jurisdiction over all cases within that judicial power "with such exceptions and regulations as Congress shall make." U.S. Const. art. III, § 2, cl. 3. Some commentators have argued that this "Exceptions" clause gives Congress plenary power over the Supreme Court's appellate jurisdiction, even to the point of removing constitutional claims from the Court's review. Other commentators, however, believe such a reading of the clause to be antithetical to principles at the heart of the Constitution. They point to the Supremacy Clause which establishes the Constitution as a supreme uniform law, binding on both the Federal courts and the courts of every state. U.S. Const. art. VI, cl. 2. To permit Congress to "except" a constitutional issue from the Supreme Court's jurisdiction, these commentators argue, would destroy the uniformity sought by the Framers of the Constitution. Rather than one Constitution on an issue, we would have fifty. It has further been argued that "excepting" a constitutional issue from the Court's jurisdiction would violate the due process guarantee of the Fifth Amendment.

Although a number of proposals to restrict the Court's appellate jurisdiction have been introduced in Congress over the years, none has passed both houses. Perhaps the closest Congress has come to eliminating Supreme Court jurisdiction over a constitutional issue was during Reconstruction, when Congress acted to eliminate the Court's appellate jurisdiction over cases raising the constitutionality of the Reconstruction Acts. In *Ex parte McCardle*, 74 U.S. (7 Wall.) 506 (1869), the Court found this Congressional restriction constitutional. The Court noted, however, that it would still have jurisdiction to decide the constitutionality of the Reconstruction Acts in the context of an original petition for *habeas corpus*, and that the circuit courts could still hear such claims. In contrast to the situation presented in *Ex parte McCardle*, Senator Helms' proposal appears intended wholly to foreclose Federal court review of school prayer cases.

I believe that any proposal to eliminate the appellate jurisdiction of the Supreme Court with respect to constitutional claims raises a serious constitutional issue about the extent of Congress' power over the appellate jurisdiction of the Supreme Court. However intrigued we may be by such questions, we should not purchase answers to them at the price of an unnecessary and possibly unfortunate confrontation between the Congress and the Court.

Aside from the constitutional problems which Senator Helms' proposal raises, I believe that enactment of this legislation would be wrong as a matter of public policy for the following reasons: First, it is undesirable to deal with highly specialized, complex and controversial constitutional issues through the device of eliminating an opportunity for a full and fair airing of the issues within the Federal judicial structure. Federal law on this point would be frozen in whatever state it happened to be at the moment; persons dissatisfied with current Federal law on such issues would be foreclosed from the possibility of any further favorable development within the Federal system. It would not be appropriate to deny access to the Federal courts with regard to such constitutional issues.

Second, the proposal chills the ability of the Federal courts to deal with Federal constitutional issues. Matters of constitutional interpretation and adjudication are, of all justiciable issues, pre-eminently within the province of the Federal judiciary; yet a proposal to eliminate such matters from their jurisdiction suggests that the Federal courts are not fit to consider them.

Third, the proposal would run afoul of the public interest in affording at least the opportunity for a uniform, definitive and dispositive nation-wide resolution of issues of constitutional magnitude. By eliminating the jurisdiction of the Supreme Court, the constitutional issues presented by such cases would be left to the highest courts of the fifty states and the District of Columbia, thereby raising the specter of a multiplicity of views as to the proper interpretation of the Constitution in this area.

Fourth, the amendment as presently drafted is restricted to cases involving "voluntary" prayers in public schools and public buildings. In order to determine whether a federal court's jurisdiction is foreclosed by the amendment, therefore, it would be necessary for the court to adjudicate the factual issue of whether the particular prayer practice is itself voluntary. Rather than eliminating the issue of school prayer from the courts, the amendment would virtually assure the involvement of the courts in deciding not only the fundamental constitutional issue of Congress' power to affect federal jurisdiction in this manner, but also the narrower jurisdictional question of whether any particular practice falls within the proscription of the amendment.

For the foregoing reasons, therefore, I would strongly urge the Senate to reject the Helms amendment.

Sincerely,

GRIFFIN B. BELL,
Attorney General.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. KENNEDY. I yield.

Mr. ROBERT C. BYRD. Mr. President, this is the predicament I am in, and I think everybody knows it: At 20 minutes after 2 p.m. today, the Senate will go back on the unfinished business, the Department of Education bill. The amendment by Mr. HELMS probably will go on that bill, if we do not get it on this one. So I hope we can get a vote on this amendment.

Mr. KENNEDY. Mr. President, I imagine that we are going to be talking about this issue on a series of different measures during the course of this year, and I will be prepared to debate those. I will accede to the majority leader's request.

Mr. ROBERT C. BYRD. I thank the Senator.

No one is going to attempt to hold the Senator responsible if the Senate does not vote on this matter today, because other Senators wish to speak.

I hope we can get a vote on this amendment.

Mr. HUMPHREY. Mr. President, earlier in the afternoon, the distinguished Senator from Massachusetts alluded to the potential of abuse by Congress of its power to limit the appellate jurisdiction of the court, conjuring up the image of a Congress, for example, that actually would install a state religion.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield for a question?

Mr. HUMPHREY. I yield.

Mr. ROBERT C. BYRD. Is the Senator in favor of this amendment?

Mr. HUMPHREY. Yes.

Mr. ROBERT C. BYRD. Then, why is he filibustering it?

Mr. HUMPHREY. I have a few remarks I would like to make.

Mr. ROBERT C. BYRD. I wish the Senator would put his statement in the RECORD, so that we could vote on the amendment. The Senator is entitled to make a statement, but I call his attention to the fact that 20 minutes from now will be too late to vote on this amendment, on this bill.

Mr. HUMPHREY. Mr. President, I point out that should a Congress abuse its powers in promoting a State religion, that abuse can be addressed by the people through the electoral process.

In the same vein, the people can address abuse by the Court, through Congress exercising its constitutional right to limit the appellate jurisdiction. So I think the Senator from Massachusetts was exaggerating and muddying the point a little.

Mr. President, in 1962, in the case of Engel against Vitale, the Court ruled that the State of New York had violated the Constitution by allowing public school children to recite a nondenominational prayer at the beginning of each day. The decision was greeted by an outpouring of criticism from the vast majority of the American people, including Members of Congress and many constitutional lawyers.

Fortunately, the Constitution provides a system of checks and balances. In anticipation of judicial usurpations of power, the framers of our Constitution wisely gave Congress the authority, by a simple majority of both Houses, to check the Supreme Court through regulation of its appellate jurisdiction. Section 2 of article III states in clear and precise language that the appellate jurisdiction of the Court is subject to "such Exceptions, and under such Regulations, as the Congress shall make."

Permit me to point out, Mr. President, that Congress has exercised this power on numerous occasions, since the earliest days of the Republic. In the well-known case of Ex parte McCardle, decided in 1868, Congress even went so far as to repeal an act, which had authorized McCardle to appeal to the Supreme Court, after the Court had already heard argument on the case! The Court promptly dismissed the case for want of jurisdiction. Speaking for a unanimous Court, Mr. Justice Davis declared:

> We are not at liberty to inquire into the motives of the legislature. We can only examine into its power under the Constitution; and the power to make exceptions to the appellate jurisdiction of this court is given by express words.

The principle laid down in the McCardle case has been reaffirmed many times by the Court in subsequent cases down to the present. As the Court observed in the Francis Wright case of 1882:

> While the appellate power of this Court extends to all cases within the judicial power of the United States, actual jurisdiction is confined within such limits as Congress sees fit to describe. What these powers shall be, and to what extent they shall be exercised, are, and always have been, proper subjects of legislative control.

In the words of the late Mr. Justice Frankfurter:

> Congress need not give this Court any appellate power; it may withdraw appellate jurisdiction once conferred. (*National Mutual Ins. Co. v. Tidewater Transfer Co., 1948*).

Not once in its history, Mr. President, has the Supreme Court departed from this principle or suggested that there are any limitations to Congress' control over the Court's jurisdiction. In-

deed, the Constitution itself admits to no limitations.

For this reason, I support this amendment which would limit the appellate jurisdiction of the Supreme Court, and the original jurisdiction of Federal district courts, in actions relating to the recitation of prayers in public schools. It states simply that the Federal courts shall not have jurisdiction to enter any judgment, decree, or order, denying or restricting, as unconstitutional, voluntary prayer in any public school.

The purpose of this amendment is to restore to the American people the fundamental right of voluntary prayer in the public schools—and I stress the word "voluntary," Mr. President. No individual should be forced to participate in a religious exercise that is contrary to his religious convictions, and the amendment takes cognizance of this cherished freedom. At the same time, it seeks to promote the free exercise of religion by allowing those who wish to recite prayers—and they are the vast majority of our citizens—to do so, with or without the blessings of government.

As many critics of the Engel decision have correctly observed, the free exercise of religion was actually denied in that case. As you will recall, no individual was compelled to recite the nondenominational prayer, and dissenters were allowed to excuse themselves from the classroom. But the remaining students were denied the freedom to participate in the recitation of the prayer. The conclusion is inescapable, Mr. President, than in Engel against Vitale, the Supreme Court, in effect, gave preference to the dissenters and at the same time violated the establishment clause of the first amendment by establishing a religion—the religion of secularism. Public school children are a captive audience. They are compelled to attend school. Their right to the free exercise of religion should not be suspended while they are in attendance. The language of the first amendment assumes that this basic freedom should be in force at all times and in all places. I respectfully urge my fellow colleagues in the Senate to join me in supporting this amendment and restoring the free exercise of religion to its full constitutional status.

I thank the Chair.

Mr. HELMS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HELMS. I am sorry the distinguished majority leader is not in the Chamber.

I call attention of the Chair to rule VII, paragraph 3:

> Until the morning business shall have been concluded, and so announced from the Chair, or until the hour of 1 o'clock has arrived, no motion to proceed to the consideration of any bill, resolution, report of a committee, or other subject upon the Calendar shall be entertained by the Presiding Officer, unless by unanimous consent; . . .

My inquiry is: Was unanimous-consent obtained in this instance?

The PRESIDING OFFICER. No; unanimous consent was not obtained.

Mr. HELMS. Mr. President, I do not intend to press the point. The distinguished majority leader's motion which was approved and with which in fact I approved at the time, but I hope the majority leader will join me now in saying that he hopes that this action will not constitute a precedent that will eliminate the necessity of unanimous consent in the future.

Mr. ROBERT C. BYRD. Mr. President, I expected someone to raise a point of order at the time, and I would have moved to table it, but I suppose under the rule the Chair really is not supposed to entertain such a motion by the Chair, as it every Senator, is subject to inadvertences, and it all happened so fast that I can understand how the Chair had a problem with it.

Mr. HELMS. I hope the Senator will not misunderstand me. I did not and do not criticize the Chair because I have sat many hours there myself, as the Senator knows.

Mr. ROBERT C. BYRD. That is right.

Mr. HELMS. And I am not being critical of him or of the Chair, but I hope that we can agree that nothing that occurred this morning adversely affects the unanimous-consent requirement under rule VII, paragraph 3.

Mr. ROBERT C. BYRD. I suppose it is a precedent of sorts but it has not been tested, and I am not interested in pressing it. The Senator is correct. The motion should not have been entertained by the Chair but inasmuch as the Chair entertained it, I did not want to object to it, and I am willing to say it is no precedent. The rule is still there.

Mr. HELMS. I thank the Senator.

Mr. ROBERT C. BYRD. I would like to get to a vote on the amendment, though.

Mr. HELMS. I wonder if the Senator would not wish to make a unanimous-consent request that we vote no later than 2:20 p.m.

Mr. ROBERT C. BYRD. I will be delighted to do that.

Mr. HELMS. I suggest that the Senator propound such a request.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the vote on the amendment which I have introduced occur at no later than 2:20 p.m. today.

The PRESIDING OFFICER. Is there objection?

Mr. THURMOND. Mr. President, reserving the right to object, I do object.

The PRESIDING OFFICER. Objection is heard.

Mr. ROBERT C. BYRD. Mr. President, I thought the Senate would be recessing tomorrow night, but it does not appear that it will be.

I say I thought the Senate would be recessing tomorrow evening, but it does not appear it will be.

I would still hope that we could have a vote on this amendment and on the bill.

Mr. BAKER. Mr. President, will the Senator yield to me?

Mr. ROBERT C. BYRD. I yield.

Mr. BAKER. Mr. President, I understand the significance of 2:20 p.m. or exactly 2:22 p.m., I believe. But I am a little curious about what we are going to do. It seems to me that we should take note of the fact there are other amendments as well as this amendment to this bill.

Mr. ROBERT C. BYRD. Yes.

Mr. BAKER. And I think it is unlikely we could dispose of this bill by 2:22 p.m., and at that time the unfinished business will automatically recur as the pending business before the Senate.

Mr. ROBERT C. BYRD. Mr. President, I propose the following unanimous-consent request in response to the distinguished minority leader's observation:

That the vote on the amendment which I have introduced occur at no later than, whatever the Senator says, 2:30 p.m., and that any other amendments to the bill be limited, if there be any further amendments——

Mr. BAKER. Fifteen minutes for Senator STEVENS I understand.

Mr. ROBERT C. BYRD [continuing]. To 30 minutes equally divided on any other amendment, debatable motion or point of order if such is submitted to the Senate for its consideraion; and that there be a time for debate on the bill itself or not to exceed 30 minutes, to be equally divided between Mr. DECONCINI and the distinguished minority leader or his designee. And how about in the usual form?

Mr. BAKER. Germaneness.

Mr. HELMS. Mr. President, I object to the usual form.

Mr. ROBERT C. BYRD. The Senator objects to the usual form.

Mr. HELMS. Yes.

Mr. ROBERT C. BYRD. Does he have a specific amendment he would like to get in? And we could put the usual form in the rest of it.

Mr. HELMS. No. I have no problem with it myself, but some others may have. All of this has developed, I say to the leader, so rapidly, that some Senators may be a bit confused by it. Therefore, I would rather not have the germaneness rule apply just yet.

Why does he not try it a little later?

Mr. ROBERT C. BYRD. Confusion made a masterpiece. All right. The agreement without the usual form.

The PRESIDING OFFICER. Is there objection?

Mr. ROBERT C. BYRD. And that a call for the regular order not bring the Department of Education bill back until this bill is disposed of, and that there be a vote on passage no later than 4 p.m.

Mr. KENNEDY. The leader is talking about S. 450?

Mr. ROBERT C. BYRD. Yes.

The PRESIDING OFFICER. Is there objection? Without objection, this pending business will remain the pending business until disposed of under the terms of the unanimous-consent agreement that has been accepted.

Mr. BAKER. Mr. President, did the Chair also grant the unanimous-consent request dealing with the limitation of time and the time certain to vote?

The PRESIDING OFFICER. That is correct.

Mr. BAKER. I thank the Chair.

Mr. ROBERT C. BYRD. Mr. President, I thank all Senators. We may still get out tomorrow evening.

Mr. THURMOND. Mr. President, I rise in support of the amendment to allow voluntary prayers in schools. I want to commend the able Senator from North Carolina for offering this amendment,

and I was pleased to join him as a cosponsor. I hope the Senate will see fit to stand by its decision of last week and agree to this amendment.

Some have said that it would be an infringement of the first amendment to adopt the Helms amendment. The first amendment reads this way:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;

Mr. President, it is clear that Congress can make no law respecting the establishment of religion, and neither can it prohibit the free exercise of it. I ask the question is it not prohibiting the free exercise of religion if people wish to, but cannot, voluntarily pray, whatever their religion is? Is it not just as bad to deny people the right to pray according to their own religion, as it would be for Congress to establish a religion by law?

Mr. President, our Nation was founded upon religion. Our forefathers came here originally seeking the right to worship as they pleased. That was the primary purpose for America's being settled. Of course, others came for other reasons, but because the original settlers were persecuted in the old country, they came to this country seeking freedom, religious freedom, and religion has been acknowledged frequently in our Government.

Today it is acknowledged in the Government and we ought to remember it: For example, the national motto "In God We Trust;" the Senate motto "God Has Favored Our Undertakings;" and the House motto, over the Speaker's desk, "In God We Trust." This is right here where we make the laws. This is in the Capitol of the United States. This is in the very buildings that constitute this great Government from which all lawmaking power emanates.

The national anthem, in the fourth verse, refers to "God;" the Pledge of Allegiance refers to "God." We have chaplains in the military services, and we have chaplains here in the Senate. There is a chaplain in the House, and these chaplains pray and refer to "God" every day that we are in session. What is wrong with that? Why is it so now that schools cannot have voluntary prayers? I repeat, these prayers are not compulsory, they are purely voluntary. No one has to listen to them. A teacher does not have to listen, a student does not have to listen, but if they wish to have voluntary prayers, why should they not be allowed to do it? I do not know of any person who has ever been hurt by praying himself or hurt for having others pray for him. A great many people feel they have been helped by prayer.

State papers and proclamations have referred to "God." There are hardly any State papers that have not referred to "God."

Ceremonies refer to "God." So do inaugurations. The last time the President of the United States was inaugurated in front of this building there were prayers at that ceremony. The time before that there were prayers. The time before that there were prayers. Every President of the United States who has been inaugurated has had prayers at the ceremony. What is wrong with that?

Well, if we here in the Nation's Capital, we who make the laws, approve of prayers, here, because we do, because we have them every day we meet, because we have them when a President is inaugurated, then what is wrong with letting little children in school pray if they want to? They do not have to. They are not forced to. They are not compelled to. But if they want to voluntarily, then I ask what is wrong with it?

The Declaration of Independence refers to "God," that great document in which those men signed their names, pledging their lives, their fortunes, and their sacred honor. There it refers to "God."

The Supreme Court has over its entrance, that branch of the Government that construes the laws of this Nation, that interprets the laws of this Nation, has over the entrance to its building, "God Save the United States." The bailiff comes in every day and says: "God save the United States and this Honorable Court." That is the way they open every session of the Supreme Court, "God save the United States and this Honorable Court."

Is that not a prayer? Well, if the Supreme Court of the United States has a prayer at its opening, what is wrong again, I say, with the little children praying in a school district in South Carolina or Arizona or Massachusetts or anywhere else?

Oh, they try to say there is a difference. I would like to know what the difference is. The American people do not see the difference. Polls of the American people show overwhelmingly that they favor allowing voluntary prayers in schools.

Baccalaureate services refer to "God" and there are prayers there. All of the things I have mentioned and others in every facet of the lives of the American people show God.

Every President has referred to "God" in his inaugural address. Every State constitution in this country, all 50 State constitutions, refers to "God."

So if the U.S. Capitol Building, if the Supreme Court, if the White House, if the Library of Congress, if the Washington Monument, if the Jefferson Memorial, if the Lincoln Memorial, if the Tomb of the Unknown Soldier, if all of these refer to "God," what is America, where is America, who controls America?

Mr. President, it does not make any sense to say that little children cannot voluntarily pray at school when our Government is laced with "God," is laced with the right to pray. Right in this building every Wednesday morning a group of us, about 20 or 25 Senators, meet in the Vandenberg Room. For what purpose? What is it? It is a prayer meeting. Well, if you do not allow little children in school to voluntarily pray, how can you allow U.S. Senators to meet in this building and hold a prayer meeting, and why do you allow the Chaplain to go up here and open every day with a prayer when we have a session? Mr. President the thing has been carried to extremes.

Now, there has been some question raised about article III of the Constitution, section 1, paragraph 3, which reads this way:

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

Mr. President, I want to repeat that: with such Exceptions, and under such Regulations as the Congress shall make.

Mr. President, does that not give the right to Congress to make exceptions as to the appellate jurisdiction? I would ask the distinguished and able Senator from North Carolina, is that not what he is attempting to do here, to get an exception on this particular matter, to take jurisdiction away from the Supreme Court, and is not Congress allowed, under the Constitution to do that?

Mr. HELMS. Mr. President, the Senator is exactly correct.

Mr. THURMOND. Mr. President, as to this argument here that this may not be constitutional, this is the Constitution itself. This is the Constitution. And I want to repeat that sentence:

In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

Mr. President, Congress is making an exception in the proposal of the distinguished Senator from North Carolina. Congress has the right to make that exception, and I would hope that the Members of this body will see fit to pass that proposed exception.

I thought last week that the action we took on Thursday was one of the most wholesome actions that had been taken in the Senate since I have been in Congress. For years and years we have attempted to get through an amendment, to allow voluntary prayer in the schools; since this decision was handed down by the Supreme Court and I was highly pleased last week when the Senate voted as it did. If the Senate had gone ahead and voted on the motion to reconsider at that time, I am confident it would have passed. However, a motion was made to adjourn the Senate. For what purpose? To try to get more people here to change their votes, to vote otherwise.

Mr. President, I sincerely hope that the Senate will see fit to pass this amendment by the able Senator from North Carolina. Congress has a right to pass it under the Constitution. The people of the country want it, and there is no reason why we, as their humble servants in this body, should not act on this matter and adopt this amendment.

Mr. HELMS. Mr. President, will the Senator yield?

Mr. THURMOND. I am pleased to yield to the Senator from North Carolina.

Mr. HELMS. I thank my friend from South Carolina.

Mr. President, I hope Senators realize that a ground swell of support has arisen all across the country favoring this amendment. I wish my friend from South Carolina could see the deluge of telegrams we have received in my office.

One such telegram comes from Pat Robertson, a distinguished Christian leader who is the son of the late distinguished Senator from Virginia, Willis Robertson, with whom the Senator from South Carolina served. I ask unanimous consent that Pat Robertson's telegram be printed in the RECORD at this point.

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

HOT SPRINGS, VA.,
Washington, D.C., April 6, 1979.

Senator JESSE HELMS: I applaud your efforts to restore voluntary prayer in our public schools. Unquestionably the decline in school discipline and the appalling rise of teenage delinquency can be traced directly to the suspension of virtually all religious activities in the public schools of our nation. No constitutional authority could believe the framers of our constitution intended the establishment of a godless society. More power to you.

PAT ROBERTSON,
President.

Mr. HELMS. Besides Reverend Robertson, religious leaders who support the voluntary prayer amendment include the following:

Rev. Jerry Falwell, whose Thomas Road Baptist Church, Lynchburg, Virginia, is one of the largest churches in the world.

Rev. Robert P. Dugan, Director, Office of Public Affairs of the 40 million member National Association of Evangelicals.

Dr. Ben Armstrong, Executive Director of the National Religious Broadcasters.

Dean Kenneth Kantzer, Editor, Christianity Today.

Dr. Harold O. J. Brown, Professor of Theology at Trinity Evangelical Divinity School, Springfield, Illinois, and Chairman, Christian Action Council.

Dr. Thomas A. Carruth, Asbury Theological Seminary, Wilmore, Kentucky.

Rev. James Boice, Tenth Presbyterian Church, Philadelphia, Pennsylvania.

Dr. Charles Stanley, First Baptist Church, Atlanta, Georgia.

Mr. President, I have been furnished by Leadership Foundation a list of 441 churches whose members wish to go on record to indicate the nationwide support for this amendment. I ask unanimous consent that the complete list be printed in the RECORD.

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

SUMMARY SHEET

Denomination:	*Number churches replied*
Assembly Of God	31
Baptist	211
Christian and Missionary Alliance	2
Catholic	15
Church Of Christ	3
Church Of God	9
Congregational	2
Disciples Of Christ	1
Episcopal	4
Lutheran	21
Mennonite	2
Methodist	19
Nazarene	2
Non or Inter Denominational	43
Presbyterian	35
United Brethren	40
Christian Broadcasting Network	1
Total	441

ASSEMBLY OF GOD CHURCHES

Bethal Temple, Rev. Powell H. Lemore, Fresno, Calif. 93627

Keyser Assembly of God, Rev. Donald W. Goldizen, Keyser, W. Virginia 26726

Valley Church, Rev. Robert J. Smith, Salt Lake City, Utah 84118

Calvary Pentecostal Church, Rev. Stephen Landis, Keyser, W. Virginia 26726

Ester Assembly Church, Rev. Eugene G. Wooten, Fairbanks, Alaska 99701

Full Gospel Church, Rev. Robert W. Rosin, Alcove, N.Y. 12007

Hazel River Church, Rev. Stanley Bowbeer, Castleton, Virginia 22716

Assembly of God, Rev. Park Benner, Latrobe, Penn. 15650

Assembly of God, Rev. Willard Hutsell, Elmer, Missouri 63538

Cathedral of Light, Rev. L. D. Field, Selma, Calif. 93662

Assembly of God, Rev. Archie M. Minnieweather, Bonita, La. 71223

Mission Sendero de La Cruz, Rev. Dennis Rivera, Pocatello, Idaho 83201

Assembly of God, Rev. Edw. R. Neulaus, Fitchburg, Maine 01420

Assembly of God, Rev. Richard J. Thomas, Ithaca, N.Y. 14850

The Calvary Assembly of God, Rev. Wayne Hampton, Cobleskill, N.Y. 12043

Assemblies of God Headquarters*, Rev. W. R. Leisy, Anchorage, Alaska 99504

First Assembly of God, Rev. Wesley J. Bransford, Ketchikan, Alaska 99901

Assembly of God, Rev. Darrell Redfearn, Anchorage, Alaska 99510

Assembly of God, Rev. Fred Francisu, Dalton, N.Y. 14836

Assembly of God, Rev. Leroy J. Miller, Eloy, Arizona 85231

Assembly of God, Rev. Franaisca Riedel, San Leandro, Calif. 94577

First Spanish Assembly of God, Rev. Simon Melendres, Greeley, Colo. 80631

First Assembly of God, Rev. C. E. Wilson, Bristol, Virginia 24201

Ambridge Assembly of God, Rev. Clinton P. Elliott, Baden, Penn. 15005

Calvary Assembly of God, Rev. Dr. Edgar R. Lee, Atlanta (Dunwoody) Georgia 30338

Christian Life Center, Rev. Tom Miskovich, Dillon, Montana 59725

First Assembly of God, Rev. R. T. Sandbach, Belvidere, Ill. 61008

First Assembly of God, Rev. Carl E. Guiney, Woonsocket, R.I. 02895

First Assembly of God, Rev. Robert D. Goree, Freemont, Calif. 94536

Teen Challenge Chapel, Rev. Mike Zello, Washington, D.C. 20001

Assembly of God, Rev. Bruce Thomas, Priestriver, Idaho 83856

Assembly of Good, Rev. Louise Barrett, Martinsburg, W. Virginia 25401

Pentecostal Church, P. H. Church, Rev. Oscar E. Bryant, Gordonsville, Virginia 22942

Assembly of God, Rev. Ed. R. Neuhaus, Fitchburg, Mass. 01420

BAPTIST CHURCHES

Galilee Baptist Church, Rev. Fred J. Bartz, Austintown, Ohio 44515

Community Baptist Church (G.A.R.B.C.)*, Rev. Daryl E. Sell, Brighton, Colo. 80601

Baptist Church (G.A.R.B.C.)*, Rev. Ernest Bloom, Akron, Ohio 44312

First Baptist Church, Rev. Paul G. Williams, Maine, N.Y. 13802

Berean Baptist Church, Rev. Richard Rahlgrin, Springfield, Ill. 62703

Heritage Baptist Church, Rev. Dr. John Kagir, Jacksonville, Fla. 32221

Baptist Church, Rev. Gerald C. Armstrong, Lebanon Junction, Ky., Route 1, 44050

New Unity, Rev. James S. Williams, Baltimore, Md. 21213

First Baptist Church, Rev. E. Hudspith, Pasadena, Calif. 91101

Baptist Church, Pastor Earl Abbott, London, Ky. 40741.

Liberty Baptist Church, Rev. Wilson B. Waldorf, Charlottesville, Virginia 22901.

Bon-Air-Arl. Baptist Church, Evangelist Dale Crowley, Washington, D.C. 20011.

Faith Baptist Church, Rev. Willis O. Booth, Strathmore, Calif. 93267.

Seward Avenue Baptist Church, Pastor Harold F. Tucker, Topeka, Kansas 66616.

Baptist Church, Rev. Yhreadri Jones, Charlottesville, Virginia 22901.

Calvary Baptist Church, Rev. David A. Tucker, Larkspur, Calif. 94939.

Emmanuel Baptist Church, Rev. Robert L. Weiss, Loveland, Colo. 80537.

First Baptist, Oglesby (G.A.R.B.C.)*, Rev. Thomas M. Parsons, Oglesby, Ill. 61348.

Community Baptist Church, Rev. Elvin G. Nyhuis, Edwardsburg, Mich. 49112.

Bethel Baptist Church, Rev. Clay Nuttall, Fruitport, Mich. 49415.

First of Kouts Baptist Church (G.A.R. B.C.)*, Pastor G. A. Heyboer, Kouts, Ind. 46347.

First Baptist Church, Pastor Gary E. Carpenter, Chelan, Wash. 98816.

Baptist Church, Rev. Wm. L. Taylor, D.D., Parkersburg, W. Virginia 26101.

First Baptist Church (G.A.R.B.C.)*, Pastor Vick Perry, Pulaski, N.Y. 13042.

Baptist Church (Independent), Pastor Mick Hill, San Jose, Calif. 95123.

American Baptist Church, Pastor R. D. McClain, Ithaca, N.Y. 14850.

Flint Hill Baptist Church, Pastor R. W. Weeks, South Birmingham, Ala. 35205.

Mt. Joy Baptist Church, Rev. Henry L. Brinkley, Washington, D.C. 20001.

Faith Baptist Church (G.A.R.B.C.)*, Rev. Merlyn E. Jones, Defiance, Ohio 43512.

Baptist Church, Rev. Dr. Robert B. Diffee, Oxon Hill, Md. 20735.

Emmanuel Baptist, Pastor Robert L. Weiss, Loveland, Colo. 80537.

North Uxbridge Baptist Church, Rev. Mel Hansen, North Uxbridge, Mass. 01538.

Faith Baptist Church, Pastor Lloyd Learned, Greenville, Ohio 45331.

Leonard Heights Baptist Church, Pastor John H. Kleis, Grand Rapids, Mich. 49504.

Baptist Church, Pastor Bill Berry, Tucker, Ga. 30084.

Immanuel Baptist Church, Pastor Murray M. Boyd, Ridgecrest, Calif. 93555.

Parma Baptist Church, Rev. Paul Randall, Parma, Mich. 49269.

Southwood Baptist Church, Rev. Jack Williamson, Jamesville, N.Y. 13078.

Baptist Church (G.A.R.B.C.)*, Rev. Paul Rickins, Weaverville, Calif. 96093.

Shaw Heights First Baptist Church, Pastor E. A. Slaugherhaupt, Denver, Colo. 80221.

Bible Baptist Church (Independent), Pastor Joseph Rock, Grove City, Ohio 43123.

Fellowship Baptist Church, Pastor Stanley Lightfoot, Jr., Marine City, Mich. 48039.

Baptist Church (Independent) Pastor John B. Schrimshire, Mt. Lake, Md. 21550.

Union Baptist Church (G.A.R.B.C.)*, Pastor Marley Evans, Union Mills, Ind. 46382.

Baptist Church, Pastor Richard T. Bray, Jr., Roanoke, Va. 24014.

Baptist Church, Pastor James W. Abington, Austin, Texas 78749.

Baptist Church (G.A.R.B.C.)*, Pastor Norman C. Warner, Stoney Fork, Ky. 40988.

Faison Baptist Church, Rev. D. W. Branch, Faison, N.C. 28341.

Baptist Church, Pastor Adam Bausman, Yakima, Washington 98902.

Baptist Church, Treas. Kester O. Williams (for the church), Star, N.C. 27356.

Footnotes at end of article.

Primitive Baptist Church, Elder Loren H. Wilson (for the church), Fairfax, Va. 22030.
Missionary Baptist Church, Rev. Martin F. Bishop, Birmingham, Ala. 35214.
Baptist Church (Independent), Rev. Daniel Schieber, Mt. Ephraim, N.J. 08059.
Baptist Church, Pastor James W. Wynn, Scott, La. 70583.
Baptist Church, Pastor R. D. McClain, Ithaca, N.Y. 14850.
Baptist Church (Independent), Rev. Don P. Porter, Key Largo, Fla. 33037.
Baptist Church, Pastor A. R. Wynn, Sheffield Lake, Ohio 44054.
Baptist Church, Rev. Louie J. DiPlacido, Wheaton, Md. 20906.
Baptist Church (G.A.R.B.C.),* Rev. John H. Tubbr, Nichols, N.Y. 13812.
Baptist Church, Pastor Wallace R. Berry, Corryton, Tenn. 37721.
Liberty Baptist Church, Rev. Hugh Biggers, Thomasville, N.C. 27360.
Baptist Church, Pastor Donald R. Billman, Indiana, Pa. 15701.
Baptist Church, Rev. Paul Yarnall, Cassville, Mo. 65625.
First Baptist (American), Rev. John Epp, Visalia, Calif. 93277.
Faith Baptist (G.A.R.B.C.),* Pastor Glenn H. Davis, Lancaster, Ohio 43130.
Rocky Fork Baptist Church, Pastor Harold M. Guthrie Cahanna, Ohio 43230.
First Baptist of Wissinoming (G.A.R. B.C.),* Rev. Walter E. Kruckow, Philadelphia, Pa. 19135.
Spruce Street Baptist Church, Rev. Dr. James L. Lowe, Newton Square, Pa. 19073.
First Baptist Church, Rev. Leland Huffhand, Lock Haven, Pa. 17745.
Grace Bapist Church, Rev. Thomas W. Noyes, Norristown, Pa. 19400.
Faith Baptist (Independent) Pastor Ronald C. Laube, Lynchburg, Va. 24501
Bible Covenant Baptist Church, Rev. Robert G. Walter, Media, Pa. 19063
Berean Baptist Church, Pastor Sydney G. Brestel, Marion, Ohio 43302
Independent Baptist Church (G.A.R.B.C.),* Rev. Donald Leitch, North Jackson, Ohio 44451
New Lyme Baptist Church, Pastor Don L. Bennett, New Lyme, Ohio 44066
Oberlin Calvary Baptist, Pastor Allen Curtis, Oberlin, Ohio 44074
Tabernacle Baptist Mission, Pastor Fred Patrick, Louisa, Va. 23093
Calvary Baptist Church (G.A.R.B.C.),* Pastor Roger L. Williams, Mesa, Arizona 85205
First Baptist, Rev. L. D. Grant, Caro, Mich. 48723
Temple Baptist Church (Independent), Pastor Lennon E. Hakes, Glen Burnie, Md. 21061
Faith Baptist Church, Rev. Victor E. Bilboe, Smyrna, Del. 19977
Grace Independent Baptist Pastor Thomas J. Hawkins, Crownsville, Md. 21032
Evangel Baptist Church, Rev. Ernest Thompson, Hagerstown, Md. 21740
Faith Independent Baptist Church, Rev. E. Duane King, Frostburg, Md. 21532
Bible Baptist Church, Pastor Willmont L. Thurlow, Mattawamkeag, Maine 04459
Cedar Run-Crooked Tower Rapidan, Baptist Church, Rev. Floyd T. Binns, Culpeper, Va. 22701
Baptist Church, Rev. Milton S. Jones, Orange, Va. 22960
Trinity Baptist Church, Pastor Jack R. Jackson, Verona, Va. 24482
Faith Baptist Church (Independent) (G.A.R.B.C.)* Rev James J. Pinkerton, ThM, Vero Beach, Fla. 32960
First Baptist Church, Pastor Wayne C. Vawter, Plainfield, Ill. 60544

*General Association Regular Baptist Church.

First Regular Baptist Church, Pastor Ronald L. Gustine, Grant Park, Ill. 60940
First Regular Baptist Church, Pastor E. Guess, Kansas City, Mo. 64127
First Baptist Church, Pastor John D. Neese, Marion, Montana 59925
Baptist Church (Independent), Pastor Larry Leonard, Medina, Ohio 44256
St. Mark's Institutional Baptist Church, Rev. Spencer Dobson, Baltimore, Md. 21216
First Baptist Church, Pastor Sam H. Ingram, Gordon, Ga. 31031
First Baptist (G.A.R.B.C.)* Pastor Ervin Miller, Onaway, Mich. 49765
Wolfe Lake Baptist Church, Pastor Charles W. Stark, Muskegon, Mich. 49441
Grandview Park Baptist Church (G.A.R.-B.C.)*, Pastor Paul Tassell, Ph. D., Des Moines, Iowa 50317
Skyline Baptist Church, Rev. John M. Mitchell, Rome, N.Y. 13440
Waveland Baptist Church, Pastor Eldon J. Coons Brownsburg, Ind. 46112
St. Joe Baptist Church, Pastor Carl Boutiller, Homer, Mich. 49245
West Bethel Baptist Church, Rev. Roy Hendershot, Cleveland, Ohio 44102
Calvary Baptist Church, Pastor Joe Gerard, Adrian, Mo. 64720
Calvary Baptist Church (Independent), Rev. Daniel Schieber, W. Collingswood Hts., N.J. 08059
Calvary Baptist Church (G.A.R.B.C.,* Pastor David E. Strong, Wilmington, N.Y. 12997
First Baptist Church, Pastor Frederick W. Thomas Massapegua, N.Y. 11758
Baptist Church (G.A.R.B.C.),* Pastor William H. Heinrich, Delphi, Ind. 46923
Hillcrest Baptist Church, Rev. Don Reiter, Rochester, Ind. 46975
Marantha Baptist Church, Pastor Russell Schelling, Jeffersonville, Ind. 47130
Five Mile Baptist Church (Independent), Pastor Gary L. Briggs, Allegany, N.Y. 14706
Calvary Baptist Church, Rev. Ronald McLucas, Decorah, Iowa 52101
Lincoln Avenue Baptist (G.A.R.B.C.),* Pastor Jack E. Cook, Ionia, Mich. 48846
Temple Baptist Church, Rev. Richard W. Johnson, Lincoln, Nebr. 68510
Emmanuel Baptist Church, Rev. David R. Crandall, Penn Yan, N.Y. 14527
First Baptist of Bay City, Pastor Donald K. Olsen, Essexville, Mich. 48732
Baptist Church, Pastor Leonard J. Bowden, Huntsville, Ala. 35810
Berean Baptist Church, Pastor Maynard Nutting, Utica, Mich. 48087.
First Baptist Church, Rev. C. Ray Vistue, Merton, Wis. 53056.
Baptist Church (G.A.R.B.C.),* Rev. Fred W. Roff Salem, Ohio 44460
Gwinnett Hall Baptist Church, Rev. M. H. Everett, Lawrenceville, Ga. 30245
Mt. Zion Baptist Church, Deacon Perry Kimbo, Lawrenceville, Ga. 30245
Rolling Hills Baptist Church, Pastor Virgil A. Barrows, Laurel, Md. 20810
Woodruff Baptist Church, Rev. James Patterson, Woodruff, Wis. 54568
Gospel Light Baptist Church, Pastor Harold J. Elting, Jr., Kearney, N.J. 07032
First Baptist Church Pastor Delbert Wren, Tonasket, Wash. 98855
Bible Baptist Church (Independent), Pastor William E. Carnes, Kissimmee, Fla. 32741
Lemoyne Baptist Church, Pastor Charles Alexander, Walbridge, Ohio 43465
First Baptist Church (G.A.R.B.C.),* Pastor Robert J. Smot, Moorcraft, Wyo. 82721
Beth Haven Baptist Church, Pastor Ardy Parlin, Louisville, Ky. 40272
Grace Baptist Church, Pastor John Gregory, Gadsden, Ala. 35901.
First Baptist Church, Pastor Richard L. Shoup, Hartland, Wis. 53029.
Calvary Baptist Church (Independent), Pastor Donald W. Reynolds, Denton, Md. 21629.
Carmel Baptist Church, Pastor James N. Birkitt, Ruther Glen, Va. 22546.
Calvary Baptist Church, G.A.R.B.C.*; Pastor J. Howard Jones, Bucypus, Ohio 44820.
First Baptist Church, Pastor Kenneth Brougham, Paden City, W. Va. 26159.
Northside Baptist Church, Pastor Weldon F. Burnett, Jr., Una, S.C. 29378.
Grace Baptist Church (Independent), Rev. Paul M. Monroe, Lexington, N.C. 27292.
Salem Baptist Church (Independent), Dr. Donald R. Sutties, Director of Business Affairs, Piedmont Bible College, Winston-Salem, N.C. 27107.
Sunnyside Baptist Church, Pastor Dalton Carrington, Toccoa, Ga. 30577.
First Baptist Church, Pastor Paul G. Williams, Maine, N.Y. 13802.
Calvary Baptist Church, Pastor Kenneth I. Smith, Fremont, Calif. 94538.
Hampden Baptist Church, Pastor James P. Carter, Baltimore, Md. 21212.
Northern Virginia Primitive Baptist Church, Pastor Hoyt B. Simms, Fairfax, Va. 22030.
Grace Independent Baptist, Pastor Thomas J. Hawkins, Jr., Crownsville, Md. 21032.
First Baptist Church, Pastor W. A. Burkey, Fairfield, Ga. 94533.
Bible Baptist Church, Rev. Earl E. Jones, Fayetteville, N.C. 28306.
Faith Baptist Church (G.A.R.B.C.)*, Pastor Donald G. Hager, New Hampton, Iowa 50659.
Fellowship Baptist Church, Rev. Frank McQuade, Glen Mills, Pa. 19342.
Wheelersburg Baptist Church, Rev. Richard L. Sumner, Wheelersburg, Ohio 45694.
First Baptist Church, Rev. R. H. Fitzpatrick, Riverdale, Md. 20840.
The Bible For Today, Collingswood, N.J., Rev. D. A. Waite, Director (Th. D., Ph. D.), Member, Bethel Baptist Church, Cherry Hill, N.J. 08000.
First Baptist Church (Independent), Rev. Audron Seymour, Dilliner, Pa. 15327.
Grace Baptist Church, Pastor Jack Dean, Bowie, Md. 20715.
Baptist Church, Pastor James R. Hartman, Shell Rock, Iowa 50670.
Independent Baptist Church, Pastor Randy Shook, Hickory, N.C. 28601.
Freewill Baptist Church, Rev. James A. Pittman, Grifton, N.C. 28530.
Primitive Baptist Church, Elder Loren H. Wilson, Brooklet, Ga. 30415.

SOUTHERN BAPTIST CHURCHES

(Southern Baptists are members of the Southern Baptist Convention)

First Baptist Church, Rev. Robert L. Scruggs, Capitol Heights, Md. 20027
Middleton Road Baptist Church, Pastor Ralph F. Carter, Anderson, S.C. 29624
Giant City Baptist Church, Rev. Larry E. Allen, Grant City, Mo. 64456
Hepzibah Baptist Church, Pastor J. William Casaday, Talladega, Ala. 35160
Baptist Church, Pastor Paul R. Baxter, Crittenden, Ky. 41030
Baptist Church, Dr. W. R. Bates, La Mirada, Calif. 90637
Baptist Church, Pastor Coy R. Bates, Upper Marlboro, Md. 20870
Baptist Church, Pastor Bill Blackburn, Shelbyville, Ky. 40065
Baptist Church, Rev. Joseph L. Aaron, Opp, Ala. 36467
Morgans Baptist Church, Pastor David Brooks, Moneta, Va. 24121
First Baptist Church, Pastor William L. Brown, Clearwater, S.C. 29822
Baptist Church, Rev. Lyndol E. Adams, Midwest City, Okla. 73130
No. Waco Baptist Church, Pastor H. O. Bilderback, Waco, Texas 76708

Baptist Church, Pastor James N. Birkitt, Ashland, Va. 23005
Baptist Church, Pastor Arles L. Bingham, Strongsville, Ohio 44136
Baptist Church, Pastor Robert Benson, Jackson, Tenn. 38301
Baptist Church, Pastor C. C. Bennett, Lincoln, Ala. 35096
Baptist Church, Rev. Dale P. Wyatt, Portsmouth, Va. 23707
Baptist Church, Pastor Douglas W. Baldree, Foley, Ala. 36535
Baptist Church, Pastor Jack E. Beck, Austin, Texas 78753
Oak St. Baptist Church, Pastor Thomas C. Biggar, Maryville, Tenn. 37801
Baptist Church, Pastor David Berryhill, Willow Springs, Mo. 65793
Baptist Church, Pastor B. R. Yarbrough, Manassas, Va. 22110
Baptist Church, Rev. W. B. Holt, Greenville, S.C. 29609
Baptist Church, Pastor D. E. Beasley, Lenox, Ga. 31637
Baptist Church, Pastor Norman S. Bell, Potsdam, N.Y. 13676
Baptist Church, Pastor Jerald P. Belzer, Fremont, Nebr. 68025
Bolivar Drive Baptist Church, Rev. Phil Swanson, Bradford, Penna. 16701
First Grifton Baptist Church, Pastor Wm. Brown, Grifton, N.C. 28530
Cray Baptist Church, Rev. Oscar L. Everett, Spotsylvania, Va. 22553
Parkville Baptist Church, Rev. Claud Logan Asbury, Baltimore, Md. 21234
Wayne Hills Baptist Church, Pastor Nevin S. Alwine, Waynesboro, Va., 22980
Mt. Ed. Baptist Church, Pastor Ronald J. Nickell, Batesville, Va. 22924
Baptist Church, Pastor Ty Berry, Dexter, Mo. 63841
Curtis Baptist Church, Pastor Lawrence V. Bradley, Augusta, Ga. 30901
Northwest Baptist Church, Dr. F. William Chapman, Miami, Fla. 33168

CHRISTIAN AND MISSIONARY ALLIANCE

Christian and Missionary Alliance, Rev. Nolan J. Brisco, Swanton, Ohio.
Christian and Missionary Alliance, Rev. David Carlson, Gainesville, Georgia

CHURCH OF GOD

Lake Road Church of God, Rev. Richard Hines, Charlottesville, Va.
Pine Valley Church of God, Rev. I. C. Morris, Jr., Wilmington, N.C.
Church of God, Rev. Ronald E. Grooms, Lynx, Ohio.
Church of God, Rev. Alton Stone, Jr., Wilmington, N.C.
Church of God, Rev. D. D. Cordell, Enid, Okla.
First Church of God, Rev. Howard Liverett, Santa Maria, Calif.
Church of God, Rev. John R. Gouge, Abingdon, Va.
Cleveland Church of God, Rev. W. H. Valentine, Wooster, Ohio.
First Church of God, Rosalie E. Vierra (Dir. Christian Educ.), Sacramento, Calif.
Church of God, Rev. R. W. Hines, Waynesboro, Va.

DISCIPLES OF CHRIST

Disciples of Christ, Rev. Pettit H. Coffey, Louisa, Va.
Disciples of Christ, Rev. Herman Trauernicht, York, Nebr.

EPISCOPAL

Christ Church, Rev. Gordon B. Davis, Gordonsville, Va.
Grace Episcopal Church, Rev. Frank Young, Fork Union, Va.
St. Raphael's, Rev. D. Crandall, Oakhurst, Calif.
St. John's, Rev. Joseph A. Dunaway, Waynesboro, Va.

CHURCH OF THE BRETHREN

Community Brethren Church, Rev. George Arthur Carey, Grass Valley, Calif.
Church of the Brethren, Rev. M. Ward Halterman, Bergton, Va.
First Church of the Brethren, Rev. Guy S. Fern, Altoona, Pa.
Church of the Brethren, Rev. Clarence M. Moyers, Staunton, Va.
Church of the Brethren, Rev. Dwight Hargett, Decatur, Ind.
Stonelick Church, Rev. Roscoe Pringle, Goshen, Ohio
Bethel Church, Rev. James O. Elkenberry, Carleton, Nebraska
Church of the Brethren, Rev. Stanley M. Waybright, Oakland, Md.
Muskegon Church OTB, Rev. Otto S. Zuckschwerdt, Muskegon, Michigan
Church of the Brethren, Rev. Robert M. Latshaw, Pottstown, Pa.
Little River Church OTB, Rev. Elwood F. Humphreys, Craigsville, Va.
Church of the Brethren, Rev. Clyde Carter, Dolesville, Va.
Spindale Church OTB, Rev. Chas F. Rinehart, Spindale, N.C.
Church of the Brethren, Rev. Walter Snyder, Freedom, Pa.
Germantown Brick Church, Rev. Sylvus D. Flora, Rocky Mount, Va.
Boones Chapel Henry Fork, Rev. Harold M. Kenepp, Penhook, Va.
Prairie View Church, Rev. Richard L. Deemy, Friend, Kansas
Morrolluill Church, Rev. Chalmer C. Dilling, Johnstown, Pa.
Stover Memorial, Rev. Berwyn L. Oltman, Des Moines, Iowa
Pittsburg Church, Rev. Bruce Noffsinger, Delphi, Indiana
Bethel Center, Rev. Doyle Peyton, Hartford, Indiana
Church of the Brethren, Rev. Willis H. Freed, Jr. Hagerstown, Md.
South Bend City Church, Rev. E. Myrl Weyant, South Bend Indiana
Church of the Brethren, Rev. H. S. Craig, Staunton, Va.
County Line Church OTB, Rev. Dave Thompson, Lima, Ohio
Church of the Brethren, Rev. N. W. Crumpacker, Roanoke, Va.
Church of the Brethren, Rev. John E. Grimley, Brookville, Ohio
Church of the Brethren, Rev. R. Dean Fawley, Bridgewater, Va.
Church of the Brethren, Rev. Andrew S. Bontrager, Paradise, Calif.
Poages Mill Church OTB, Rev. Dr. Allen D. Pugh, Roanoke, Va.
Church of the Brethren, Rev. B. A. Smith, Christiansburg, Va.
Church of the Brethren, Rev. Archie P. Naff, Pilot, Va.
Bassett First Church OTB, Rev. William C. Stovall, Bassett, Va.
Mount Ida Church OTB, Rev. Ralph Loshbaugh, Westphalia, Kans.
Church of the Brethren, Rev. Fred R. Clayon, Kasson, W. Va.

UNITED BRETHREN IN CHRIST

United Brethren in Christ, Rev. Herbert Householder, Junction City, Ohio.
United Brethren in Christ, Rev. Carl V. Hinkle, Staunton, Va.

CATHOLIC

St. Thomas Catholic Church, Rev. Bernard Michalik, Riverside, Calif.
Sacred Healer, Rev. D. A. Farinba Jr., Patterson, N.J.
Fatima, Rev. Anthony McGowan, San Clemente, Calif.
Mary Queen of Heaven, Sister Roseanna, Erlanger, Ky.
New Orleans, Rev. Robert G. Howes, New Orleans, La.
St. Anthony, Rev. James O. Reilly, Riverside, Calif.
St. Adelaide, Rev. William Erstad, Highland, Calif.
Our Lady of Perpetual Help, Rev. Donald Casey, Riverside, Calif.
St. Catherine's, Rev. John Donald Quinn, Avalon, Calif.
St. Matthews, Rev. Bernard C. Cronin, San Mateo, Calif.
St. Augustine's, Rose M. Moffett, Oakland, Calif.
St. Paul, Rev. Cathal M. J. Brennan, Silverton, Oreg.
St. Patrick, Rev. John P. Farrell, Scotia, Calf.
St. Mary's, Rev. Michael F. Logan, Whittier, Calif.

CHURCH OF CHRIST

Willow Street COC, Rev. Bernard Bliss, Effingham, Ill.
Church Of Christ, Rev. Clifford E. Reeves, Fresno, Calif.
Bethany United COC, No Pastor, Cuyahoga Falls, Ohio.
Church Of Christ, Rev. Phillip H. Powers, East Alton, Ill.
Montgomery COC, Rev. Roger O. Williams, Cincinnati, Ohio.

CONGREGATIONAL

W. Williamsfield Church, Rev. Kenneth R. Roden, Dorset, Ohio.
Lake Avenue Congregational Church, Rev. Ed Holtz, Los Angeles, Calif.

LUTHERAN

Lutheran Church Missouri Synod, Rev. Kenneth L. Zank, Roseburg, Oreg.
Lutheran Church, Rev. L. Beale, Anaheim, Calif.
Lutheran Church, Rev. Dennis A. Kastens, Aica, Hawaii.
St. Luke Lutheran Church, Rev. Luther Herman, Benton, Ark.
Peace Lutheran Church, Rev. Norman L. Hammer, Honolulu, Hawaii.
Lutheran Church, Rev. Gregory Bye, Dayton, Wash.
Lutheran Church Missouri Synod, Rev. Ralph A. Weinrich, Cocoa Beach, Fla.
Lutheran Church, Rev. Kasimir Kachmarek, Sweet Home, Oreg.
American Lutheran Church, Rev. Herbert W. Wolber, Englewood, Fla.
Bethlehem Lutheran Church, Rev. Eldon L. Pickering, Sedro Woolley, Wash.
Lutheran Brethren Church, Rev. Allen J. Foss, East Hartland, Conn.
Lutheran Church, Rev. E. G. Meseke, Baldwin, Ill.
St. Peter Lutheran Church, Rev. E. H. Pfeiffer, Carlsbad, New Mexico.
Lutheran Church, Rev. Robert E. Ward, Portland, Oreg.
Lutheran Church Missouri Synod, Rev. Eldon K. Winker, Blytheville, Ark.
Lutheran Church, Rev. Frank Zirbel, Gillett, Ark.
Lutheran Church Missouri Synod, Rev. Thomas E. Meyer, Aurora, Colo.
American Lutheran Church, Rev. Erling A. Jacobson Bensenville, Ill.
Lutheran Church, Rev. Norman M. Nessett, Corvallis, Oreg.
Lutheran Church, Rev. William Gittner, Montgomery, Ala.
Grace Lutheran Church, Rev. Robert E. Cassell, Elkhart, Indiana.
Good Shepherd Lutheran Church, Rev. Wendell Brown, Salinas, Calif.
Lutheran Church Missouri Synod, Rev. Arnold E. Strohschein, Portland, Oregon.

MENNONITE

Stuarts Draft Mennonite Church, Rev. Charles C. Ramsey, Lyndhurst, Va.
Mountain View Mennonite Church, Rev. Roy D. Kiser, Stuarts Draft, Va.

UNITED METHODIST (EXCEPT AS NOTED)

New Milton UMC, Rev. Robert H. Pimto, Highland Mills, N.Y.

St. Lukes UMC, Jacob R. DeHaven (Chmn. Soc. Concerns), Martinsburg, W. Va.

St. Lukes UMC, Rev. Richards C. Chambers, Martinsburg, West Virginia.

First UMC, Rev. Gordon L. Hemphill, Brewer, Maine.

United Methodist Church, Rev. Lucy S. Norton, Asheville, N.C.

United Methodist Church, Rev. Claude B. Dickenson, Greenville, Va.

United Methodist Church, Rev. Charles K. Root, Farmingdale, N.J.

United Methodist Church, Rev. Donald E. Wildman, Tupelo, Miss.

Emerickville UMC, Rev. G. K. Marshall, Brookville, Pa.

Etlaw Free Methodist Church, Rev. Ronald I. Shultz, Etlaw, Va.

Mineral Wesleyan Methodist Church, Rev. Samuel R. Swinney, Mineral, Va.

Glovier Memorial UMC, Rev. Lee G. Bowman, Waynesboro, Va.

Frances Childs UMC, Rev. Kenneth P. Stevens, Jr., West Collingswood, N.J.

United Methodist Church, Rev. Ronald E. Dunk, Brick Town, N.J.

Garden Heights UMC, Rev. Malvin F. Warntz, Altoona, Pa.

United Methodist Church, Rev. Henry W. Burruss, Charlottesville, Va.

St. Stephens UMC, Rev. A. K. Shumake, Staunton, Va.

United Methodist Church, Rev. Jerry D. Ruff, Sea Isle City, N.J.

Linvale UMC, Rev. Stuart A. Snedeker, Vincentown, N.J.

First UMC, Rev. Ralph W. Widman, Bucyrus, Ohio.

Essex UMC, Rev. Robert Hurley, Essex, Md.

Allegheny Wesleyan Methodist Church, Rev. Clifford A. and Ruth Holen, Sacramento, Calif.

Chevy Chase UMC, Rev. Elmer Kimmel, Chevy Chase, Md.

United Methodist Church, Rev. Orion N. Hutchinson, Asheville, N.C.

NAZARENE

Chrisman Church of the Nazarene, Rev. Martin Arni, Chrisman, Ill.

First Church of the Nazarene, Rev. A. Ralph Montemuro, Salisbury, Md.

Oak Grove Church of the Nazarene, Rev. Leslie Wooten, Decatur, Ill.

Eldorado Church of the Nazarene, Rev. Wayne Bowers, Eldorado, Ill.

Church of the Nazarene, Rev. S. Oren Woodward, Charlottesville, Va.

UNITED PRESBYTERIAN

Granger UPC, Rev. William W. Ainley, Granger, Wash.

Parker Heights UPC, Rev. Paul V. Neel, Wapato, Wash.

United Presbyterian Church, Rev. Osborn McKay, Williston, Fla.

United Presbyterian Church, Rev. J. B. Martin, Elkton, Va.

Culpepper Presbyterian Church, Rev. Horace D. Douty, Culpepper, Va.

United Presbyterian Church, Rev. John H. Rogers, Cashmere, Wash.

United Presbyterian Church, Rev. Ernest L. Vermont, Skagway, Alaska.

First Presbyterian Church, Rev. Donald Meekhof, Ellensburg, Wash.

United Presbyterian Church, Rev. Elbert G. Harlow, Port Angeles, Wash.

United Presbyterian Church, Rev. Vernon A. Anderson, Dallas, Tex.

United Presbyterian, Rev. Robert S. Chamberlain, Washington, D.C.

Cottage Lake Presbyterian Church, Rev. Richard L. Grout, Woodinville, Wash.

White River UPC, Rev. James F. Armstrong, Auburn, Wash.

Cranbury UPC, Rev. Fred W. Quigley, Cranbury, N.J.

First UPC, Rev. Frank D. Svoboda, East Islip, N.Y.

Oliver UPC, Rev. Victor I. Alfsen, Minneapolis, Minn.

Bedford Presbyterian Church, Rev. Thomas A. Hughart, Bedford, N.Y.

United Presbyterian Church, Rev. Gabriel Abdullah, Jacksonville, Fla.

Lakewood Presbyterian Church, Rev. Ernest Eric Pelz, Tacoma, Wash.

United Presbyterian Church, Rev. Lane G. Adams, Memphis, Tenn.

United Presbyterian Church, Rev. Andrew A. Jarvis, Grandview, Wash.

Southern Presbyterian Church, Rev. Harry W. Alexander, Lexington, Ky.

United Presbyterian Church, Rev. M. L. Andrews, Orlando, Fla.

United Presbyterian Church, Rev. Wayne R. Aughinbaugh, Charlotte, N.C.

United Presbyterian Church, Rev. Young Karl Choi, Seattle, Wash.

United Presbyterian Church, Rev. Elliott R. Ohannes, Republic, Wash.

Sumner First UPC, Rev. R. B. Snelling, Sumner, Wash.

Community UPC, Rev. Jim Forbes, St. Maries, Idaho.

Community UPC, Rev. Darrell Udd, Buckley, Wash.

Church of the Atonement, Rev. Stewart J. Rankin, Silver Spring, Md.

INTER OR NONDENOMINATIONAL

Independent Christian Church, Rev. William E. Stork, Mattoon, Ill.

Church of the Open Bible, Rev. Roger V. Seacord, Greenwich, N.Y.

Catacombs Outreach Church, Rev. Randy Shanley, Gilbertsville, Pa.

Ivis Bible Church, Rev. Dave Minturn, Hindman, Ky.

Christian Church, Rev. Phil Hansen, Rochester, Ill.

First Christian Church, Rev. E. T. Phelps, Jr., Flora, Ill.

Church at Northern Virginia, Rev. J. Topping, Oakton, Va.

Orcutt Christian Church, Rev. Kevin Don Levellie, Santa Maria, Calif.

Thoroughfare Chapel, Rev. George W. Johnson, Jr., Brightwood, Va.

Forcey Memorial Church, Rev. Gerald G. Small, Silver Spring, Md.

Free Holiness Church, Rev. Pressley L. Pullen, Craigsville, Va.

Evangelistic Center Church, Rev. A. J. Rowden, Kansas City, Mo.

Faith Community Church, Rev. J. Harvey Dixon, Salisbury, Md.

Interdenominational Church, Rev. David H. Hine, Portland, Oreg.

Full Gospel Church, Rev. Fred P. Chacon, Carmichael, Calif.

Some-One-Cares, Rev. Lance J. Antosz, Wheaton, Md.

Life Bible Fellowship, Rev. David H. Hine, San Bernardino, Calif.

Stokesville Community Church, Rev. Ray E. Tabor, Staunton, Va.

Four States Christian Missions, Rev. James M. Resh, Hagerstown, Md.

The Federated Church, Rev. Russ Rehm, Waterville, Wash.

The Salvation Army, Rev. Capt. Fred Marshall, Concord, N.H.

Moores Corner Church, Rev. William C. Floge, Leverett, Mass.

Interdenominational Church, Rev. S. R. Schwambach, Evansville, Ind.

Christian Broadcasting Network, Rev. Milton Markworth, Terre Haute, Ind.●

Mr. HELMS. I ask unanimous consent that a news release from the National Association of Evangelicals be printed in the RECORD at this point.

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

NAE APPLAUDS PRAYER AMENDMENT

The Director of the National Association of Evangelicals' Office of Public Affairs, Robert P. Dugan, Jr., said Friday: "We are delighted with the favorable action of the United States Senate yesterday, in adopting an amendment by Senator Jesse Helms (R-NC) to the Department of Education bill. Senator Helms' amendment was approved by a vote of 47-37 and is designed to restore the right for 'voluntary prayers in the public schools.'" The vote is to be reconsidered by the Senate on Monday, April 9, and "we would hope that the approval will be reaffirmed by an even larger margin," he added.

Associate Director Floyd Robertson, with the Office of Public Affairs for over 18 years, noted that during the past two decades the National Association of Evangelicals has repeatedly adopted resolutions calling upon the Congress to enact suitable legislation that will strengthen the provision for the free exercise of religion in national life. He called attention to the fact that the NAE believes firmly in the separation of church and state, but holds that this by no means implies an espousal of secular humanism and practical atheism, through the exclusion from the public schools of all reference to God.

Historically, as early as 1957, the NAE Executive Committee adopted a statement asking that the right of voluntary prayer in public schools be preserved. This statement became a resolution in a plenary session of the NAE's 1960 Annual Convention. NAE has consistently stated its conviction that the Free Exercise Clause of the First Amendment was designed to provide such religious freedom in public life. This conviction has been reiterated no less than half a dozen times in other resolutions adopted since 1960.

Dugan and Robertson stated that the enactment of the Helms amendment into public law would be a step toward the restoration of public confidence in the right of religious freedom. It would leave absolutely undisturbed all of the other freedoms secured by the First Amendment and the entire Bill of Rights. It would not promote nor inhibit prayer by anyone. It would not impose responsibility upon any public official or individual to pray or not to pray. It would not require anyone at any time to initiate or supervise prayer. It would not deprive anyone of any right or privilege he or she now enjoys.

The National Association of Evangelicals (NAE) is a voluntary fellowship of evangelical denominations, churches, schools, organizations and individuals providing a cooperative witness and extended outreach for 3.5 million Christians. Founded in 1942, the NAE today represents 38 complete denominations and individual churches from at least 33 other groups. Its working constituency, through Commissions and Affiliates is estimated at between 10 and 15 million.

Mr. HELMS. I have a number of other telegrams, Mr. President, which are brief, expressing support for this amendment. I ask unanimous consent that they be printed in the RECORD at this point.

There being no objection, the telegrams were ordered to be printed in the RECORD, as follows:

MADISON, N.J.,
April 7, 1979.

Senator JESSE HELMS,
Washington, D.C.

We support your voluntary school prayer amendment. We represent a listening audience of 130 million Americans weekly and 850 organizational members.

DR. BEN ARMSTRONG,
National Religious Broadcasters.

LYNCHBURG, VA.,
April 6, 1979.

Senator JESSE HELMS,
Washington, D.C.

As pastor of the 16,000 member Thomas Road Baptist Church in Lynchburg, Virginia and chancellor of Liberty Baptist Schools, I commend you for the wonderful effort you are making with your prayer amendment. There are over 12,000 Baptist churches in our affiliation and we as Independent Baptists urge you to continue the fight on to victory. We commend the Senate for voting to restore to our children the opportunity to begin their school day with voluntary prayer. It is long past time that this basic tenet of the free exercise of religion be returned.

Dr. JERRY FALWELL,
Thomas Road Baptist Church.

ATLANTA, GA.,
April 6, 1979.

Senator JESSE HELMS: I commend the Senator for your support of voluntary prayer in the public schools.

Dr. CHARLES STANLEY,
Pastor, First Baptist Church.

PHILADELPHIA, PA.,
April 7, 1979.

Senator JESSE HELMS,
Washington, D.C.

I wish to express my support for your efforts to restore voluntary prayer in the public schools through Senate action this Monday.

Dr. JAMES M. BOICE,
Pastor, 16 Presbyterian Church.

MINNEAPOLIS, MINN.,
April 8, 1979.

Senator JESSE A. HELMS: Congratulations on your support of voluntary prayer.

Dr. THOMAS MCDILL,
President, Evangelical Free Church of America.

HIGHLAND PARK, ILL.,
April 8, 1979.

Senator JESSE HELMS: Congratulations for moving prayer amendment. Trust Senate will sustain restoration of voluntary prayer in schools to local option.

KENNETH S. KANTZER,
Editor, Christianity Today.

Mr. HELMS. I thank the Chair, and I thank the Senator from South Carolina for yielding to me.

Mr. THURMOND. Mr. President, in the last few days I have received a large number of letters from high school students in South Carolina. Almost every time, each student has asked in his or her letter a simple question:

Why is the Senate permitted to open each day with a prayer, and yet the Supreme Court does not permit us to do the same thing in our classrooms?

Although, as I have said, this is a simple question, it is not simple to answer. In fact, it cannot be answered without admitting a basic contradiction in this country.

Mr. President, again I want to say that I think, in justice to the people of this country, who want the right to have voluntary prayers in schools, that they should be allowed that privilege. After all, we are merely here representing our people. Overwhelmingly the people feel that way, and their wishes should be granted.

Mr. DURKIN. Mr. President, the amendment offered by the Senator from North Carolina, Mr. HELMS, poses a difficult dilemma for many of us.

The Helms amendment would partially remove the jurisdiction of the Federal courts over any act by a State government dealing with voluntary prayers in the public schools. In other words, it would have Congress put a limitation on the specific jurisdiction of the Federal courts, including the Superior Court of the United States.

In common with Senator HELMS, I believe that the Constitution and our own traditions offer room for allowing moments of voluntary prayer by each student in their own fashion in the public schools without doing violence to our Constitution. I do not believe that the kinds of prayers that most of us grew up with endanger the Republic, or would do so in the future. I would like to point out that I was educated in a Catholic high school, college as well as law school. Our three children are in a Catholic elementary school. Prayer is an integral part of our family life.

However, I have concluded that I am unable to support this particular amendment, because it improperly restricts the powers of the Federal courts to redress and revise prior Federal court decisions.

After considerable reflection, it appears to be that the aims of the Senator from North Carolina—aims which I in good part share—are ill-served by an amendment which, without any hearing or public debate, may threaten to do permanent change to the constitutional fabric of our country far beyond the present controversy.

This type of restriction on the judicial power, once applied in this instance, will become ever easier to apply in the future. The appetite for this restrictive practice will grow with the eating. Other times, and other measures, will call forth similar demands to restrict the jurisdiction of the court. Pressures to politicize all such controversies will grow apace. The result will be to weaken, if not cripple, the independence of the Federal judiciary and subvert the U.S. Constitution.

Mr. President, it is precisely to avoid this type of outcome that the American Republic, alone among democracies in modern or ancient times, created and continued an independent judicial branch of government. By and large this independence—an independence of custom, tradition, and mutual restraint as much as of law—has served our country well over the past two centuries.

I believe that we weaken this proud tradition at our peril.

For this reason I must oppose this particular amendment.

The PRESIDING OFFICER. Who yields time?

Mr. ROBERT C. BYRD. Mr. President, I yield back the time on my side of the amendment.

The PRESIDING OFFICER. Is all remaining time yielded back?

Mr. HELMS. Mr. President, who has the time in opposition in this matter? If I have it, I will be glad to yield it back.

The PRESIDING OFFICER. All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from West Virginia (Mr. ROBERT C. BYRD). The yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. INOUYE (after having voted in the affirmative). On this vote I have a live pair with the distinguished Senator from Arkansas (Mr. BUMPERS). If he were present and voting he would vote "nay." If I were at liberty to vote I would vote "yea." Therefore, I withhold my vote.

Mr. CRANSTON. I announce that the Senator from Arkansas (Mr. BUMPERS), the Senator from Missouri (Mr. EAGLETON), and the Senator from South Carolina (Mr. HOLLINGS) are necessarily absent.

I further announce that the Senator from New Jersey (Mr. WILLIAMS), is absent on official business.

Mr. STEVENS. I announce that the Senator from Rhode Island (Mr. CHAFEE), the Senator from Delaware (Mr. ROTH), the Senator from Texas (Mr. TOWER), and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

I further announce that, if present and voting, the Senator from Texas (Mr. TOWER) and the Senator from Wyoming (Mr. WALLOP) would each vote "yea."

The PRESIDING OFFICER. Have all Senators in the Chamber voted?

The result was announced—yeas 51, nays 40, as follows:

[Rollcall Vote No. 39 Leg.]

YEAS—51

Armstrong	Goldwater	Pressler
Baker	Hatch	Pryor
Bentsen	Hayakawa	Randolph
Boren	Heflin	Sasser
Byrd, Harry F., Jr.	Helms	Schmitt
Byrd, Robert C.	Huddleston	Schweiker
Cannon	Humphrey	Simpson
Chiles	Jepsen	Stennis
Church	Johnston	Stevens
Cochran	Kassebaum	Stewart
DeConcini	Laxalt	Stone
Dole	Long	Talmadge
Domenici	Lugar	Thurmond
Durenberger	Magnuson	Warner
Exon	McClure	Young
Ford	Melcher	Zorinsky
Garn	Morgan	
	Nunn	

NAYS—40

Baucus	Hart	Nelson
Bayh	Hatfield	Packwood
Bellmon	Heinz	Pell
Biden	Jackson	Percy
Boschwitz	Javits	Proxmire
Bradley	Kennedy	Ribicoff
Burdick	Leahy	Riegle
Cohen	Levin	Sarbanes
Cranston	Mathias	Stafford
Culver	Matsunaga	Stevenson
Danforth	McGovern	Tsongas
Durkin	Metzenbaum	Weicker
Glenn	Moynihan	
Gravel	Muskie	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Inouye, for.

NOT VOTING—8

Bumpers	Hollings	Wallop
Chafee	Roth	Williams
Eagleton	Tower	

So the amendment (UP No. 70) was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 71

(Purpose: to preserve the existing direct Supreme Court appellate jurisdiction over the Trans-Alaska Pipeline system)

Mr. DECONCINI. Mr. President, I send a technical amendment to the desk in behalf of Senator STEVENS and myself and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Arizona (Mr. DECONCINI), for himself and Mr. STEVENS, proposes an unprinted amendment numbered 71.

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

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

The amendment is as follows:

On page 4, delete the period at the end of line 9 and add: "and inserting in lieu thereof the following: Any review of the interlocutory or final judgment, decree or order of such district court may be had only upon direct review by the Supreme Court by writ of certiorari."

Mr. DECONCINI. Mr. President, this is a technical amendment for the benefit of the transAlaska pipeline system of Alaska. It would preserve the existing direct Supreme Court jurisdiction but make it applicable by writ of certiorari. I urge its adoption.

The PRESIDING OFFICER. Is all time yielded on the amendment?

Mr. STEVENS. I yield back my time.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment.

The amendment was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. DECONCINI. Mr. President, I move that we have a voice vote on S. 450 at this time unless there are other amendments.

The PRESIDING OFFICER. If there are no further amendments——

Mr. MORGAN. Mr. President, will the Senator yield for a question?

The PRESIDING OFFICER. Who yields time?

Mr. DECONCINI. I yield to the Senator from North Carolina.

Mr. MORGAN. Mr. President, I did not know this bill was going to be called up. May I inquire of the Senator, has he made an opening statement on this bill?

Mr. DECONCINI. I have.

Mr. MORGAN. Could the Senator tell me very briefly what it does? I know it somehow limits the jurisdiction of the U.S. Supreme Court. I personally have great trepidation about denying or restricting the right of individuals or States to appeal directly to the Court.

Mr. DECONCINI. As the law is now, as the Senator knows——

Mr. MORGAN. Mr. President, I am sorry. I just cannot hear.

The PRESIDING OFFICER. It is necessary for the Senate to be in order. Members cannot be heard and the Senators will withhold until the Senate is in order. The Chair asks those Senators who are conversing on the floor to remove their conversations elsewhere.

The Senators may proceed.

Mr. DECONCINI. Mr. President, as the Senator from North Carolina knows, the Supreme Court has mandatory jurisdiction over certain cases that arise out of statutes that have been passed by Congress creating that right. The appeal goes directly to the Supreme Court without going to the Court of Appeals. This bill eliminates that and provides for the writ of certiorari as a substitute.

The purpose of the bill is to give the Supreme Court greater control over managing its docket. We have submitted in the record this morning a letter from all nine Supreme Court justices supporting S. 450. We held hearings on the bill last year. There was absolutely no witness who had any knowledge of any person or group who had opposition to the bill.

Mr. MORGAN. Will the Senator enumerate for me in a sort of one, two, three order the cases in which the absolute right of appeals will be eliminated?

Mr. DECONCINI. Under 28 U.S.C. 1252, if the district court holds act of Congress invalid in suit involving the United States, an officer or agency of the United States, that is appealed of right directing to the Supreme Court.

Mr. MORGAN. Is that eliminated?

Mr. DECONCINI. No. Appeals would have to go to the circuit court of appeals first, not to the Supreme Court, but could still go to the Supreme Court by the certiorari.

Mr. MORGAN. From the circuit court directly to the Supreme Court. Is that an absolute right?

Mr. DECONCINI. That is an absolute right, yes.

Mr. MORGAN. Direct appeal is not eliminated?

Mr. DECONCINI. Direct appeal by certiorari is not eliminated under the examples I am going to read.

Also, under 28 U.S.C. 1254, where the court of appeals holds invalid a State statute relied upon by one of the parties to the suit.

Mr. MORGAN. I am not sure I heard correctly. Is the Senator saying that if a Federal district court holds a State statute invalid then the appeal goes to the circuit court?

Mr. DECONCINI. That is right. The Senator is correct.

Mr. MORGAN. Is that an absolute right of appeal from the circuit court to the Supreme Court?

Mr. DECONCINI. That is correct by certiorari from the court of appeals.

Mr. MORGAN. All the Senator is saying is that one cannot go directly from the State court to the Supreme Court but has to go by way of the circuit court of appeals.

Mr. DECONCINI. The Senator is correct.

Next, 28 U.S.C. 1257: A State's highest court holds invalid a Federal statute or treaty; or holds valid a State statute questioned as repugnant to the Constitution or treaties of the United States.

This would go to the district court, then writ of certiorari to the Supreme Court directly from the district court.

Next is the Supreme Court of Puerto Rico taking either of the actions described above in 28 U.S.C. 1254, applying to that.

The last is miscellaneous provisions relating to the Federal Election Campaign Act, California Indian Lands Act, and the Trans-Alaskan Pipeline Authorization Act—although I just amended that section. That was the technical amendment to the Pipeline Act, which permits that they can continue to go to the Supreme Court.

Mr. MORGAN. The last ones that the Senator mentioned go directly to the Supreme Court?

Mr. DECONCINI. That is correct—from the district court.

Mr. MORGAN. Bypassing the circuit court?

Mr. DECONCINI. Yes.

Mr. MORGAN. Are there any cases in which an absolute right of appeal to the Supreme Court is eliminated?

Mr. DECONCINI. No. The Senator means eliminated from an appeal?

Mr. MORGAN. Does this bill anywhere take away from any litigant a right of appeal, an absolute right of appeal, to the Supreme Court, which he now has, and change that to a writ of certiorari?

Mr. DECONCINI. You still have a writ of certiorari, but you have to go to the court of appeals first. But you are not denied the right to appeal in any of these provisions.

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate? This is an important colloquy, and I hope Senators and staff members will assist the Chair in obtaining order.

The PRESIDING OFFICER. The Senate will be in order.

Mr. MORGAN. In our colloquy, when we talked about the right of appeal to the Supreme Court——

Mr. DECONCINI. I am talking about the writ of certiorari.

Mr. MORGAN. The Senator is talking about a writ of certiorari?

Mr. DECONCINI. Yes.

Mr. MORGAN. Are they now entitled to an absolute right of appeal?

Mr. DECONCINI. They are.

Mr. MORGAN. So what we are really doing, in the cases enumerated by the Senator from Arizona, is saying to litigants, "You cannot really have your full day in court. You can ask the court to review the cases, if it wishes."

Let me rephrase my question.

What we are really doing is saying to this class of litigants, "You no longer have an absolute right of appeal to the Supreme Court, but you may ask the Court if it would care to review it."

Mr. DECONCINI. We are putting in these five categories that I enumerated—we are putting them on the same basis as other litigants, that they have to go to the court of appeals instead of a direct appeal to the Supreme Court; that is by writ of certiorari, they may be considered like any other litigant today. We are equalizing these five areas.

Mr. MORGAN. Let us take a case in which a supreme court of a State, the highest appellate court of a State, rules that a statute is unconstitutional or is constitutional. The litigants now have

an absolute right of appeal to the Supreme Court.

Mr. DECONCINI. That is correct.

Mr. MORGAN. But the Senator from Arizona is taking away from those parties, including the States, if a party happened to be a State, that absolute right. The Senator is saying, "You may ask the Supreme Court to review it if they wish."

Mr. DECONCINI. That is correct. The Senator is correct.

Mr. MORGAN. I do not know how much time the Senator has. Will he yield me 5 or 6 minutes?

Mr. DECONCINI. I yield.

Mr. MORGAN. Mr. President, I must say, in all candor, that I come a little late to voice my reservations about this bill. For that reason, I really do not expect to make any substantial alterations to the bill or even to defeat it.

I know what a heavy load the Supreme Court of the United States carries, and I know the desirability of reducing that load. However, every member of the Supreme Court assumed those responsibilities voluntarily. No one is compelling them to sit on the Court.

The right of a litigant in the United States—and especially the right of a sovereign State—to have an appeal and to have his day in court and to argue his case is very important to me. It can be said, "You have a right to appeal to the Supreme Court by writ of certiorari." In my opinion, that is not entirely correct. What you are doing is saying that the State of North Carolina or the State of Minnesota, or what have you, has a right to ask the Supreme Court if it would care to review the case. That would be all right with me if I knew that the Supreme Court gave the same kind of care and attention to a petition for certiorari as it would to a case being argued by the State.

However, I know, and I think most lawyers know, that most of those cases are handled routinely by law clerks. A petition for writ of certiorari, which is a petition in which you ask the Supreme Court to please hear your case, is routinely granted or denied with a one-sentence opinion: Petition is denied. You never know what the consideration was, and you never know who considered it.

I am going to vote against this measure. I am not going to make any concerted effort to persuade others to vote against it. I know that the members of our Supreme Court have a heavy load, and I know it is burdensome, but I repeat: They knew what it was when they went on the Supreme Court.

In my opinion, the sovereign States of the United States have a right at least to argue their case and present it. I never have found petitions for writs of certiorari to be very satisfactory.

I am going to vote against the measure, but it does concern me.

Mr. MCCLURE. Mr. President, will the Senator from North Carolina yield?

Mr. MORGAN. If I have time.

The PRESIDING OFFICER. Who yields time?

Mr. MCCLURE. Does the Senator from North Carolina have time?

The PRESIDING OFFICER. The majority leader has 5 minutes remaining, and the minority leader has 15 minutes remaining.

Mr. MORGAN. I do not have any time.

Mr. MCCLURE. Mr. President, who controls the time for the minority?

Mr. DECONCINI. The minority leader.

The PRESIDING OFFICER. The minority time is controlled by the minority leader or his designee.

Does the Senator from Alaska yield time to the Senator from Idaho?

Mr. STEVENS. I am happy to designate the Senator from Idaho to control time on this matter.

Mr. MCCLURE. I thank the Senator from Alaska.

Mr. President, I take this time only that I might comment to my colleague, the Senator from North Carolina, that I share the same concern he does about what may be done here, rather casually, in an offhanded manner, disrupting the rights of the States to an appeal, as a matter of right, to the highest Court of the land.

I think the Senator is correct, that they do not have a right to be heard in the Supreme Court. They have a right to file a writ of certiorari, and the Supreme Court may or may not hear them.

I am struck by the parallel in a similar situation—not exactly the same—in which the State I have the honor to represent in the Senate may be denied its right to be heard in a constitutional case involving a conflict between two States, simply because the master appointed by the Supreme Court in that instance has indicated that the Federal Government is an indispensable party to that suit and that unless the Federal Government desires to intervene, the State cannot be heard. It is another way of saying to the States, "You may have a constitutional right to be heard in the Supreme Court, but that right cannot be exercised because the Federal Government does not want you to exercise that right."

So I share with my friend the very grave concern about the proposed legislation. Perhaps if we had had the opportunity to have thought about it a little more before it came up today, rather unexpectedly, some of us might have had our heads together and had an opportunity to provide a little better balance in the debate.

I, like my colleague, doubt very much what I say today is going to influence any great number of votes because we have not had the opportunity to prepare for this day.

But, Mr. President, I am going to vote against the measure simply on that basis, that I think we do not have a reasoned opportunity to weigh what it will do with respect to the right of the individual States to present their case to the highest court in this land.

I, therefore, oppose the measure.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. DECONCINI. Mr. President, Senator BUMPERS, coauthor of this legislation, could not be here today. I offer a statement by the Senator and ask unanimous consent that it be printed in the RECORD.

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

STATEMENT OF SENATOR BUMPERS

Under present law the appellate jurisdiction of the Supreme Court of the United States falls, in the main, under two headings: appeals and petitions for writs of certiorari. Ever since the Judiciary Act of 1925, certiorari has been the most important source of the court's jurisdiction. It differs from appeals principally in being discretionary. The Court has a right to decide for itself whether to review cases that come to it on petition for writ of certiorari. Appeals, on the other hand, are obligatory. The Court, at least in theory, has no choice. It must hear and decide cases coming to it by appeal.

It is time to do away with this distinction. The entire trend of modern court reform points towards simplification of the forms of actions, and this trend is just as commendable in appellate practice as it is in trial practice. Just as Rule 1 of the Federal Rules of Civil Procedure, first adopted in 1938, made a great advance by declaring that in civil cases there shall be "one form of action," so also it would be in the public interest, from the point of view of the courts as well as litigants, to consolidate and simplify the means of access to the Supreme Court. I have in mind the elimination of most of the Court's obligatory appellate jurisdiction. Under S. 450, of which I am a cosponsor, all of the Court's appellate jurisdiction, with very limited exceptions that I shall describe shortly, would be discretionary, by writ of certiorari. The number of cases that the Court actually decides on the merits should therefore be reduced, freeing the court to concentrate more effectively on the small number of cases that deserve its consideration.

It is true that in most cases the Court appears to treat appeals strikingly similarly to the way it deals with petitions for writs of certiorari. A statement as to jurisdiction, the document that formally initiates an appeal, is for most purposes the functional equivalent of a petition for writ of certiorari. Just as four votes are required to grant certiorari, thereby leading to full briefing, oral argument, and decision on the merits, so four votes are required to note probable jurisdiction of an appeal, a step that also leads to full consideration and decision on the merits.

Most cases that come before the Supreme Court, of course, do not reach this stage. They are disposed of "on the papers," either a petition for certiorari or a jurisdictional statement. The difficulty is that such a summary disposition of an appeal, unlike the denial of certiorari, technically is an adjudication on the merits and stands as a precedent. The traditional rule has been that a summary affirmance, or a dismissal of an appeal for want of a substantial federal question, is the equivalent in its force of any other Supreme Court decision. See Stern & Gressman, *Supreme Court Practice* 197 (4th ed. 1969). As recently as *Hicks* v. *Miranda*, 422 U.S. 332 (1975), the Supreme Court held that state and lower federal courts are as bound by summary disposition of appeals as by dispositions after plenary consideration.

The dilemma that this rule creates was aptly described in a dissenting opinion delivered on November 8, 1976. The Court of Appeals for the Seventh Circuit had upheld the validity of the Indiana guest statute. The Supreme Court denied certiorari, over the dissents of Justices Brennan and Marshall. Two years previously, the court had dismissed for want of a substantial federal

question an appeal from the Supreme Court of Utah sustaining the constitutionality of the Utah guest statute, *Cannon* v. *Oviatt*, 419 U.S. 810 (1974), and this dismissal, under the rule of *Hicks* v. *Miranda*, was apparently treated as a binding precedent justifying denial of certiorari in *Sidle* v. *Majors*, the Indiana case.

The situation in which the Court finds itself is described as follows in the dissenting opinion of Mr. Justice Brennan, 42 U.S. Law Week 3343, 3344 (No. 75-309):

Hicks has now eliminated from the consideration of appeals the desirable latitude each of us formerly had to weigh, as in the case of petitions for certiorari, whether the issue presented is sufficiently important to merit plenary review, and whether in any event the question might better be addressed after we have had the benefit of the views of other courts. Particularly unfortunate, I think, is the inevitability that *Hicks* will prematurely cut off, as it has in the case of these guest statutes, consideration of important and evolving federal constitutional questions by the state and lower federal courts. It frequently happens that difficult constitutional issues go through a valuable maturing process, and this Court and developing jurisprudence generally profit enormously from the accumulated wisdom of various courts that have considered the issues in a number of contexts and from a number of angles. *Hicks*, however, now mandates that summary disposition must be followed as fully binding precedents by state and lower federal courts, regardless of the maturity of the issue, and regardless of the fact that even when the issue is before us for the first time, our disposition is made without opinion, without briefing or oral argument, and after only the most cursory conference discussion.

The rule of the *Hicks* case, which I must admit is logically compelled by the fact that appeals are not optional with the Court, necessarily limits the Court to one of two choices under the present statutory scheme. It may greatly increase the number of appeals that are given plenary consideration, thus spreading itself even thinner than at present and diverting needed time and attention from those cases that come before it on certiorari and that deserve full briefing and argument. Or it may continue to dispose of appeals summarily, just as it does petitions for certiorari, and take the consequences of creating a body of off-handed but binding precedents.

The solution is to make all of the court's appellate jurisdiction, or nearly all of it, discretionary by way of certiorari. In this way, the court will have full latitude to decide which cases to decide and which to refuse. It can consider the importance of the issue, the state of development of the law generally, the demands on its own time, and whether the public interest might be served by waiting until other courts have had a chance to express themselves on the point. I therefore rise in support of the pending bill. Specifically, the bill would make the following substantive changes, among others:

1. Under 28 U.S.C. Section 1254 decisions of district courts holding an Act of Congress unconstitutional, in cases where an officer or employee of the United States is a party, are directly reviewable by appeal to the Supreme Court, whether the district court is composed of one judge or three. Repeal of this provision, which S. 450 includes, would make these cases reviewable on appeals to courts of appeals under the general provisions of 28 U.S.C. Sections 1291 and 1292. Decisions holding Acts of Congress unconstitutional are important, to be sure, but I submit that there is no reason why the intermediate appellate level should be skipped. Consideration of the question by a court of appeals will help the Supreme Court in its ultimate resolution of the issue, if it decides to grant review, and the rare case that is so important, or in which time is such a critical element, that an immediate final decision by the Supreme Court is in the public interest, can be handled by the Court's power to grant certiorari before judgment under Section 1254.

2. Under the same Section 1254, the Court presently has jurisdiction by appeal over cases in which United States Courts of Appeals have held state statutes invalid. These cases are also reviewable by certiorari, and in my view this remedy is sufficient.

3. Similarly, under 28 U.S.C. Section 1257 (1) and (2), an appeal lies from a judgment of the highest court of a state holding unconstitutional a treaty or statute of the United States, or holding valid against a claim of federal unconstitutionality any statute of any state. These two classes of cases are also reviewable under Section 1257 (3) by writ of certiorari, and again this remedy, in my judgment, is sufficient.

The Judiciary Act of 1925 was passed at a time of greater leisure for the courts as well as for our lives generally. It made sense, at least theoretically, to require the Supreme Court to hear and determine on their merits certain classes of cases. With the passage of time and the substantial increase in the Court's business, and with the increasing tendency to determine appeals as well as petitions for certiorari "on the papers" without plenary consideration, the reason for this distinction in jurisdiction has gradually disappeared. It therefore seems appropriate to eliminate the distinction in most cases.

I join the distinguished Senator from Arizona (Mr. DECONCINI) in urging passage of the bill.

Mr. DECONCINI. Mr. President, I just point out that this has been around on the calendar in the last Congress and this Congress for almost a year and a half, having passed unanimously from the Judiciary Committee 5 weeks ago, and it passed last year also unanimously from the Judiciary Committee.

The Hruska Commission recommends it. The Justice Department recommends it. All nine Supreme Court justices support it, and a total concurrence by that body is impressive. Dean Pollack supports it.

And it is interesting to note, Mr. President, that 45 percent of the cases now that go to appeal come from these categories, and that means the slightest objection on a constitutional basis from the State court is automatically considered by the Supreme Court.

We are only asking that these cases be considered like any other litigant before the Supreme Court. It does not mean they cannot be heard. It does not mean they are denied the right to appeal, because they will have the right to appeal to the court of appeals and by writ of certiorari may be considered by the Supreme Court.

I reserve the remainder of my time.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. MCCLURE. Mr. President, first of all I ask for the yeas and nays on the measure.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. MCCLURE. Mr. President, let me respond only to this extent, that for exactly that reason, as stated by the Senator from Arizona, I oppose this measure, because it says the States will now have the position exactly as any other litigant. The States have had a different position before the Court up until the passage of this legislation. I see no reason why the States should be denied that position which is already guaranteed to them and why we should take this right away from them.

I am happy to yield to my colleague.

Mr. HEFLIN. Mr. President, I support this bill. I think it is a logical approach toward handling these matters.

I am a strong believer in the right of appeal. I think really it is a part of due process. But I do not think that a litigant should have two bites on the apple almost and so when you give it to the circuit court of appeals in these cases that in my opinion is sufficient and it is not, for example, on the State's right to take the appeal directly to the Supreme Court. If the supreme court of the State has declared it unconstitutional, that is the way it goes now. If it is held constitutional, then the way it is reviewed is by certiorari.

I do not think this is anything drastic. I think it is an efficient use of judicial time, and I support it.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. LEVIN). The Senator from Idaho.

Mr. MCCLURE. Mr. President, I yield to the Senator from South Carolina.

Mr. THURMOND. Mr. President, S. 450 eliminates the jurisdiction of the Supreme Court to review by appeal certain types of Federal court cases specified in 28 U.S.C. section 1252 and sections 1254 (2) and certain types of State court cases specified in 28 U.S.C. section 1257 (1) and (2). Instead, the decision as to review of these cases would lie within the sound discretion of the members of the Supreme Court. I believe this shift from obligatory to discretionary jurisdiction to be a necessary change and, therefore, support S. 450.

There can be no doubt that it is within the powers of Congress to enact such legislation. Neither article III nor the due process clause of the Constitution requires that litigants be provided with any absolute right to "appeal" to the Supreme Court. It is for Congress to determine how much of the Supreme Court's appellate jurisdiction is to be compulsory and how much of it is to be discretionary. The Constitution does not prevent Congress from making the Court's appellate jurisdiction totally discretionary.

With the passage of S. 450, we will have essentially completed the long process of shifting from a totally obligatory appellate jurisdiction to one that is virtually all discretionary. From 1789 to 1891, the appellate jurisdiction of our Supreme Court was exclusively obligatory. This proved to be satisfactory for a number of years; but, by 1891, the Court's burgeoning docket had become unmanageable.

Congress responded by setting up intermediate courts of appeals and intro-

ducing the concept of discretionary review by writ of certiorari. By 1925, there was a need to adjust the Court's caseload again; and Congress acted decisively by significantly expanding the scope of discretionary jurisdiction, thereby establishing the writ of certiorari as the means of obtaining Supreme Court review in most cases. During the 1970's, Congress passed additional legislation doing away with portions of the Court's obligatory jurisdiction.

I believe that it is time once again for the legislative branch to respond to increasing pressures on our Supreme Court by adjusting its appellate jurisdiction. Obligatory jurisdiction cases constitute a very large percentage of all cases decided on the merits. During the 1976 term, the Court disposed of 3,648 cases on its discretionary docket, of which 234 were decided on the merits. In striking contrast is the fact that 211 of the 311 cases on the Court's obligatory docket were decided on the merits. Obviously, our Supreme Court is being forced to spend a significant portion of its time on certain cases from its obligatory docket at the expense of cases presenting issues of national importance which it might have chosen to hear. I do not support S. 450 because I feel our Supreme Court Justices should have less work to do. I simply believe they should have the discretion to decide which cases will receive the greatest amount of their attention.

They will have that power by virtue of S. 450. The Supreme Court Justices themselves will have that power. If they feel that the case involves a novel issue that needs to be decided and a new precedent to be set, they will hear the case. If it is an issue that the Court has addressed in similar decisions time and time again, why have an appeal that takes the time which justices could devote to other matters? S. 450 will give them needed flexibility.

Finally, passage of S. 450 will help to avoid the very difficult problem of determining what precedential value is to be given to summary disposition of obligatory cases. The rule regarding denials of certiorari is simple and clear. They are of no precedential value. Summary affirmances or dismissals, on the other hand, are recognized to have such value although they are regarded as carrying less weight than a determination of the merits. S. 450 would provide welcome relief from the uncertainty in this area.

I enjoyed having the opportunity during a recent conference in Williamsburg, Va., to discuss this legislation with Attorney General Bell, Chief Justice Burger, and other prominent jurists and scholars. They believe that passage of this bill is necessary, and I would ask my colleagues in the Senate to carefully consider their views also and to support S. 450.

Mr. President, I have a letter from the American Bar Association which reads as follows:

DEAR SENATOR THURMOND: At the meeting of the House of Delegates of the American Bar Association held February 12–13, 1979 the following resolution was adopted upon recommendation of the Special Committee on Coordination of Federal Judicial Improvements:

Be it resolved, That the American Bar Association approves and supports the adoption by the Congress of legislation to abolish obligatory Supreme Court review by appeal, as distinguished from discretionary review by certiorari, of all matters now reviewable by appeal, except for appeals from determinations by three-judge courts.

This resolution is being transmitted for your information and whatever action you may deem appropriate.

Mr. President, I also ask unanimous consent that that letter be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. THURMOND. Mr. President, in closing, I want to point out that you are not denying the people their right to appeal. They do have the right to appeal.

But when they appeal by certiorari in certain cases, if it is determined it is not a matter of great importance or it is a matter the Supreme Court Justices have decided they may not care to review the case. I believe there is no use in taking up additional time. The Supreme Court should move on to other cases.

I certainly do not favor any change in the law that would deny the right of people to be heard. I feel, however, that the changes made here are reasonable ones. They are recommended by the American Bar Association, by the Supreme Court, and by recognized scholars and outstanding lawyers in the country who are familiar with the issues involved.

I hope the Senate will pass the bill.

EXHIBIT 1

MARCH 28, 1979.

Re: Supreme Court Review.

Hon. STROM THURMOND,
Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR SENATOR THURMOND: At the meeting of the House of Delegates of the American Bar Association held February 12–13, 1979 the following resolution was adopted upon recommendation of the Special Committee on Coordination of Federal Judicial Improvements:

Be it resolved, That the American Bar Association approves and supports the adoption by the Congress of legislation to abolish obligatory Supreme Court review by appeal, as distinguished from discretionary review by certiorari, of all matters now reviewable by appeal, except for appeals from determinations by three-judge courts.

This resolution is being transmitted for your information and whatever action you may deem appropriate.

Please do not hesitate to let us know if you need any further information, have any questions or whether we can be of any assistance.

Sincerely yours,

HERBERT D. SLEDD.

The PRESIDING OFFICER. Who yields time?

Mr. STEVENS. Mr. President, may I inquire if there are any other Senators on my side who would like time? If there are none, I am prepared to yield back the remainder of our time.

Mr. DECONCINI. I am prepared to yield back the remainder of the time on this side.

The PRESIDING OFFICER. All time being yielded back, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and to be read a third time. The bill was read the third time.

The PRESIDING OFFICER. The question is, Shall the bill pass? The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Arkansas (Mr. BUMPERS), the Senator from Missouri (Mr. EAGLETON), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Michigan (Mr. HART), and the Senator from Tennessee (Mr. SASSER) are necessarily absent.

I further announce that the Senator from New Jersey (Mr. WILLIAMS), is absent on official business.

Mr. STEVENS. I announce that the Senator from Rhode Island (Mr. CHAFEE), the Senator from Delaware (Mr. ROTH), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The PRESIDING OFFICER. Are there any Senators who have not voted?

The result was announced—yeas 61, nays 30, as follows:

[Rollcall Vote No. 40 Leg.]

YEAS—61

Baker	Goldwater	Pell
Bellmon	Hatch	Pressler
Bentsen	Hatfield	Pryor
Biden	Hayakawa	Randolph
Boren	Heflin	Sarbanes
Byrd, Harry F., Jr.	Heinz	Schmitt
Byrd, Robert C.	Helms	Schweiker
Cannon	Huddleston	Simpson
Chiles	Humphrey	Stafford
Church	Inouye	Stennis
Cochran	Jackson	Stevens
DeConcini	Jepsen	Stevenson
Dole	Johnston	Stewart
Domenici	Kassebaum	Stone
Durenberger	Leahy	Talmadge
Durkin	Long	Thurmond
Exon	Lugar	Wallop
Ford	Magnuson	Warner
Garn	Matsunaga	Young
Glenn	Melcher	Zorinsky
	Nunn	

NAYS—30

Armstrong	Gravel	Moynihan
Baucus	Javits	Muskie
Bayh	Kennedy	Nelson
Boschwitz	Laxalt	Packwood
Bradley	Levin	Percy
Burdick	Mathias	Proxmire
Cohen	McClure	Ribicoff
Cranston	McGovern	Riegle
Culver	Metzenbaum	Tsongas
Danforth	Morgan	Weicker

NOT VOTING—9

Bumpers	Hart	Sasser
Chafee	Hollings	Tower
Eagleton	Roth	Williams

So the bill (S. 450) as amended, was passed as follows:

S. 450

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Supreme Court Jurisdiction Act of 1979".

SEC. 2. Section 1252 of title 28, United States Code, is repealed.

SEC. 3. Section 1254 of title 28, United States Code, is amended by deleting subsec-

tion (2), by redesignating subsection (3) as subsection (2), and by deleting "appeal;" from the title.

SEC. 4. Section 1257 of title 28, United States Code, is amended to read as follows:

"§ 1257. State courts; certiorari

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution, treaties, or statutes of, or commission held or authority exercised under, the United States.

"For the purposes of this section, the term 'highest court of a State' includes the District of Columbia Court of Appeals.".

SEC. 5. Section 1258 of title 28, United States Code, is amended to read as follows:

"§ 1258. Supreme Court of Puerto Rico; certiorari

"Final judgments or decrees rendered by the Supreme Court of the Commonwealth of Puerto Rico may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of the Commonwealth of Puerto Rico is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution, treaties, or statutes of, or commission held or authority exercised under, the United States.".

SEC. 6. The analysis at the beginning of chapter 81 of title 28, United States Code, is amended to read as follows:

"Chapter 81.—SUPREME COURT

"Sec.
"1251. Original jurisdiction.
"1252. Repealed.
"1253. Direct appeals from decisions of three-judge courts.
"1254. Court of appeals; certiorari; certified questions.
"1255. Court of Claims; certiorari; certified questions.
"1256. Court of Customs and Patent Appeals; certiorari.
"1257. State courts; certiorari.
"1258. Supreme Court of Puerto Rico; certiorari.".

SEC. 7. Section 314 of the Federal Election Campaign Act of 1971, as added by section 208(a) of the Federal Election Campaign Act Amendments of 1974, as redesignated and amended (2 U.S.C. 437h), is amended:

(a) by deleting subsection (b); and

(b) by redesignating subsection (c) as subsection (b).

SEC. 8. Section 2 of the Act of May 18, 1928 (25 U.S.C. 652) is amended by deleting ", with the right of either party to appeal to the Supreme Court of the United States".

SEC. 9. Subsection (d) of section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652(d)) is amended by deleting the last sentence and inserting in lieu thereof the following: Any review of the interlocutory or final judgment, decree or order of such district court may be had only upon direct review by the Supreme Court by writ of certiorari.

SEC. 10. This Act shall take effect ninety days after the date of enactment. However, it shall not affect cases then pending in the Supreme Court, nor shall it affect the right to review, or the mode of reviewing, the judgment or decree of a court when the judgment or decree sought to be reviewed was entered prior to the effective date of this Act.

SEC. 11. (a) Chapter 81 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1259. Appellate jurisdiction limitations

(a) Notwithstanding the provision of sections 1253, 1254, and 1257 of this chapter the Supreme Court shall not have jurisdiction to review, by appeal, writ of certiorari, or otherwise, any case arising out of any State statute, ordinance, rule, regulation, or any part thereof, or arising out of any Act interpreting, applying, or enforcing a State statute, ordinance, rule, or regulation, which relates to voluntary prayers in public schools and public buildings.".

(b) The section analysis at the beginning of chapter 81 of such title 28 is amended by adding at the end thereof the following new item:

"1259. Appellate jurisdiction; limitations.".

SEC. 12. (a) Chapter 85 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1364. Limitations on jurisdiction

"Notwithstanding any other provision of law, the district courts shall not have jurisdiction of any case or question which the Supreme Court does not have jurisdiction to review under section 1259 of this title.".

(b) The section analysis at the beginning of the chapter 85 of such title 28 is amended by adding at the end thereof the following new item:

"1364. Limitations on jurisdiction.".

SEC. 13. The amendments made by sections 11 and 12 of this Act shall take effect on the date of the enactment of this Act, except that such amendments shall not apply with respect to any case which, on such date of enactment, was pending in any court of the United States.

Mr. DECONCINI. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. ROBERT C. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DECONCINI. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of S. 450.

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

DEPARTMENT OF EDUCATION

Mr. ROBERT C. BYRD. Mr. President, what is the pending business before the Senate.

The PRESIDING OFFICER. The Senate will resume consideration of the unfinished business, which the clerk will state by title.

The assistant legislative clerk read as follows:

A bill (S. 210) to establish a Department of Education.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senate will be in order. The Senator from Connecticut.

Mr. RIBICOFF. Mr. President, I move to reconsider the vote on the Helms amendment to S. 210.

Mr. ROBERT C. BYRD. Will the Senator yield to me?

Mr. RIBICOFF. How much time does the Senator wish?

Mr. ROBERT C. BYRD. Will the Senator yield me 3 minutes?

Mr. RIBICOFF. I yield.

Mr. ROBERT C. BYRD. I yield to the Senator from Wisconsin.

EXTENSION OF THE COUNCIL ON WAGE AND PRICE STABILITY

Mr. PROXMIRE. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 2283.

The PRESIDING OFFICER laid before the Senate a message from the House of Representatives announcing its disagreement to the amendments of the Senate to the bill (H.R. 2283) to amend the Council on Wage and Price Stability Act to extend the authority granted by such act to September 30, 1980, and for other purposes, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. PROXMIRE. I move that the Senate insist upon its amendment and agree to the request of the House for a conference on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Messrs. PROXMIRE, WILLIAMS, CRANSTON, GARN, and TOWER conferees on the part of the Senate.

DEPARTMENT OF EDUCATION

The Senate continued with the consideration of the bill S. 210.

Mr. ROBERT C. BYRD. Mr. President, on Thursday last the Senate adopted an amendment, the school prayer amendment, offered by Mr. HELMS to the bill creating the Department of Education, S. 210. I voted for the amendment by Mr. HELMS.

Today the Senate adopted the exact same language that was in the amendment by Mr. HELMS to the Department of Education bill to the bill S. 450, the subject matter of which bill was Federal court jurisdiction.

It is hoped now that the vote on the amendment that was adopted by the Senate on Thursday to the Department of Education bill will be reconsidered, and that the amendment will be voted down.

The bill S. 450 which was called up today by the leadership, and to which the Senator's amendment was attached, was the appropriate vehicle in that that legislation dealt with Federal court jurisdiction. To attach the amendment to the Department of Education bill would endanger that bill, in the judgment of many. Therefore, the Senate having already adopted the language of the school prayer amendment on a more appropriate bill today, I would hope that the motion to reconsider which has been made by Mr. RIBICOFF will carry.

Undoubtedly, a motion to table that motion to reconsider will be made. I hope that Senators will vote against the motion to table and vote for Mr. RIBICOFF's motion to reconsider, and if that carries, then that the Senate will indeed recon-

sider the vote and reverse its vote of last Thursday on the amendment by Mr. HELMS.

Again, I say I voted for that amendment last Thursday. But the Senate has adopted the amendment today on a more appropriate vehicle. In the interest of not endangering the Department of Education bill, I would hope that the Senate would undo what it did last Thursday, vote against a tabling motion, vote for the motion to reconsider by Mr. RIBICOFF, and then vote down the amendment by Mr. HELMS.

Mr. RIBICOFF. Mr. President, the Helms amendment really does not belong in the legislation creating a Department of Education. That is a reorganization bill. The Helms amendment logically belonged on the bill, S. 450. The Senate has worked its will on that.

There is no question in my mind that if the Helms amendment were attached to the Department of Education bill, it would tend to kill the Department of Education bill.

I do realize that there are many people in this Chamber who voted for the Helms amendment and yet are cosponsors and supporters of the Department of Education bill. They were caught in a dilemma. They have expressed their will. They have made their decision for the school prayer amendment of Senator HELMS. It is now attached to S. 450.

Mr. President, I would hope that having so voted, those Senators would vote against the motion to table and for the motion to reconsider.

I am pleased to yield to the Senator from Illinois.

Mr. PERCY. Mr. President, based on the trust that the Senate will vote this down, in the last hour I have had the privilege of meeting with a class of 200 junior high school students from the State of Illinois, up in room 3302. I put the question of voluntary prayer in public schools to them, without prejudice in any way, and asked them to speak to both sides of it. The students spoke on both sides of it. Then they voted, overwhelmingly, against it. I think there were less than a dozen in favor of school prayer.

Afterward, in a discussion with the faculty members who were there, we discussed who would make these decisions, what kind of prayers would be said, and so on.

I simply do not feel that this is the time or place for this amendment. Certainly, I do not feel that this is the proper vehicle. Those who favor the Helms position, and a majority of the Senate did, have now expressed themselves. They have a proper vehicle. I hope we will not burden the Department of Education bill but vote that up or down on the basis of its own importance to the Senators as to whether they should have it or not. We should not encumber it with this particular amendment that has already been adopted by the Senate.

Mr. BAKER. Will the Senator yield to me a minute?

Mr. HELMS. I am delighted to yield to the Senator from Tennessee.

Mr. BAKER. Mr. President, many of us in this Chamber have, from time to time, offered and, on occasion, voted for constitutional amendments to restore voluntary prayer in public schools or to provide a statutory approach to that subject. It is not a trivial matter. It is of extraordinary importance. It is not coercive; it is important, it is fundamental; it is not complex. It is a matter that should be addressed and should be addressed at every convenient opportunity.

Mr. President, I enthusiastically support the creation of a Department of Educaton. I feel that HEW is too big and it is out of control. I think the sooner we get about the business of breaking it down into its component parts, the better off we shall be. Thus, I support the creation of a Department of Education.

In my judgment, Mr. President, there is no more appropriate place to put statutory language dealing with the restoration of the State's authority to judge the question of voluntary prayer in public schools than at the time we consider the creation of a new Department of Education. On that basis, and consistent with my views as I have expressed them many times in this Chamber, I shall vote to table the motion to reconsider.

Mr. HELMS. I thank my friend from Tennessee.

Mr. President, I feel a little bit like the defendant in a case down in Texas when he heard the bailiff say "Oyez, oyez, the great State of Texas against John Smith" and John Smith said, "All that against me?"

The President of the United States has been calling Senators all day long, beginning, I know, as early as 7:30. The distinguished Vice President is sitting right across the cloakroom. He has been collaring Senators here. My friend, the majority leader, who voted for my amendment the other day, and I appreciate it, is now against me. So there is nobody for me except the people.

Mr. ROBERT C. BYRD. Will the Senator yield?

Mr. HELMS. Briefly, because time is limited.

Mr. ROBERT C. BYRD. The majority leader has neither been collared by the Vice President nor has he been contacted by the President.

Mr. HELMS. I did not say the majority leader had, but other Senators have told me that they have been.

Be that as it may, Mr. President, this is a procedural vote. That is all it is. The Senator from North Carolina and those who stood with him this past Thursday won, fair and square. We called up an amendment, it was voted on. We won by a 10-vote margin. Now what we have is an effort to turn that around, to rescind an action of the Senate simply because people are fearful that it might affect this bill. Well, as to the DeConcini bill, which was just passed, I should like some assurance by somebody that that is going to pass the House of Representatives. I do not know. But I will say, Mr. President, that the Senator from North Carolina intends to put this amendment on every available piece of legislation coming through the Senate until both the House and the Senate get a chance to vote on it.

I yield to my friend from Iowa.

Mr. JEPSEN. Mr. President, I rise to speak today on behalf of the Helms amendment in regard to voluntary prayer in public schools. As I reread the CONGRESSIONAL RECORD of last Thursday's proceedings in this august body, I was struck by the fine and articulate, reasoned manner in which Senator HELMS presented his amendment. I also read with appreciation the comments of the Senator from Nebraska (Mr. EXON). To me, it was certainly a hopeful sign that this amendment passed with a 47-to-37 margin. Now that there has been a motion to reconsider, and I know that many well-intentioned people have been very active since last Thursday in opposition to the Helms amendment, I would like to make a few considered remarks in regard to the amendment.

I also appreciate the action of the majority leader and his assistance in getting a bill passed previous to this.

I rise today not to speak as a constitutional lawyer, although I have read the opinions of many on this matter. I rise to speak as a Christian and as a concerned American. That may not be a very sophisticated and popular thing to proclaim in this modern day of 1979, but I can tell you with great certainty it would have been very much accepted in the Halls of Leadership only 200 short years ago, when our predecessors were shaping the foundation that this great United States has been built upon. A house without a foundation will not stand very long—nor will a nation without a foundation stand very long. If the Members have not read "the Light and the Glory" by Peter Marshall, Jr., and David Manuel, I would suggest you at least peruse it. The depth of faith and conviction with which the leaders of this Nation called upon God and their open, unembarrassed manner in doing so, I believe, will perhaps surprise you. These are the motivating factors that the secular history books overlook. This was founded as a Christian country and the very basis of our Government was the Judeo-Christian ethic. Any scholar who would refute this would be hard put to prove otherwise.

We find ourselves today faced with the erosion of nearly every basic moral and spiritual belief which we held as true in the last 200 years. The so-called new morality is being replaced by "do your own thing." Now, that "own thing" may be at the expense of your family, your home, and your country.

We hear the hue and cry for more rights. Rights for this group and that group. That is fine, but what has happened to the responsibilities that logic alone tells us accompany rights? Do we hear a cry and a new movement for our own responsibilities? Has anyone here ever seen a demonstration demanding responsibilities? I wonder why not? I submit that one of the greatest reasons is that we have taken, stone by stone, the foundation of these United States away and the house is getting mighty shaky.

I submit today that one of those stones that was taken away from our foundation in this country was the freedom of our children to pray in school—if they so choose. In the early schools of America, Bible reading and prayer were an ac-

cepted part of the school day for most children. Now they had better not get caught praying or they may be in more trouble than if they were caught smoking pot. Something is wrong.

Our Constitution guarantees us all the "free exercise of religion." It guarantees us all freedom of religion—not freedom from religion. This amendment only gives our children the freedom to pray in school if they wish; it does not tell them or anyone they must pray. I believe this is their basic constitutionally guaranteed right.

We have tried and adopted in the last few years many new "sensitive" approaches to modern-day education. Yet we see the morals and discipline disappearing in our schools and our children many times graduating from high school without being able to read and write adequately. We have chucked the old and brought in the new—and many times, sadly, it has not worked. We have not been giving our children any foundation upon which to build and shape their own value system. No wonder they are floundering for purpose and direction.

Mr. President, I do not propose that voluntary prayer in school will solve all our problems. That would be ridiculous. But it would at least be putting back one of the stones of the foundation this great land is built upon. Please think about it.

I am aware that some of the Christians in this country, and I believe they are in the minority, are opposed to the Helms amendment. I am sure that there are Christians in this Senate that are opposed to this amendment. I would like to say this to them: "My brothers and sisters, I know that your heart is in the right place and your intentions are good, that you are concerned about the rights of the unbelievers and the agnostics, that you do not want to offend them or take from them their rights. I understand your concern. But I would only remind you that the Lord God does not run a democracy—nor bend and change for a disagreeing minority. And he is not overruled by the whims of the Supreme Court of the Day.

I believe that the witness of those in the Christian community who come out in opposition to voluntary prayer in school is a sad and watered-down testimony to the gospel they profess. I believe that the secular humanism that abounds in our children's schools today is a religion and it is openly accepted and generally unchallenged. I believe we Christians are called to stand and proclaim more than a "social religion"—and then by God's grace try to live by his precepts.

In closing, I would like to read from the inaugural address of our country's first President, George Washington. On April 30 of 1789, in New York City, after taking the oath of office, he stepped inside Federal Hall and spoke these words:

> It would be peculiarly improper to omit, in this first official act, my fervent supplication to that Almighty Being, who rules over the universe, who presides in the councils of nations, and whose providential aids can supply every human defect, that his benediction may consecrate to the liberties and happiness of the people of the United States. . . . No people can be bound to acknowledge and adore the invisible hand which conducts the affairs of men more than the people of the United States. Every step by which they have advanced to the character of an independent nation seems to have been distinguished by some token of providential agency. . . . We ought to be no less persuaded than the propitious smiles of heaven can never be expected on a nation that disregards the eternal rules of order and right, which heaven itself has ordained.

Mr. RIBICOFF. Mr. President, I yield 1 minute from the bill to the Senator from Vermont.

Mr. LEAHY. Mr. President, I have heard the debate today and last week.

Speaking personally and as a parent of three young children, I will vote against this amendment. The three Leahy children have attended schools both in the parochial school system and the public school system. They attend the parochial school system in Vermont, and that is by our choice. In that system, prayers are encouraged—in fact, are mandatory—and we are delighted with that, because we have made the choice of the school and we made the choice of the religion involved—in this case, Roman Catholicism—and we accept and believe in the prayers said.

However, I would be very concerned if my children were put in a position where they were required to say prayers in the public school system, prayers I would have no choice or say over, to be dictated perhaps by a school board or bureaucracy with which I was not connected and in which I had no voice.

The PRESIDING OFFICER. The Senator's time is expired.

Mr. LEAHY. Mr. President, will the Senator yield me 30 seconds?

Mr. RIBICOFF. I yield 1 additional minute on the bill.

Mr. LEAHY. We will continue to send our children to Catholic education schools; they will continue to say prayers there. But it will be by our choice and prayers of our choosing, not prayers of someone else's choosing.

For that reason, and on sound constitutional grounds, I will vote against this amendment.

I thank the distinguished Senator from Connecticut.

Mr. BAKER. Mr. President, how much time remains in opposition?

The PRESIDING OFFICER. Time has expired on the amendment.

Mr. BAKER. Mr. President, is there time remaining on the bill?

The PRESIDING OFFICER. On the bill, there are 3½ hours.

Mr. BAKER. I thank the Chair.

The PRESIDING OFFICER. The question is on agreeing to the motion to reconsider the Helms amendment.

The Senator from North Carolina.

Mr. HELMS. Mr. President, I move to table the motion to reconsider, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The question is on agreeing to the motion to table the motion to reconsider.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll to ascertain the presence of a quorum.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. 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 question is on agreeing to the motion to table the motion to reconsider. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

The VICE PRESIDENT assumed the chair.

Mr. CRANSTON. I announce that the Senator from Arkansas (Mr. BUMPERS) and the Senator from Missouri (Mr. EAGLETON) are necessarily absent.

I further announce that the Senator from New Jersey (Mr. WILLIAMS) is absent on official business.

I further announce that, if present and voting, the Senator from Arkansas (Mr. BUMPERS) would vote "nay."

Mr. STEVENS. I announce that the Senator from Rhode Island (Mr. CHAFEE), the Senator from Delaware (Mr. ROTH), and the Senator from Texas (Mr. TOWER) are necessarily absent.

I further announce that, if present and voting, the Senator from Texas (Mr. TOWER) would vote "yea."

The result was announced—yeas 41, nays 53, as follows:

[Rollcall Vote No. 41 Leg.]

YEAS—41

Armstrong	Hatch	Morgan
Baker	Hatfield	Pryor
Bellmon	Hayakawa	Sasser
Boren	Heflin	Schmitt
Byrd, Harry F., Jr.	Helms	Schweiker
Church	Hollings	Simpson
Cochran	Humphrey	Stennis
Dole	Jepsen	Stevens
Domenici	Johnston	Stewart
Exon	Kassebaum	Thurmond
Ford	Laxalt	Wallop
Garn	Long	Warner
Goldwater	Lugar	Young
	McClure	Zorinsky

NAYS—53

Baucus	Gravel	Nelson
Bayh	Hart	Nunn
Bentsen	Heinz	Packwood
Biden	Huddleston	Pell
Boschwitz	Inouye	Percy
Bradley	Jackson	Pressler
Burdick	Javits	Proxmire
Byrd, Robert C.	Kennedy	Randolph
Cannon	Leahy	Ribicoff
Chiles	Levin	Riegle
Cohen	Magnuson	Sarbanes
Cranston	Mathias	Stafford
Culver	Matsunaga	Stevenson
Danforth	McGovern	Stone
DeConcini	Melcher	Talmadge
Durenberger	Metzenbaum	Tsongas
Durkin	Moynihan	Weicker
Glenn	Muskie	

NOT VOTING—6

Bumpers	Eagleton	Tower
Chafee	Roth	Williams

So the motion to lay on the table the motion to reconsider was rejected.

The VICE PRESIDENT. The question recurs on the motion to reconsider. The Senator from Connecticut.

Mr. RIBICOFF. Mr. President, this has been a busy day, and I know how strong the feelings are on the prayer amend-

ment. With S. 450, which was a proper bill, for this amendment to be attached, the Helms amendment was carried and passed by the Senate.

On Thursday last, the Helms amendment was attached to the Department of Education bill, and it was voted upon. Now we have the reconsideration of the Helms amendment. Senator HELMS moved to table, and the motion to table failed.

It is our feeling that there are many here who feel strongly about the prayer amendment but who also feel strongly about the Department of Education. They have cosponsored this legislation and are in favor of it, but it is a certainty that if this prayer amendment, the Helms amendment, is attached to the Department of Education bill it will doom the Department of Education bill.

There should be an opportunity to vote up or down on the Department of Education bill as a basically clean bill without it being encumbered with a piece of legislation or an amendment that really belongs in the Judiciary Committee or on a Judiciary Committee bill.

The Department of Education bill is a reorganization bill. We did not have hearings on the ins, the outs, the whys and the wherefores and the constitutionality of the Helms amendment.

It is our hope that we will vote up or down on germane amendments to the Department of Education bill. .

Those who have favored and who are in favor of the prayer amendment have made their intentions very clear on a bill where it really belongs.

I do hope the Senate will vote favorably on the motion to reconsider the vote on Mr. HELMS' amendment.

The VICE PRESIDENT. The question is on agreeing to the motion to reconsider the vote by which Mr. HELMS' amendment was agreed to.

Mr. HELMS. Mr. President, I ask for the yeas and nays.

The VICE PRESIDENT. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Arkansas (Mr. BUMPERS), the Senator from Arizona (Mr. DECONCINI), and the Senator from Missouri (Mr. EAGLETON) are necessarily absent.

I further announce that the Senator from New Jersey (Mr. WILLIAMS) is absent on official business.

I further announce that, if present and voting, the Senator from Arkansas (Mr. BUMPERS) would vote "yea."

Mr. STEVENS. I announce that the Senator from Rhode Island (Mr. CHAFEE), the Senator from Delaware (Mr. ROTH), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The VICE PRESIDENT. Have all Senators voted?

The result was announced—yeas 50, nays 43, as follows:

[Rollcall Vote No. 42 Leg.]

YEAS—50

Baucus	Gravel	Muskie
Bayh	Hart	Nelson
Bentsen	Hatfield	Nunn
Biden	Heinz	Packwood
Boschwitz	Huddleston	Pell
Bradley	Inouye	Percy
Burdick	Jackson	Pressler
Byrd, Robert C.	Javits	Proxmire
Cannon	Kennedy	Ribicoff
Chiles	Leahy	Riegle
Cohen	Levin	Sarbanes
Cranston	Mathias	Stafford
Culver	Matsunaga	Stevenson
Danforth	McGovern	Stone
Durenberger	Melcher	Tsongas
Durkin	Metzenbaum	Weicker
Glenn	Moynihan	

NAYS—43

Armstrong	Hayakawa	Randolph
Baker	Heflin	Sasser
Bellmon	Helms	Schmitt
Boren	Hollings	Schweiker
Byrd, Harry F., Jr.	Humphrey	Simpson
	Jepsen	Stennis
Church	Johnston	Stevens
Cochran	Kassebaum	Stewart
Dole	Laxalt	Talmadge
Domenici	Long	Thurmond
Exon	Lugar	Wallop
Ford	Magnuson	Warner
Garn	McClure	Young
Goldwater	Morgan	Zorinsky
Hatch	Pryor	

NOT VOTING—7

Bumpers	Eagleton	Williams
Chafee	Roth	
DeConcini	Tower	

So the motion to reconsider was agreed to.

Mr. ROBERT C. BYRD. Mr. President, the Senate is now about to vote with respect to the amendment offered by Mr. HELMS. The same amendment was adopted earlier today to the Supreme Court jurisdiction bill, which was the appropriate vehicle for that amendment.

The VICE PRESIDENT. Who yields time?

Mr. RIBICOFF. I yield 5 minutes from the bill.

Mr. ROBERT C. BYRD. I voted for the amendment earlier today. I voted for the amendment by Mr. HELMS on last Thursday. But in the minds of many, the adoption of this amendment to the Department of Education bill could prove to be fatal to the bill. I would hope now that the Senate would not support the amendment. As I say, the Senate has already voted on a separate amendment today, and has adopted it to a more appropriate vehicle. We will have a vote now on the motion to adopt the Helms amendment. Is that correct, Mr. President?

The VICE PRESIDENT. It will be on the amendment itself on reconsideration.

Mr. ROBERT C. BYRD. The amendment is before the Senate again?

The VICE PRESIDENT. The question recurs on the amendment.

Mr. ROBERT C. BYRD. I will move to table shortly but I will not cut off any other Senator from an equal amount of time. I simply want to stress the fact for the record that the Senate has already today adopted this amendment but to another bill, to a more appropriate bill, a bill dealing with Supreme Court jurisdiction, which is the subject matter of the amendment. To apply it to this Department of Education bill could endanger the bill. Therefore, I hope that this Department of Education bill can be ultimately passed without this amendment.

Mr. President, I ask that I be recognized to move to table after the Senator from North Carolina and other Senators have spoken.

Mr. HELMS. Mr. President, what the Senator from West Virginia has said is true. He has been accurate in his statement. But the fact of the matter is that I have the apprehension that what has transpired here today may effectively kill the amendment. I do not know what attitude the distinguished chairman of the House Judiciary Committee will take with respect to the bill referred to, S. 450. My information is that he does not like the bill in the first place. But, as the Senator from New York is want to say, we are not children and we can recognize what is going on.

I would say to Senators that from all over this country over the weekend telegrams and telephone calls have poured in from citizens who are very much interested in this amendment. A vote to table the Helms amendment will be, in my judgment, a vote to effectively kill the amendment. If a Senator wants to do that and then to go back home and try to explain it, that is fine. Each of us have to vote our conscience. I would not want any Senator to labor under the impression that he has done his duty on behalf of restoring voluntary prayer in the schools of this country simply by voting for the amendment which was attached to S. 450.

Mr. RANDOLPH. Mr. President, will my colleague yield? I do not want, however, to break his continuity in discussing this important subject.

Mr. HELMS. I am glad to yield to my friend from West Virginia.

Mr. RANDOLPH. Mr. President, there is a desire on the part of this Senator to continue to support voluntary prayer in our public schools.

Mr. HELMS. I believe that.

Mr. RANDOLPH. I have always voted so during my service in the Senate. I regret that the President of the United States has said in recent days that he, in essence, does not want "our Government in the prayer business." I remember, however, that our Chief Executive wants prayer in the White House. We have daily prayer here in the Senate. We have daily prayer in the House of Representatives. This is a public body; the House is a public body; the White House is a public body, I believe he is in error to differentiate, and therefore to be against prayers on a voluntary basis as a part of a voluntary program in the public schools of this country.

Mr. President, I ask unanimous consent to include at this point in my remarks the following news report in the Washington Star of April 9, 1979.

The material follows:

CARTER DOESN'T WANT U.S. IN "PRAYER BUSINESS"

President Carter, commenting on a new effort in the Senate to permit voluntary

prayer in public schools, has told a news conference, "I think the government ought to stay out of the prayer business."

The president's remarks were made to a group of editors at the White House Friday. A transcript was released yesterday.

Carter declined, however, to say whether he felt that a prayer amendment sponsored by Sen. Jesse A. Helms, R-N.C., was unconstitutional or not.

"I won't try to judge," he said. "I am not a lawyer. I don't know." Then he added. "The Constitution, I think, has been interpreted by the Supreme Court in such a way that students should not feel a constraint to pray while they are in a public school."

Having said this, I now must be very careful in relation to the position I take on the pending vote. The able Senator knows how I feel about the subject. We have discussed it, as I have discussed it with other Senators who take a viewpoint at variance with the one we basically hold in this matter.

I often vote with the Senator from North Carolina. I vote with him, not so much because he offers the amendment—although certainly it is something that I recognize as being offered by a dedicated Senator speaking his conscience and is loyal to his purpose—I vote on the substance of the matter, which I think we must always weigh regardless of which of our colleagues offers an amendment in the Senate.

What I am trying to arrive at in my own thinking is that—having done what Senator BYRD, the persuasive majority leader, has emphasized—we have acted on this matter. I have voted for the amendment of the Senator from North Carolina, attached to an appropriate bill. I cannot say what the members of the Committee on the Judiciary will do; I cannot say what the chairman of that committee, the diligent Senator from Massachusetts, will do. It is not for me to say. But I have spoken with my vote and helped to have the amendment attached to legislation. It is difficult for me to understand why I would have to go back home and explain that this was a part of a maneuver operation. It is not such an action with me. I look on my vote as having been cast. It is there in black and white and it goes to the House of Representatives for subsequent decision. Is that correct? I ask the Senator.

Mr. HELMS. That is correct.

Mr. RANDOLPH. Yes. So it is a vote that is a part of the legislative process. So it is difficult for me to stand with the Senator from North Carolina on a vote of this kind, though I would listen to him further on the subject matter.

Mr. HELMS. Mr. President, I thank the Senator from West Virginia. There is no Member of this Senate who is more versed in the operation of the Senate and no one more able to explain his position than the distinguished Senator from West Virginia.

Mr. President, a parliamentary question.

Mr. KENNEDY. Mr. President, will the Senator from Connecticut be kind enough to yield me 4 minutes.

Mr. HELMS. Mr. President, I still have the floor.

The VICE PRESIDENT. The Senator from North Carolina has the floor.

Mr. HELMS. A parliamentary inquiry, Mr. President.

The VICE PRESIDENT. The Senator will state it.

Mr. HELMS. Is a motion to lay on the table in order in this instance?

The VICE PRESIDENT. The Parliamentarian tells me it would not be, 3 days not having intervened since the motion to table was defeated.

Mr. HELMS. When the time has expired, is a motion to table in order?

The VICE PRESIDENT. Under the precedents of the Senate, a motion to table cannot be renewed once one has failed, unless the amendment has been changed in some form, until after 3 days have intervened.

Mr. HELMS. Will the distinguished Vice President repeat all that in tandem so I can understand?

The VICE PRESIDENT. I shall try. A motion to table, having failed, cannot be renewed except if it has been changed in some form; it cannot be renewed until after 3 days have intervened.

Mr. HELMS. I thank the Chair.

Mr. ROBERT C. BYRD addressed the Chair.

The VICE PRESIDENT. The Senator from West Virginia now has the floor.

Mr. ROBERT C. BYRD. Mr. President, I know about the 3-day rule and that is a misnomer; it is not a rule. I know about the 3-day precedent. In this instance, I think there is an extenuating circumstance, that being that the Senate has only today—only today—voted for an identical amendment to the amendment now pending, an amendment to the Federal court jurisdiction bill. It seems to me that that circumstance would justify a motion to table in this instance. It would not be counted as a precedent, it would not be counted as overruling the previous precedent. But there is an extenuating circumstance in this instance. The Senate has already voted, not more than 2 hours ago, to adopt the same amendment.

Why should the Senate do the same thing twice on the same day in the same session? In that circumstance, I think a motion to table would be in order. If it requires an amendment to the amendment, we can offer one.

Mr. HELMS. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. HELMS. Let us have an up or down vote and I shall leave this alone. What is the difference, really, between an up or down vote and a tabling motion except, perhaps, to obscure the issue a little bit? Let us vote up or down.

Mr. ROBERT C. BYRD. The issue has already been obscured. We have already adopted the amendment today.

My distinguished friend from North Carolina says, what about those Senators who will have to go back home and explain how they voted against a prayer amendment? We have already adopted a school prayer amendment. I voted for it. But what is the benefit of adding an amendment to a bill that is going to kill the bill? And when it kills the bill, the amendment dies, also. So that is a vain act, it seems to me.

Mr. HELMS. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. HELMS. I want to be frank with the Senator. I have heard at least one Senator say he was going to vote against the bill if this amendment were killed. So it is two sides of the coin. I do not understand the argument that this will kill the bill. I do not want to prolong it, but if the Senator will explain it to me, I would be so grateful for his enlightenment.

Why not allow schoolchildren to have voluntary school prayer?

Mr. ROBERT C. BYRD. The Senator would not be persuaded by my argument, I say in all respect. He would not be persuaded.

Mr. HELMS. Yes, he would. The distinguished majority leader always persuades me.

Mr. ROBERT C. BYRD. Mr. President, the Senate has already adopted this amendment. Why go through the motion of adopting the amendment again, and, especially, to a bill to which it is not germane and which can be endangered by the amendment? We have already adopted the amendment and adopted it to the appropriate bill, a bill that deals with Federal court jurisdiction. That is the bill to which this amendment should have been attached and it was attached, by a resounding vote of the Senate. I do not think the Senate should vote this amendment up again, or down. Let us vote to table it.

Mr. HELMS. Well, the Senate is going to be in violation of the rules unless the majority leader appeals the ruling of the Chair, because the Chair has already ruled against him.

Mr. ROBERT C. BYRD. Mr. President, I move to lay the amendment on the table.

Several Senators addressed the Chair.

Mr. ROBERT C. BYRD. I withhold the motion, Mr. President.

Mr. KENNEDY. Mr. President, will the majority leader yield me 4 minutes?

Mr. RIBICOFF. I am pleased to yield 4 minutes from the bill to the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, prior to the first motion to table the Helms amendment last Thursday, there really was no debate or discussion about the importance or the significance of this issue from a constitutional point of view. I call to the attention of the Senate my reasons for raising this issue earlier in the day, I will continue to oppose the amendment of the distinguished Senator from North Carolina.

This will be the first time in 200 years of American history—the first time in 200 years of American history—where the U.S. Congress has excluded from Federal court jurisdiction or Supreme Court jurisdiction a matter which is enshrined in the Constitution of the United States. The establishment clause and the first amendment.

There should be no mistake among the Members of this body about the impor-

tance and the significance of this particular amendment and what it means to our constitutional history and what it could mean for future legislation.

Mr. President, by adopting the amendment of the distinguished Senator from North Carolina, we will establish a precedent that the Congress will be able to take any action, involving individual rights and liberties directly or specifically referred to in the Constitution of the United States and remove jurisdiction of that matter from the Federal courts and the Supreme Court of the United States.

There is no place in the Constitution of the United States or in the history of this body where that has ever been done before.

We have limited appellate jurisdiction. We have refined appellate jurisdiction. We have defined appellate jurisdiction. But we have never in the history of 200 years in this country effectively denied appellate jurisdiction. We are about to do so in this particular case on a very important issue, the free practice of religion, or the establishment clause of the Constitution of the United States.

We should not lose sight of the significance of this, Mr. President. There can be questions as to whether this amendment is constitutional or not. There can be questions as to whether we can frame a constitutional amendment to remove jurisdiction from the Supreme Court and Federal courts. That is an open constitutional issue. But it is important that all of us understand, Mr. President, that if we as a body differ or take issue with a Supreme Court decision, then our Founding Fathers prescribed a way that issue should be addressed, and that is, it should be addressed by constitutional amendment.

This is how our Founding Fathers wanted us to deal with these matters, not by further refinement or elimination of jurisdiction in the Federal courts or in the Supreme Court.

The Senator from North Carolina has read into the record identities of distinguished religious leaders that support his position—I daresay that better than 60 percent of the organized religious groups in this country are opposed to his amendment, and for a very important reason: It is because they have read history and understand it.

In the history of Western democracies, religions have been basically persecuted. This has been the case in many countries. Religious leaders possibly foresee the day when Members of this body are going to say that a particular religion is going to be the established religion of the United States.

And if such a piece of legislation has added to it that clause, that excludes the Federal jurisdiction of the Supreme Court from ruling on that item, they foresee a grave challenge to our Nation. It is for that very reason, that representatives of the great religious groups of our country have wanted this body to leave the issue of jurisdiction of the Supreme Court in interpreting the Constitution of the United States alone.

I do not just relegate this to questions of religion. We can see it in the seizure of property, or the elimination of due process of law, after the nationalization or seizure of private property, with an amendment similar to the Helms amendment, there would be no review by the Supreme Court.

In the McArdle case, at the time of the Civil War, appellate jurisdiction was further reviewed and defined, but it was never eliminated. And that is the significance of this issue.

I think it is important, Mr. President, since we have received assurances from the Senator from North Carolina that we are going to be faced with this issue time and time and time again, that Members of this body search their consciences and take the time to read through the whole range of constitutional authorities on this issue. We must ponder the steps we are taking on one of the most important and significant questions that has ever affected this body. And that is the basic issue of freedom of religion.

Several Senators addressed the Chair.

The VICE PRESIDENT. The Senator from Connecticut.

UP AMENDMENT NO. 72

(Purpose: To require the Under Secretary to consult with the Secretary concerning the recommendations of the Intergovernmental Advisory Council on Education)

Mr. RIBICOFF. Mr. President, I send an amendment to the Helms amendment to the desk and ask that it be stated.

The VICE PRESIDENT. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Connecticut (Mr. RIBICOFF) proposes unprinted amendment numbered 72 to the Helms amendment.

Several Senators addressed the Chair.

Mr. BAKER. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. BAKER. Mr. President, we have only heard the title stated. Could the Chair advise us whether or not this amendment is in order?

Mr. RIBICOFF. It is in order. It is germane to the bill.

The VICE PRESIDENT. The clerk will state the amendment.

The assistant legislative clerk read as follows:

At the end of the amendment, add the following new sentence: "Notwithstanding any other provision of this Act, the Under Secretary shall consult periodically with the Secretary concerning the recommendations of the Intergovernmental Advisory Council on Education.".

Mr. HELMS. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. HELMS. Is the amendment in order?

The VICE PRESIDENT. The amendment is in order.

Mr. HELMS. Mr. President, a further parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. HELMS. Does this Parliamentarian suggest that this amendment is germane?

The VICE PRESIDENT. Yes, it is.

Several Senators addressed the Chair.

Mr. HELMS. Mr. President, may I be recognized?

Mr. President, I was seeking recognition.

Mr. BAYH. So was the Senator from Indiana.

The VICE PRESIDENT. The Senator from North Carolina is recognized.

Mr. HELMS. I ask for the yeas and nays on my amendment.

The VICE PRESIDENT. The yeas and nays are automatic since they were ordered on the amendment initially, and the vote thereon was a yea and nay vote.

The Senator from Indiana.

Mr. BAYH. Mr. President, I think there has been a great deal of discussion on this matter. I would like to heartily concur in the wisdom of the remarks of the distinguished Senator from Massachusetts.

It has been the Senator from Indiana's good fortune to serve on the Judiciary Committee and to have been given the rather thankless task of presiding over the subcommittee of that committee which deals with the constitutional questions.

For some reason or other, they are all hot potatoes, and none of them has been more sensitive than the one involving prayer.

I think it is important for us to understand that what the Senator from Massachusetts says is correct. We are setting a very dangerous precedent that could go far beyond prayer.

But beyond that, in a body comprised, I would say, universally of men and women who are God-fearing people, who believe in a higher being, who practice religious beliefs, I think it would behoove some of us to look at the hearings we have held on the prayer issue shortly after the country decided the Shamp, Vitalley, and Murray question, which was when it first arose.

If we look at those hearings, we will find that the question decided by the Court was not to outlaw voluntary prayer, but to outlaw Government prayer.

The Court has said that we cannot proscribe. The Baltimore School Board, the Pennsylvania State Education Commission, the New York Education Commission, in those questions the question had said, "Thou shall pray every morning, and this is what you say."

I do not think any of us believe that is what we want in our school system. If we want voluntary prayer, if we believe our relationship with the Almighty is an individual one, not to be prescribed by some governmental body, then we ought to vote this down and leave things as they are now. The Court has not proscribed voluntary individual approaches to the Almighty in our school system. It has said, "You cannot do it under Government order."

As sensitive as my State is on this issue, if you have a chance to lay it out, I do not want a State legislature or a city council

or a school board telling my child what to pray, even if I believe in it, even if my child would not be offended by it.

It seems to me that if we believe in individual, voluntary prayer, we should have enough of this and get on with the passage of the bill, absent this amendment.

Mr. STEVENS. Mr. President, will the Senator from Illinois yield me some time on the bill, please?

Mr. PERCY. How much time?

Mr. STEVENS. Five minutes.

Mr. PERCY. I yield 5 minutes to the Senator.

Mr. STEVENS. Mr. President, I have listened to the Senator from Massachusetts and the Senator from Indiana, and I want to repeat what I said here the other day.

I voted to table this amendment when it first came up. However, I consider this a unique amendment, and it is a totally new approach to constitutional questions. The Senator from Massachusetts is correct about that. We have to get this amendment on a bill that is going to pass so that it will be decided by the Supreme Court, once and for all. We cannot listen to the debate and act as judges.

With all due respect to my friend, the Senator from Indiana, that is what he is doing. The Senator wants us to be Supreme Court justices and Senators at the same time.

This is a unique constitutional question. It is going to be decided if it gets to the Court that is—if it gets to the Court in a way that it will be presented fairly.

When the motion to table failed the other day, several of us voted for this amendment, for the precise purpose of getting it on a bill that we knew would be signed. We knew it would be presented to the Court, and it could be presented to the Court in several ways, as most lawyers in this body know.

Either we are going to get this over there in a very quick and simple fashion, or we are going to face similar amendments on every constitutional issue we can dream up—not by me, but by other Members of the Senate, because here is a unique way to raise a constitutional issue that has not been presented to the Court before. I challenge any Member of this body to say that this question has been presented to the Court before, because it has not.

I say it is not our job to determine the constitutionality of this unique approach. The arguments that it is unconstitutional are based upon the person's desire to be against the principle that is involved in the matter that would be reserved to the State courts to decide. It may well be a unique way to restore some of the powers to the States.

Mr. KENNEDY. Mr. President, will the Senator yield on that points?

Mr. STEVENS. I will yield in a moment.

It may be a unique way to restore some of the powers to the States. It may be that it is unconstitutional. But I think we all will agree that it is a unique way to raise a constitutional issue.

As I said the other day, if it is constitutional, Congress may have a way to narrow the interpretation of the courts that passed on some of the amendments of the Constitution, which this Senator would like to do. I would like to see this principle examined by the Court, to determine whether or not Congress has the power to so restrict the jurisdiction of the Court, if, in effect, it restricts the interpretation of the amendments to the Constitution.

I yield to the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, the point I would like to make is this: I do not think one really has to reach the issue of constitutionality in order to have very serious reservations about this approach. Let me continue for 1 minute.

If we take this action and if the action actually is acceded to, we deny the jurisdiction to the Federal courts and to the Supreme Court of the United States. If that occurs we will have 50 different interpretations as to what the amendment means. That may satisfactory to Members of this body and to the American people, who are disheartened by the current holding of the Supreme Court on the prayer issue, but make no mistake about it: If it is found to be constitutional, each and every State court will be able to make a judgment, on voluntary prayer that will never be contested. And those 50 different interpretations are going to be called the law of the land.

Second, if this is upheld, whenever the issue of prayer comes up again, it is going to be said that it is not voluntary prayer, that it is somehow compulsory prayer, and the issue will be back in the Federal Courts anyway.

So we are giving assurances to the people of this country that we are resolving this issue. We are doing a disservice, I believe, to this institution by undermining the basic concept of the separation of powers.

No one doubts for a moment that we can bring the court system of this Nation to its knees—we have that power—by denying appropriations, either to the Supreme Court, to the district courts, to the U.S. attorneys, or to the courthouses. We have that power. The reason we have worked so successfully in this great Nation of ours is that we have respected the restraint and the importance of separation of powers.

It is my contention that should you come to that final question and decide that there is wisdom in this amendment you do a disservice in a very important, basic, and fundamental way to an area that is carefully outlined in the Constitution of the United States—freedom of religion. For we will have circumscribed the power of the Supreme Court and all the Federal courts to provide, for this one Nation of ours, one rule under law.

Mr. STEVENS. Mr. President, if the Senator from Massachusetts is asking me a question, with due respect, I have not heard the question.

The problem with what he is saying is that, in this instance, we fear the Supreme Court. That is what he is saying: We fear that the Supreme Court might find that this proposal is constitutional. I do not fear the Supreme Court.

As I have told my good friend from North Carolina, I have serious questions about the constitutionality of this proposal. However, I would like to find out whether this is a mechanism to help restore some of the powers to the States. If it is, we might well see some changes. We might well see the diversity that was originally in this Nation. We might well restore the concept of being a Union of States. To me, that would be a desirable goal.

Mr. RIBICOFF. Mr. President, I yield 3 minutes from the bill to the distinguished Senator from New York.

Mr. MOYNIHAN. I thank the distinguished chairman.

Mr. President, I rise for an ancillary purpose. I have opposed and will oppose the amendment of the distinguished Senator from North Carolina for the reasons so ably stated by the Senator from Massachusetts and the Senator from Indiana.

It seems to me that the matter of prescribed prayer inevitably partakes of the establishment of religion and cannot be accepted under our Constitution.

At the same time, it seems to me clear, to use the term of the Senator from Massachusetts, that the American people are disheartened by the circumstances in which they find themselves. Their Government often requires them to do things they do not understand, things they do not like, and at levels of profound seriousness. Hence, we are led into dilemmas such as we see on the floor today.

It was precisely this problem that the Senator from Oregan and I had in mind last year, when we introduced the proposal for tuition tax credits, which would maintain the possibility of a plural school system, a plural educational system such that parents who have particular concerns of this kind have an option—albeit one which cannot be met without encountering the proper restraints of the Constitution. And the Senator from Connecticut supported us in this endeavor.

I hope we were not wrong in having proposed that, as the school system of the United States becomes more of a Government monopoly, this kind of agonizing question will more and more enter our politics, where it does not properly belong.

Mr. President, in our deliberations, in our exposition, we repeatedly said that, far from wishing to avoid the jurisdiction of the Supreme Court in the matter, we welcomed it and had fashioned our legislation in order to bring about a constitutional decision at an early term.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. TSONGAS). The Senator from Connecticut.

Mr. RIBICOFF. Mr. President, the area of intergovernmental relations is an important one. The Roth-Danforth amendments in committee improved the bill with respect to State and local responsibilities in education.

The present amendment to the Helms

amendment would require the Under Secretary, who is a member of the Intergovernmental Advisory Council on Education, to consult with the Secretary concerning the recommendations of the Council.

I, therefore, move that we adopt this amendment to the Helms amendment.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, let us understand what is going on here.

The only reason this amendment has been sent forward is because the rules require it in order for the distinguished majority leader to be able to make a motion to table and thereby avoid an up-and-down vote on this matter.

I do not care much about the amendment. I do not think it does any good. I do not think it does any harm. But I think Senators should know exactly what is going on. The amendment is simply an effort to have a tabling motion instead of an up-and-down vote.

If the majority leader will have an up-and-down vote this debate is over as far as the Senator from North Carolina is concerned. But I want Senators to understand precisely what is going on.

Mr. JEPSEN. Mr. President, will the Senator from North Carolina yield?

Mr. HELMS. I am delighted to yield to my friend.

Mr. JEPSEN. The distinguished Senator from Massachusetts has been talking about separation of church and state, the Constitution, and so on.

There is a bill numbered 4890 that passed in the Commonwealth of Massachusetts which was an act allowing for a moment of meditation for school prayer in the public schools.

At the commencement of the first class of each day in all grades in all public schools, the teacher in charge of the room in which such class is held shall announce that a period of silence not to exceed one minute in duration shall be observed for meditation or prayer, and during any such period, silence shall be maintained and no activities engaged in.

This bill became law in Massachusetts and was upheld by a Federal court.

I thought I should bring this to the attention of this body and remind the Senator from Massachusetts of that.

Mr. KENNEDY. Does the Senator wish to offer that as a substitute for the amendment of the Senator from North Carolina?

Mr. HELMS. If the Senator from Iowa will yield—oh, I see that the able Senator has sat down. Therefore, he does not have the floor.

Mr. President, I seek the floor in my own right.

The PRESIDING OFFICER. The Senator from North Carolina has the time.

Mr. HELMS. I was tempted to say to my friend, Senator MOYNIHAN, that I would call him from old New York if he would move me back to North Carolina.

No, Mr. President, I have nothing further to say except I am going to move to table this amendment because it serves no purpose at all except to avoid an up-and-down rollcall vote. I think Senators should take a flatfooted stand one way or the other up-or-down on the Helms amendment.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. HELMS. I yield.

Mr. ROBERT C. BYRD. Senators have already taken a flatfooted stand up-or-down on the language of the Helms amendment. How many more times does the Senate have to do the same thing on the same day? It has done that already. I hope it will not have to do it again.

Mr. HELMS. Mr. President, the Senator from West Virginia has stood with the Senator from North Carolina on this question almost entirely. Why does he object to an up-or-down vote?

Mr. ROBERT C. BYRD. Because I do not want to stand day after day and hour after hour with the distinguished Senator from North Carolina.

He tells us now we are going to repeatedly have to vote on this question. We have already voted on it. So let us be done with it.

Mr. McCLURE. Mr. President, will the Senator from North Carolina yield for a question?

Mr. HELMS. I yield.

Mr. McCLURE. I thank the Senator for yielding for this question.

It seems to me I heard the argument today that to leave this amendment on the pending bill will be to kill the bill. I assume that that is also true if it is left appended to S. 450. Therefore, it is not really an action to save the amendment as it is to give it a convenient vehicle upon which it can conveniently die.

Therefore, Congress can avoid having voted on it and can say yes, we voted for it, but without admitting that we voted for it in the form in which we knew it would fail.

That is something that the people across the States will have to judge on their own understanding of the procedures under which it was adopted.

I wonder if the Senator from North Carolina has the same apprehension about what may happen with respect to the ultimate disposition of the Helms amendment.

Mr. HELMS. Mr. President, that would require on the part of the Senator from North Carolina to read the mind of the distinguished chairman of the House Judiciary Committee. I cannot do that. I am hopeful that Congressman RODINO will hear from a considerable number of American citizens about this matter and that he will indeed see to it that the DeConcini bill with the Helms amendment attached to it is reported to the House floor.

If Mr. RODINO decides not to do that, then he can deal with his constituents as he pleases.

I cannot read his mind. I do not know what he is going to do. I am delighted that the prayer amendment is on the DeConcini bill, and I think the Senate should go ahead and complete the job and put it on this education bill.

Mr. President, are we up on our time agreement?

The PRESIDING OFFICER. The Senator has 4 minutes and 30 seconds remaining.

Mr. MOYNIHAN. Mr. President, will the Senator from North Carolina yield briefly to me?

Mr. HELMS. The Senator said "North Carolina" this time.

Mr. MOYNIHAN. I thank the Senator and I correct my mistake and point out that in my enthusiasm for tuition tax credits I did not take into consideration the difference between North and South.

Mr. HELMS. It was my Yankee accent that fooled the Senator.

Mr. MOYNIHAN. I do not think that he feels insulted to be called the Senator from South Carolina, but the Senator from North Carolina clearly prefers to be from North Carolina.

Mr. HELMS. I thank the Senator.

Mr. PERCY. Mr. President, before the Senator moves to table the amendment will the Senator yield me a couple minutes?

Mr. HELMS. I yield.

Mr. PERCY. Mr. President, we have 100 Members of this body. There are 17 different religious affiliations and every single Senator is affiliated with some established religious movement in this country.

We have a Senators' prayer breakfast. Twenty-four Senators were there last week. There are members of the prayer breakfast who voted on both sides of this issue. I do not think we have to prove whether or not we are for religion or against religion. I think it is a very distinct question as to whether or not it belongs on this bill.

As the manager of the bill on the minority side, I believe it does not belong on this bill.

The majority leader has seen to it that the Senate had a chance to vote on it on another vehicle and will send it to the House of Representatives and have this matter tested.

The Senator from Illinois deeply believes and hopes that the Supreme Court cannot be removed from jurisdiction by Congress in this matter. It is an important issue.

I speak with some deep feeling, having listened all my political life to my distinguished minority leader, my colleague in the Senate, the beloved Everett McKinley Dirksen. Whenever he spoke on the school amendment in Illinois or in the Chamber it would bring tears to anyone's eyes, but it never changed his junior partner's decision on this matter.

I think this is a matter that should be left to the Supreme Court.

What I am deeply concerned about is that even on the other vehicle, if it does go to the Supreme Court, we are going to suddenly find our school system engulfed in debates as to how will this be implemented, what time will it be done, will children be excused from the room, if a prayer is offered what kind of prayer should be offered, what is the responsibility of a school district while this is being appealed to the Supreme Court once it has been passed into law, should they or should they not implement it as long as it is on appeal, and so forth.

Our schools are in deep trouble today with financing problems. They have great issues that should be debated and time should be taken with parents and students.

As I mentioned earlier today, I presented this issue to 200 junior high school students from the State of Illinois. We

debated it in a seminar in room 3302, the very room where the education bill was voted out. After a full debate on both sides, without the Senator from Illinois indicating how he would vote on it, overwhelmingly those young people would have voted against a school prayer amendment.

Therefore, I intend to vote for the amendment by my distinguished colleague and trust we can have a vote either on a tabling motion or up-and-down motion immediately.

SEVERAL SENATORS. Vote.

The PRESIDING OFFICER. The Senator from Connecticut has used all his time.

Mr. HELMS. Is all time yielded back?

Mr. RIBICOFF. I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from North Carolina has 20 seconds remaining.

Mr. HELMS. Mr. President, I yield back any time I may have remaining, and I move to table the amendment and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to lay on the table the amendment of the Senator from Connecticut to the amendment of the Senator from North Carolina. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Arkansas (Mr. BUMPERS) and the Senator from Missouri (Mr. EAGLETON) are necessarily absent.

I further announce that, if present and voting, the Senator from Arkansas (Mr. BUMPERS) would vote "nay."

Mr. STEVENS. I announce that the Senator from Rhode Island (Mr. CHAFEE), the Senator from Delaware (Mr. ROTH), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The PRESIDING OFFICER. Are there any Members who have not voted?

The result was announced—yeas 38, nays 57, as follows:

[Rollcall Vote No. 43 Leg.]

YEAS—38

Armstrong	Hatch	Morgan
Baker	Hayakawa	Sasser
Bellmon	Helms	Schmitt
Byrd, Harry F., Jr.	Hollings	Schweiker
Church	Humphrey	Simpson
Cochran	Jepsen	Stennis
Dole	Johnston	Stevens
Domenici	Kassebaum	Talmadge
Exon	Laxalt	Thurmond
Ford	Long	Wallop
Garn	Lugar	Warner
Goldwater	Magnuson	Young
	McClure	Zorinsky

NAYS—57

Baucus	Cranston	Huddleston
Bayh	Culver	Inouye
Bentsen	Danforth	Jackson
Biden	DeConcini	Javits
Boren	Durenberger	Kennedy
Boschwitz	Durkin	Leahy
Bradley	Glenn	Levin
Burdick	Gravel	Mathias
Byrd, Robert C.	Hart	Matsunaga
Cannon	Hatfield	McGovern
Chiles	Heflin	Melcher
Cohen	Heinz	Metzenbaum
Moynihan	Pressler	Stafford
Muskie	Proxmire	Stevenson
Nelson	Pryor	Stewart
Nunn	Randolph	Stone
Packwood	Ribicoff	Tsongas
Pell	Riegle	Weicker
Percy	Sarbanes	Williams

NOT VOTING—5

Bumpers	Eagleton	Tower
Chafee	Roth	

So the motion to lay on the table UP amendment No. 72 was rejected.

The PRESIDING OFFICER. The question now recurs on agreeing to the amendment offered by the Senator from Connecticut.

Mr. RIBICOFF. I yield back the remainder of my time.

Mr. HELMS. Mr. President, I have no objection to a voice vote on the Senator's amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Connecticut.

The amendment was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I now move to lay on the table the Helms amendment as amended by the Ribicoff amendment.

I do so on the simple but very logical and I think cogent and persuasive basis that the Senate has already today adopted the same language on another bill, the Federal Judiciary Jurisdiction Act, which is supported by all nine Justices of the Supreme Court. All nine of the Justices support that measure, and to pass this amendment to this bill—and I voted for the amendment; I have supported the amendment, but I think it would be a mistake now, based on my conversations over the weekend, to add this legislation to the pending Department of Education bill.

So, unless the Senator from North Carolina wishes to respond, I am prepared to move to table.

Mr. HELMS. Mr. President, I have no wish to respond, except to thank the Senator from West Virginia, the Senator from Connecticut, and others. I think I know what the outcome is going to be; I have become accustomed to that. I wish we were having an up or down vote. We shall not, but Senators ought to bear in mind that when the Senator from West Virginia moves to table, any Senator voting for the motion to table my amendment is voting against the prayer amendment.

Mr. ROBERT C. BYRD. Mr. President, the Senator from North Carolina moved to table the amendment of Senator RIBICOFF a moment ago. He exercised his rights, and I am going to do the same in moving to table his amendment.

I say again—I do not know how many times I will need to say it—the same language, with the exception of the amendment by Mr. RIBICOFF, has already been voted up in the Senate today. The Senate has already adopted the Senator's proposal on a bill supported by the nine Justices of the Supreme Court. I oppose putting it on this bill, although I have already voted for the amendment, and I can go back home and tell my constituents I voted to support the prayer amendment, just as the Senator from North Carolina can do.

Mr. President, if the motion to table carries, this will be the last rollcall vote tonight unless a Senator wishes to have a rollcall vote on any other matter. I see no such indication.

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the motion to table. The yeas and nays have been ordered and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Arkansas (Mr. BUMPERS), and the Senator from Missouri (Mr. EAGLETON) are necessarily absent.

I further announce that, if present and voting, the Senator from Arkansas (Mr. BUMPERS) would vote "yea."

Mr. STEVENS. I announce that the Senator from Rhode Island (Mr. CHAFEE), the Senator from Arizona (Mr. GOLDWATER), the Senator from Delaware (Mr. ROTH), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The PRESIDING OFFICER. Have all Senators in the Chamber voted?

The result was announced—yeas 53, nays 40, as follows:

[Rollcall Vote No. 44 Leg.]

YEAS—53

Baucus	Hart	Nunn
Bentsen	Hatfield	Packwood
Biden	Heinz	Pell
Boschwitz	Huddleston	Percy
Bradley	Inouye	Pressler
Burdick	Jackson	Proxmire
Byrd, Robert C.	Javits	Randolph
Cannon	Kennedy	Ribicoff
Chiles	Leahy	Riegle
Cohen	Levin	Sarbanes
Cranston	Mathias	Simpson
Culver	Matsunaga	Stafford
Danforth	McGovern	Stevenson
DeConcini	Melcher	Stone
Durenberger	Metzenbaum	Tsongas
Durkin	Moynihan	Weicker
Glenn	Muskie	Williams
Gravel	Nelson	

NAYS—40

Armstrong	Hayakawa	Pryor
Baker	Heflin	Sasser
Bellmon	Helms	Schmitt
Boren	Hollings	Schweiker
Byrd, Harry F., Jr.	Humphrey	Stennis
Church	Jepsen	Stevens
Cochran	Johnston	Stewart
Dole	Kassebaum	Talmadge
Domenici	Laxalt	Thurmond
Exon	Long	Wallop
Ford	Lugar	Warner
Garn	Magnuson	Young
Hatch	McClure	Zorinsky
	Morgan	

NOT VOTING—7

Bayh	Eagleton	Tower
Bumpers	Goldwater	
Chafee	Roth	

So the motion to lay on the table UP amendment No. 69, as amended by UP amendment No. 72, was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion to table was agreed to.

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

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

Mr. ROBERT C. BYRD. Mr. President, there will not be any further rollcall votes tonight.

Mr. RIBICOFF. Mr. President, if the Senator will yield, I made an agreement with the distinguished Senator from New Mexico and the distinguished Senator from Massachusetts to have them introduce an amendment, which we will accept. It will take 10 seconds.

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

Mr. WALLOP. If the Senator will yield, Mr. President, I will not be long.

I call attention to what, by any standards, could be called a double standard. I was late for a vote earlier today by less than that just reserved by the Senator from Florida (Mr. CHILES).

I would say that it does not seem to be a fair standard. We either follow the clock or we do not follow the clock.

AMENDMENT NO. 135

(Purpose: To delete the transfer of programs from the National Science Foundation to the Department)

Mr. SCHMITT. Mr. President, I ask that my amendment No. 135 be called up.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from New Mexico (Mr. SCHMITT), for himself, Mr. PROXMIRE, and Mr. GOLDWATER, proposes an amendment numbered 135.

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

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

The amendment is as follows:

On page 88, beginning with the word "Improvement" on line 2, strike out through the dash on line 4, and insert the following: "Improvement all functions transferred from the Secretary of Health, Education, and Welfare—".

On page 88, line 5, strike out "(A)" and insert "(1)".

On page 88, line 8, strike out "(B)" and insert "(2)".

On page 88, line 10, strike out the semicolon and the word "and" and insert a period.

On page 88, strike out lines 11 through 13.

On page 106, beginning with line 22, strike out through line 23 on page 107.

On page 108, line 3, strike out "SEC. 304." and insert "SEC. 303.".

On page 108, line 12, strike out "SEC. 305." and insert "SEC. 304.".

On page 108, line 18, strike out "SEC. 306." and insert "SEC. 305.".

On page 109, line 3, strike out "SEC. 307." and insert "SEC. 306.".

On page 109, line 10, strike out "SEC. 308." and insert "SEC. 307.".

On page 124, line 18, strike out "section 304" and insert "section 302".

On page 73, in the table of contents, strike out item

"Sec. 303. Transfers of functions from the National Science Foundation.".

On page 73, in the table of contents, renumber items Sec. 304. through Sec. 308. as items Sec. 303. through Sec. 307., respectively.

Mr. SCHMITT. Mr. President, this amendment would delete from the bill, S. 210, the provisions that transfer educational functions now residing in the National Science Foundation to the proposed Department of Education.

Mr. President, the importance of science and technology in providing for the high standard of living in the United States, the defense needs of our Nation, and the improvement of conditions throughout the world cannot be overstated. The answer to many of the problems which we as a Nation face lies with advances in science and technology. The answer to many of the challenges which we as a people face can be found in continued research and development.

In my travels as first a former astronaut and now as a U.S. Senator, I am impressed with how the imagination of people, especially young people, in the United States and throughout the world has been captured by our technological achievements. People in other nations are impressed with how technology has improved the standard of living so greatly in the United States. This is no accident or coincidence. The coordination of science education and research must be credited with much of the success in this field.

The transfer of science education programs from the National Science Foundation to a new department will not meet the goal of improving science education which we all desire. This transfer will result in a communications gap between science education and scientific research. Coordination of education programs and research will be hampered and bureaucratic interference will be increased.

When the science education programs were initially developed they were put into the National Science Foundation rather than the Office of Education. This was not an accident. The basic mission, and that is what is important, was not education as much as the development of science and technology through education. Education is only the vehicle for the improvement of science.

This is an important point when we consider the Department of Education. The programs that have been considered for transfer must be considered in terms of their primary and basic mission and not solely their relationship to education. In the case of science education, this Senator feels that it was and is clear that the basic mission is to increase trained personnel and to promote research and development. That mission cannot be met satisfactorily by removing science education from the National Science Foundation.

The relationship between science education and the research and development programs of NSF are so integral that both will suffer if they are separated. That is the primary reason why this Senator opposes this transfer and this Senator does not stand alone. At this point, Mr. President, I wish to read the editorial which appeared in Science, the journal of the American Association for the Advancement of Science (AAAS), on May 19, 1978:

ANOTHER GO AT FEDERAL EDUCATION

There is something beautiful and good in the vision of Cabinet rank for education. There is to be a seat at the table at last, in the heady company of defense, foreign affairs, and energy. There is a hopeful glimpse of new political power, built on a unified education constituency. Such is the spell wrought by the sorcery of reorganization.

Whether a remodeled government architecture ensures more quality and vitality in education in the United States is by no means clear. To paraphrase Thomas Huxley, size is not grandeur and territory does not make an educated nation. In the past three decades, federal education priorities have zigged and zagged and it is hard to put a name to what has come out of them, although there is evidence that federal leverage played a large role in opening up educational opportunity and that science curricula took a turn for the better. But given the built-in aversion to federal authority over the education process, expectations for striking change were too optimistic. The President sees balkanization of federal responsibility as a problem, and to an extent he is right. But pretentious efforts at reorganization are unlikely to make a difference unless driven by new consensus strategies, which to date have not turned up.

If little is to be gained by reorganizing federal education programs, the next question is whether something is to be lost. It is not idle question, given the jarring news that the National Science Foundation is to be stripped of most of its science education programs. Although science education in NSF is not what it once was, it still commands and deserves respect in the scientific community. The prospect of its assimilation by the conglomerate department of education is unsettling, since no bill of particulars has been presented to show that a superagency would do more than distribute mediocrity uniformly.

Time was when science education made up half of the NSF budget, compared with only 8 percent of a larger budget now. If we understand the government's intentions, NSF's statutory charter for science education would not be revoked even though its programs would be handed off. Puzzling as that may be, what is even more troubling is the severing of science education from the major-purpose agency concerned with the state and progress of science. In a new education department dispensing 18 billion, the forlorn science education component would amount to two-tenths of a percent. One recalls a cherished footnote in federal budgets: "Totals may not add due to rounding." It is hard to believe that so frail a unit in so vast an empire could compete effectively in a contest of priorities.

In the absence of wars and space competitions, the importance of science education may not seem impressive to the reorganization experts. But only weeks ago the President was stressing the importance of science to our principal national purposes and calling for a new surge of technological innovation. He was right on both counts. If scientific research is a necessary public investment, surely it follows that science education is an equally necessary investment, surely it follows that science education is an equally necessary investment. Indeed, if a choice had to be made between more dollars for research and greater effort in science education, the case for the latter would be stronger. Human resources make or break investment in research.

Science education is not a priority that we have outgrown. As the knowledge base expands, increasing pressure is put on teaching. Both the proficiency of instruction at the secondary level and the effectiveness and competence of career counseling have profound meanings for higher education. A public which is asked to cope with difficult problems of choice in matters of health, consumerism, energy, and environmental balance can hardly assess uncertainty in the absence of better science education. There is a large and vexing job to be done. Government, which calls most of the signals for science, should be the first to understand this.—WILLIAM D. CAREY.

The position of the AAAS has not changed since that time after the debates which took place in the Senate on this issue last fall. The council of the AAAS met in January of this year and adopted a resolution reaffirming their position on this issue. Mr. President, I quote from the letter which I received from Mr. William D. Carey, executive officer of the AAAS, on this issue:

AMERICAN ASSOCIATION FOR THE ADVANCEMENT OF SCIENCE,
Washington, D.C., January 15, 1979.

Hon. HARRISON H. SCHMITT,
Committee on Commerce, Science, and Transportation, Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR SCHMITT: At its meeting in Houston on January 7, 1979, the Council of the American Association for the Advancement of Science expressed opposition to the proposed transfer of science education activities of the National Science Foundation to the new Department of Education which would be created under pending legislation.

As you know, the American Association for the Advancement of Science is the largest federation of scientists in the world, consisting of some 130,000 individual members and nearly 300 affiliated scientific organizations.

The full Resolution adopted by the AAAS on January 7 is as follows:

Whereas the American Association for the Advancement of Science has long recognized the need for effective education in the sciences and for the public understanding of science, and

Whereas the continuing collaboration of scientists and educators within the structure of the National Science Foundation has contributed to the identification and resolution of issues in science education, and

Whereas the transfer of the educational activities of the National Science Foundation to the proposed Department of Education would sever this close working relationship between the scientific and educational communities,

Therefore be it resolved that the Council of the American Association for the Advancement of Science supports the retention of science education as an integral part of the National Science Foundation.

The Association respectfully asks that you give your most serious consideration to its position when the legislation to establish the new Department of Education comes up for action.

Sincerely,

WILLIAM D. CAREY,
Executive Officer.

The Subcommittee on Science, Technology, and Space of the Senate Committee on Commerce, Science, and Transportation held hearings on the Office of Science and Technology Policy last month. We had the privilege to hear testimony from Dr. Edward E. David, Jr., chairman of the American Association for the Advancement of Science and president of Exxon Research and Engineering Co. During Dr. David's testimony, he touched on the issue of science education and the proposed Department of Education. I quote from his testimony:

As members of this Subcommittee know, there is a proposal in Congress to move the NSF Science Education Program to the new Department of Education. This would not be a productive move, in my opinion. As far as science and engineering education are concerned, innovation has come from the NSF in contrast to the HEW Department of Education or the NIE. NSF has been able to mobilize the technical community to see that bona fide science and engineering are the backbone of math, physics, chemistry, and biological education. The techniques have been copied for use in other curricula by HEW and others, but NSF has been the leader. Fundamentally, education benefits from a close association with research and advanced technical activity. It would be detrimental to the entire technical enterprise if NSF's education activities were divorced from its other activities.

The AAAS does not stand alone in its opposition to this transfer. Higher education associations as well as individual colleges and universities oppose this transfer. The feeling is shared by all affected by this transfer that both science education and research efforts will suffer. Charles Saunders of the American Council on Education stated this best in his testimony before the House Subcommittee on Legislation and National Security last year:

The location of the Education Directorate within the National Science Foundation affirms the importance of the interdependence of science education and scientific research. To separate the two would inevitably damage the quality of both by depriving them of their mutually supportive relationship.

Although one might argue the scientific community is speaking with a vested interest, the unanimity of this vested interest has to carry a great deal of weight in this deliberation. If we in the Congress and in the Government are going to continue to ignore the recommendations of all of the people most expert in a given field, then we are going to do so at very great peril to the Nation.

Mr. President, I have discussed the basic mission of science education and the interrelationship of science education and scientific research. My last point deals with the concern this Senator has with the transfer of programs into a Department which we know so little about. The Department of Education is still not a reality. It is a proposal which has generated a deal of controversy both in whether it should become a reality and what programs should or should not be included. It is unlikely that these concerns and controversies will disappear quickly even if the proposed legislation is passed. In addition, if the Department of Energy, our most recent Executive Department, is any indication, it may be years before the Department gets itself organized and its house in order. What will happen to science education during this time? How will science education and research suffer during this period of time?

This Senator is very concerned about this situation and has serious reservations about putting science education into the middle of any problems which may arise in the first few years of a new Department. If, in fact, science education does belong in a Department of Education, and this Senator feels strongly that it does not, then, at least, let us wait until the Department is established and has its house in order.

Mr. President, I do not know what else can be said but to emphasize that the essential unanimous opinion of everybody who has been involved in science, scientific research, and scientific education is that we ought not to do it. I have been involved in all of these areas for most of my professional life. I am still involved in them in somewhat a different manner. I cannot say too strongly to my colleagues that this is probably one of the most serious mistakes we are going to make in the 96th Congress if we continue with the creation of the Department of Education and the inclusion of science education in such a venture.

Mr. HATCH. Mr. President, I rise in support of Senator SCHMITT's amendment to retain the science education function within the National Science Foundation.

As I am sure every Member of the Senate realizes, the United States is lagging behind in our scientific achievement. Productivity and innovation in the United States is slowing down dramatically and we are losing our lead in a technological capability.

In order to rebuild our position in science and technology we must maintain a strong emphasis on science education. The training of our young people in science is absolutely essential to our future scientific health and our well-being as a nation.

Science education is as much a part of science as basic or applied research. It is the function of science which will determine the success of research in physics, chemistry, biology, or geology in the future. The Federal program for science education ought to remain a part of the Federal entity charged specifically with our scientific enterprise and with that agency which can continue its focus on the future of science, not the future of education.

Mr. President, I wholeheartedly support the effort of my friend from New Mexico to delete the provisions transferring these programs from the National Science Foundation and I commend him for offering this amendment.

Mr. SCHMITT. Mr. President, at this time I yield to the distinguished Senator from Massachusetts.

UP AMENDMENT NO. 73

(Purpose: To amend provisions relating to the transfer of functions from the National Science Foundation)

Mr. KENNEDY. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. There is an amendment pending, the Chair informs the Senator from Massachusetts.

Mr. SCHMITT. Mr. President, I believe this is a perfecting amendment?

Mr. KENNEDY. It is an amendment to the bill.

The PRESIDING OFFICER. Does the Senator from Massachuetts ask unanimous consent to call up his amendment?

Mr. KENNEDY. Yes, Mr. President.

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

The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Massachusetts (Mr. KENNEDY) for himself and Mr. RIBICOFF, Mr. PERCY, Mr. MAGNUSON, Mr. WILLIAMS, Mr. RANDOLPH, Mr. PELL, Mr. STEVENSON, Mr. JAVITS, and Mr. LUGAR, proposes an unprinted amendment numbered 73.

Mr. KENNEDY. Mr. President, I ask

unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 106, beginning with line 24, strike out through line 17 on page 107 and insert the following:

Sec. 303. (a)(1) There are transferred to the Secretary all programs relating to science education of the National Science Foundation or the Director of the National Science Foundation established prior to the effective date of this Act pursuant to section 3(a)(1) of the National Science Foundation Act of 1950, except the functions or programs or parts of programs, as determined by the Director of the Office of Management and Budget, after consultation with the Director of the Office of Science and Technology Policy and the Director of the National Science Foundation, which relate to—

(A) scientific career development;

(B) the continuing education of scientific personnel;

(C) increasing the participation of women, minorities, and the handicapped in careers in science;

(D) the conduct of research and development applied to science learning at all educational levels and the dissemination of results concerning such research and development; and

(E) informing the general public of the nature of science and technology and of attendant values and public policy issues.

(2) Except as provided in section 301(a)(1) of this Act, no mission oriented research functions or programs of the National Science Foundation or of any other Federal agency shall be transferred by this Act.

(b) The Secretary is authorized to conduct the programs transferred by subsection (a). In conducting such programs the Secretary shall consult, as appropriate, with the Director of the National Science Foundation, and shall establish advisory mechanisms designed to assure that scientists and engineers are fully involved in the development, implementation, and review of science education programs.

(c) The annual report to be transmitted by the Secretary pursuant to section 427 shall include a description of arrangements, developed by the Secretary in consultation with the Director of the National Science Foundation, for coordinated planning and operation of science education programs, including measures to facilitate the implementation of successful innovations.

On page 107, line 18, strike out "(c)" and insert "(d)".

Mr. KENNEDY. Mr. President, this amendment deals with the proposed transfer of the National Science Foundation science education programs. It is designed to help assure that this Nation's science education programs continue to meet the standard of excellence which has contributed so importantly to this Nation's scientific and technical strength.

I ask unanimous consent to have printed at this point in the RECORD a table summarizing the distribution of NSF's science education programs as provided in my amendment and a narrative description of the manner in which the NSF and the Department of Education are expected to work together to carry out their responsibilities. The amendment provides that NSF will retain 70 percent of its science education funding—rather than only 27 percent as provided in the bill as reported by the Committee on Governmental Affairs.

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

NSF science education programs	Purpose	Audience	NSF fiscal year 1980 request	Location after DOEd legislation is enacted	NSF	DOEd
Comprehensive assistance to undergraduate science education	Instructional Improvement	Scientists and science educators	$3.5	Most to education	$ 3.5	$10.0
Minority institutions science improvement	do	Minority scientists and science educators.	5.0	Education	0	5.0
Resource centers for science and engineering	do	do	2.8	NSF	2.8	0
Undergraduate instructional improvement (local course improvement and undergraduate instructional scientific equipment).	do	Scientist and science educators	6.5	Education get about half.	3.0	3
Dissemination	Knowledge transfer	do	1.3	NSF	1.3	0
Development in science education	Knowledge generation	Scientists and science education researchers.	9.0	NSF	8	0
Research in science education	do	do	6.3	Mostly NSF	6.0	
Science for citizens	2-way communication on issues of public policy.	Scientists and the public	2.1	NSF	2.1	0.3
Ethics and values in science and technology	R. & D. to illuminate issues of public policy.	do	1.3	NSF	1.3	0
Public understanding of science	Information to nonscientists	General public of all ages	4.0	NSF, some to education.	2.4	1 .6
Precollege teacher development	Information to practitioners	Elementary school teachers	9.0	NSF, some to education.	6	3. 0
Science faculty professional development (less elementary school programs).	do	High school and college teachers	3.0	NSF	3	0
Student-oriented programs	Talent identification	do	5.2	NSF	5.2	0
Minorities, women, and physically handicapped	Talent identification and conservation.	Minorities, women, and physically handicapped.	2.0	NSF	2.0	0
Fellowships and traineeships	Talent conservation	Graduate students in science	13.7	NSF	13.7	0
Total			84.7		60.3	24.4

RESPECTIVE ROLES OF DEPARTMENT OF EDUCATION AND NSF IN SCIENCE EDUCATION

The rationale for the division of programs, or parts of programs, between the National Science Foundation and the Department of Education is based on the following principles and considerations:

NSF ROLE

Programs that involve working at the frontiers of a scientific discipline, as in developing curricula reflecting new knowledge;

Programs involving close ties between instruction and the research environment, such as supporting graduate fellowships and developing research opportunities for undergraduate and secondary school students;

Programs directed at practitioners of science and technology, as in their scientific career development, presenting public policy issues affecting them;

Programs with the potential to increase the participation of minorities, women and the handicapped in careers in science;

Programs whereby practitioners of science and technology inform the general public of their perception of issues and values;

Transfers from NSF should result in retention of a sufficient nucleus of programs and staff to sustain the Directorate and provide a base for continued experimentation across the range of program areas.

DEPARTMENT OF EDUCATION ROLE

Ongoing support of general science needs, such as upgrading science teaching facilities and equipment and the calibre of instruction;

Programs directed at the classroom environment, such as surveying the correlation between teachers' education and students' test scores in science subjects;

Instructional and educational improvement at elementary and secondary levels, and at higher levels where instruction does not require advanced scientific expertise;

Science education whose aim is to provide students with scientific and technological awareness, as contrasted with the development of practitioners;

Continuing coordination with NSF on science education planning and program implementation;

In the conduct of its program, the Department will maintain links with the scientific community.

RESEARCH AND DEVELOPMENT

Both NSF and the Department should support innovation and dissemination of R & D results;

Their respective focus for such R & D should be based on the missions spelled out above, with NSF emphasizing the needs of the sciences and contributions of scientists, and the Department emphasizing the needs of general classroom instruction, including teaching technological awareness;

The Department should facilitate widespread implementation of successful new approaches, whether developed by NSF, the Department, or elsewhere.

Mr. KENNEDY. Mr. President, this amendment has been developed with the assistance, cooperation, and support of the Committee on Governmental Affairs, the While House Office of Science and Technology Policy, the National Science Foundation and the Office of Management and Budget. I ask unanimous consent to have printed at this point in the RECORD a letter of support for the proposed amendment from Dr. Frank Press, science adviser to the President.

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

WASHINGTON, D.C.,
April 2, 1979.

Hon. EDWARD M. KENNEDY,
U.S. Senate,
Washington, D.C.

DEAR TED: This letter concerns the proposed Department of Education and the transfer of certain activities from the National Science Foundation to the proposed department. I know that you expressed concerns in the last Congress about the Administration's proposal and also know that you have continued to be concerned with the specific provisions (Sec. 304) concerning "Transfers from the National Science Foundation" in the current proposal as it has been introduced.

Over the last several months but especially in the last few weeks, our office has worked closely with others in the Administration, officials of the National Science Foundation, representatives of the educational and science communities, and members of the staffs in the House and the Senate to improve the proposal. We have attempted to clarify the roles for the proposed department, the continuing roles of the National Science Foundation, and the relationships that would exist between the two organizations once the Department of Education is established. These discussions have resulted in new formulation of the roles of the Foundation and the proposed department.

The proposal has been strengthened considerably. Our earlier proposal did not fully recognize the continuing important role of the NSF in scientific career development, the conduct of research and development in science and technology and attendant values of public policy issues. At the same time, the proposal did not sharply focus on the special capabilities that would exist at the department. In my judgement, these dificiencies have been corrected.

I believe that the new statement of the respective roles is acceptable and merits Congressional support.

Yours sincerely,

FRANK PRESS,
Director.

Mr. KENNEDY. Mr. President, the National Education Association and higher education groups have also been helpful in this process. They have played an important role in calling to the attention of the Congress the need to examine with great care the impact of any transfer of science education programs from the National Science Foundation to the Department of Education.

Mr. President, my amendment will assure that the National Science Foundation continues to have the primary responsibility for the development of scientific and technical talent in this Nation. It requires that science education programs—whether administered by the NSF or the Department of Education—will draw extensively on the expertise of the scientific community and that there will be close cooperation between researchers and science educators. My amendment also provides that the President's science adviser and the Director of the National Science Foundation will be closely involved in all aspects of science education and in planning and carrying out a smooth transition for any science education programs which are transferred to the Department of Education.

I would now like to describe the substance of my amendment and its impact on science education programs.

First, the amendment reaffirms that the National Science Foundation will continue to have primary responsibility for the direction and initiation and support of basic scientific research and for programs to strengthen scientific research potential and science education programs at all levels in the mathematical, physical, medical, biological, engineering, social, and other sciences.

Second, my amendment provides that most activities presently directed by the National Science Foundation will not be subject to transfer to the Department of Education. Those activities include:

Scientific career development;

Continuing education of scientific personnel;

Efforts to increase the participation of women minorities and the handicapped in careers in science;

Research and development affecting science learning at all educational levels, and the dissemination of results; and

Fifth. Programs which inform the general public of the nature of science and technology and of related ethical, value, and public policy issues.

Third, my amendment provides that the Department of Education must establish advisory mechanisms designed to fully involve scientists and engineers in the development, implementation, and review of science education programs administered by the Department of Education.

And fourth, my amendment provides that the secretary of the Department of Education must report to the Congress concerning the arrangements for coordinated planning and operation of sceince education programs and the steps taken to facilitate the implementation of successful innovations.

Mr. President, in my years in the Senate as chairman of the subcommittee which has direct jurisdiction over the programs of the National Science Foundation I have been deeply involved in the development of programs to strengthen science and science education. I have had the opportunity to work closely with leaders of the scientific community in all disciplines and in all regions of the country. These eminent scientists and educators were deeply concerned over the original proposal for science education programs presented to the Congress by the administration.

Mr. President, I believe that my amendment meets many of the major concerns which have been raised over the proposed transfer. It provides that well over two-thirds of the National Science Foundation's science education programs will remain under the direction of National Science Foundation's science education directorate. It includes provisions which substantially reduce the potential for disruption in the programs which are proposed for transfer—programs which have had an outstanding record of success and whose continued strength and growth must be assured.

It is my hope that the Senate will adopt this amendment and thereby alleviate some of the concerns of scientists and educators with extensive firsthand experience in this important area. And while there may still be those who are convinced that no science education programs should be transferred I hope that the Senate's action today can lead to a productive discussion in the House of Representatives and an opportunity for further adjustments if necessary to assure a firm basis for science education in the future.

I urge the Senate to accept this amendment.

Mr. RIBICOFF. Mr. President, I commend the distinguished Senator from Massachusetts and the Senator from New Mexico. I think they have improved the bill in a very important way. I am pleased to be a cosponsor of the amendment.

Mr. President, the committee has been especially interested in testimony with regard to the transfer of the science education programs to the Department of Education. Senator KENNEDY also has a long record as a strong supporter of legislation to establish a Department of Education. His testimony presented to our committee earlier this year—which reaffirmed his commitment to early enactment of the pending bill—raised important issues with regard to science which both the administration and members of our committee wanted to examine with particular care.

Those issues have now been thoroughly reviewed and, with his assistance and the President's science adviser, we have been able to develop an alternative plan for the NSF's science education programs proposed for transfer. That alternative is provided by the amendment offered today, and I am pleased to join as a cosponsor in offering it to the Senate.

The amendment has the support of the administration, the White House Office of Science and Technology Policy, the National Science Foundation, and the Office of Management and Budget.

A strong, coherent program of science education is important to the new Department of Education. As part of its broad mission to improve educational programs in schools and colleges, the Department of Education will be able to concentrate on the special priority of science education only if it has the appropriate resources to do so. The bill provides these resources and the scientifically trained staff to achieve this goal.

The National Science Foundation has authority over $80 million in fiscal year 1979 devoted to science education programs, less than one-tenth of its total budget. The proposed amendment transfers approximately $25 million to the Office of Educational Research and Improvement of the Department of Education. These programs, transferred intact to the Office of Educational Research and Improvement, would be placed prominently in that Office. The Office is directly responsible to the Secretary of Education. The Office will be headed by an Assistant Secretary for Educational Research and Improvement, concerned with other programs now located in HEW's Education Division which complement the science education programs. These programs include environmental education, metric education, and other science and math programs.

It is extremely important for the Department to provide ongoing support of

general science needs. This includes the upgrading of science teaching facilities and equipment and improving the quality of instruction in science. The Department will also have specific responsibility to assist with instructional material and improvement at the elementary and secondary levels and at higher levels where instruction does not require advanced scientific expertise.

These are important responsibilities for the Department of Education. The proposed transfer of some of the National Science Foundation's science education programs provides the Department of Education's Office of Educational Research and Improvement an opportunity to assist in these important endeavors.

Meanwhile, the important mission of the NSF would not be affected by the change. More than 80 percent of the NSF budget goes to basic research and supporting resources—none of which will be involved in the transfer. While the NSF advances in major new research projects, the Department of Education will work closely with both NSF and teachers to translate these findings to school-age students.

All of the statutory authority granted to the National Science Foundation by Congress will be maintained. NSF will keep its authorization to embark on new science education programs when necessary. It will continue to support all graduate-level research training and fellowship programs as well as inservice training programs for scientists and engineers. Encouraging women, minorities, and the handicapped—all of whom are underrepresented in scientific and technological careers—will still be the responsibility of NSF.

The amendment assures a continuing and close relationship between science and science education. It assures that the National Science Foundation will continue to play a major role in assuring that science education programs meet the high standards which have contributed so importantly to our Nation's scientific and technical strength in the past. The amendment assures that those programs which are transferred will be protected to the greatest extent possible against any disruption. The amendment provides language assuring cooperation between NSF and the new department. With this cooperation and the streamlining of the programs involved, the Department of Education and the National Science Foundation will be working to improve the status of science education.

The ranking minority member of our committee, the senior Senator from Illinois, has also been extremely helpful in the development of this alternative. I am pleased that he, too, has joined as a cosponsor.

I ask my colleagues in the Senate to give their full support to the amendment.

Mr. PERCY. Mr. President, I commend Senator KENNEDY and Senator SCHMITT for the addition they have made, the strengthening of the bill. The colloquy we had a year ago on this same subject was very informative.

I think the solution arrived at today is proper and right. I am delighted to associate myself with it.

Mr. SCHMITT. Will the Senator yield?

Mr. PERCY. I am happy to.

Mr. SCHMITT. As I stated earlier, I feel strongly we were making a mistake in transferring any programs from the National Science Foundation to the proposed Department of Education.

I know the Committee on Governmental Affairs and its distinguished chairman and ranking Republican are in disagreement with me on this point. I would, however, like to congratulate the senior Senator from Massachusetts on his initiative to find this compromise position.

I looked over the proposal and I find it does provide that the National Science Foundation retain the most important programs now within its jurisdiction; namely, those programs most closely related to basic research.

It is my understanding the managers of the bill, as I indicated, are prepared to accept the amendment substituted by Senator KENNEDY.

At this point, I think it is in order to withdraw my amendment and ask that the Senator from Massachusetts add me, also, as a cosponsor to his amendment.

Once again, I congratulate him and find this a useful compromise.

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

Mr. KENNEDY. I ask that the Senator from New Mexico be added as a cosponsor, and I thank the Senator from New Mexico.

I yield back the remainder of my time.

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

Mr. RIBICOFF. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Massachusetts.

The amendment was agreed to.

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

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KENNEDY. Mr. President, I am glad to see legislation to establish a Department of Education debated on the Senate floor. As a member of the Subcommittee on Education, I strongly urge my colleagues to support it, as I have since the distinguished Senator from Connecticut first introduced legislation to do so.

Education is essential to the well-being of our demoracy, for, in an ignorant country the people cannot choose. And, education is essential to the well-being of the people who reside in our democracy for it is the basis of the developments in the arts and sciences which are the hallmark of a progressive and civilized society. My predecessor in the Senate, Daniel Webster, noted:

> On the diffusion of education among people rests the preservation and perpetuation of free institutions.

That is why the people of America cares so much about education. State and local governments spend more on education—close to 40 percent of their budgets—than on any other item. Schooling is universally available and universally required. The proportion of children who start school earlier and continue longer has increased year by year.

It is time, Mr. President, that we show the same concern on the Federal level. The Federal Government must not usurp the place of the States and localities in providing education. But, we must insure that we do all that we can to help the States and localities provide equal opportunity education of high quality. Education in this country needs help today, and we must give our assistance. The bill which the distinguished Senator from Connecticut has crafted and brought to the floor does this admirably.

The bill is premised on the notion that we can increase attention to the proper Federal role in education through a separate organization which can devote itself to addressing that role and which can then deal effectively with others in serving educational functions. It is difficult to focus Federal attention on educational needs within the HEW context. HEW is overwhelmingly concerned with health and welfare issues and the Secretary has little time to devote to education. Education should become the focus of a Cabinet official, who has the resources and the time to devote to making the Federal effort more effective. Officers of such a Department will be able to then deal in a more direct way with others in the executive, and with Congress. A separate Department will increase the accountability to local education officials and should cut down on the administrative burden of dealing with the Federal Government.

The offices that have been established within this new Department indicate the increased attention we will be able to give to the various aspects of education: Offices for elementary and secondary education; postsecondary education; occupational, community and adult education; civil rights; research and improvement; special education and rehabilitative services.

Mr. President, this legislation not only increases Federal attention to education but achieves many other objectives as well.

The bill emphasizes the need for citizen involvement in the educational process. Such involvement can be the touchstone for better education. It has always been a primary concern of mine—from parental involvement in the education of native Americans, to parental involvement in education for the educationally disadvantaged. We moved to strengthen such involvement through the Elementary and Secondary Education Act amendments last year.

The bill strengthens our ability to insure equal educational opportunities for all individuals. The Office of Civil Rights in the department is given more prominence, is insulated from programmatic pressures, and its Director will report directly to the President, Secretary, and Congress.

The new Department will allow for much better coordination of Federal programs for elementary and secondary education. The current fragmentation

leaves educators on the local level no one to turn to when their problems go beyond the specific legislation administered by some official. An important focus of the new Assistant Secretary should be to insure the availability of Federal programs to all those who are eligible. Many eligible students are not being served through title I of the Elementary and Secondary Education Act; few of the eligible students are being served by bilingual education programs. The Assistant Secretary should see how we can most effectively utilize our resources in these areas.

The new department would also be able to make substantial contributions to the effective support of postsecondary education and of occupational, adult, and community education by the Federal Government.

Mr. President, I have already addressed some amendments which have been proposed to this legislation, and I will not address them again here. Several of them would not be wise additions to this bill.

Mr. President, this bill has been improved over previous bills, as well. This bill does not transfer Indian education from the Bureau of Indian Affairs, as was suggested in the committee bill last year.

So, too, we have resolved our problems with National Science Foundation programs.

We must assure that this Nation's science education programs continue to meet the standard of excellence which has contributed so importantly to this Nation's scientific and technical strength.

Earlier in the debate the Senate adopted my amendment to assure that the National Science Foundation continues to have the primary responsibility for the development of scientific and technical talent in this country. It requires that science education programs—whether administered by the NSF or the Department of Education—will draw extensively on the expertise of the scientific community and that there will be close cooperation between scientists and science educators. It provides that 70 percent of NSF's science education programs will remain at NSF.

With the inclusion of this amendment we were able to meet many of the concerns which had been raised about this particular aspect of the bill.

Altogether then, this legislation is an admirable advance, an advance for which the chairman of the Government Affairs Committee deserves great credit.

Altogether, a new Department of Education will indicate that we, at the Federal level, recognize the Federal responsibility to assist local and State governments in their educational efforts. No more should education take a back seat. For, in education lies the future.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business, that Senators may be permitted to speak therein for not to exceed 10 minutes.

DEATH OF CARROLL ROSENBLOOM

Mr. KENNEDY. Mr. President, the death of Carroll Rosenbloom in Florida last week has deprived the Nation of one of its most vigorous, successful, and best known figures in the worlds of both business and sports.

As the owner of the Baltimore Colts football team and later of the Los Angeles Rams football team in the National Football League, he was familiar to generations of football players and lovers of the sport as a person with an extraordinary sense of excellence and leadership, and with a deep commitment and dedication to his teams and players.

His teams compiled consistently outstanding records in the National Football League. He won the Super Bowl with the Baltimore Colts in the 1960's and he came so close to repeating that remarkable achievement with the Los Angeles Rams in recent years that all of us who knew him were convinced that the title would be his yet again.

But for each of us who knew Carroll well, it is the sudden loss of his immense vitality and friendship that we shall miss the most. At 72, he had the strength and energy and initiative of persons half his age. Even the open heart surgery he had in recent years could not begin to slow him down.

When he died last week, he was swimming in strong surf off the coast of Florida. His death is a heavy loss to all who knew him, and I extend my deepest sympathy to his wife Georgia and children.

Mr. President, I ask unanimous consent to have printed in the RECORD an excellent column on Carroll Rosenbloom that appeared in the New York Times on April 5, entitled "He Loved To Swim in the Surf."

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

[From the New York Times, Apr. 5, 1979]

HE LOVED TO SWIM IN THE SURF

(By Dave Anderson)

He had swum in that surf so often. For years Carroll Rosenbloom had owned an oceanfront home amid the palm trees of Golden Beach, Fla., where millionaires go to relax. When he took over the Los Angeles Rams in 1972 after trading the Baltimore Colts franchise, Carroll Rosenbloom sold his home in Golden Beach and purchased two homes in the Los Angeles area—one in Bel Air with gardens and a tennis court, the other on the beach at Malibu where he could swim in the surf. And last week, while vacationing in Florida with his wife, Georgia, the 72-year-old Rams owner decided to rent a home in Golden Beach for old time's sake. For him, the surf was like everything else in his life—a challenge to be conquered. Anybody can swim in a pool. But when he went swimming in the surf at Golden Beach last Monday afternoon, the surf won. Trapped by the undertow 75 yards from the beach, Carroll Rosenbloom drowned. Yesterday his body was cremated at a funeral in Hollywood, Fla., attended by family and close friends. Next Monday a public service will be held in Los Angeles.

"Swimming in the surf," one of his friends has said, "Carroll loved to swim in the surf."

One night 10 years ago he swam in the surf to put his world in perspective. That afternoon his Colts had been upset in Super Bowl III by the New York Jets, 16–7, and as the owner of the first National Football League team to lose to an American Football League team, he felt disgraced. When he returned to his Golden Beach home, he was consoled by Senator Edward Kennedy, a long-time friend. During the Colts glory years, the Kennedys often had been Carroll Rosenbloom's guests at games. But by 1969, of course, both John F. Kennedy and Robert F. Kennedy had been assassinated.

"Carroll," the Senator reminded the Colts owner that night, "there are worse things than losing a football game."

A SMILE AND A SIX-PIECE BAND

Senator Kennedy persuaded him to go for a swim in the surf before the players, coaches, front office and friends arrived for what had been planned as the Colts' victory party. When everybody arrived, Carroll Rosenbloom was there to greet them with a smile—a forced smile, but still a smile. That night a six-piece band played, everybody had a few drinks and Carroll Rosenbloom was out where they could see him. He did not hide.

Two years later the Colts won Super Bowl V and Carroll Rosenbloom had another party, without forcing his smile.

In recent years, Carroll Rosenbloom was frustrated by the Rams inability to qualify for the Super Bowl despite six consecutive divisional titles. Some people will remember him for that frustration. But for him, perhaps frustration was deeper than for others because of his success as the owner of the Colts and as a businessman, initially as the manufacturer of work clothes. Perhaps his favorite team was the 1958–59 Colts who ruled the N.F.L. with Johnny Unitas at quarterback. Around that time three of his players—Gino Marchetti, Alan Ameche and Joe Campanella—asked him for a loan to open a hamburger stand in Baltimore.

"How much do you need?" he asked.

"We figure about $100,000," Marchetti said.

"You got it," Rosenbloom said.

"But suppose we blow it?" Marchetti asked.

"Then you blow it," he replied.

EWBANK, SHULA AND ALLEN

As it developed, the "Gino's" fast-food chain prospered, so did the players, and Carroll Rosenbloom got his money back. Once a Penn halfback, he identified with his players more than his coaches.

"Coaches," he once snapped. "You hire them and you give them the players and once they win, you can't tell them anything."

He had a knack for selecting assistant coaches who turned out to be brilliant head coaches—Weeb Ewbank and Don Shula with the Colts, and Chuck Knox with the Rams. But when he chose the famous head coach, George Allen, to take over the Rams a year ago, he dismissed him after only two exhibition games.

"Boy," acknowledged Carroll Rosenbloom, "did I make a mistake."

Other owners would have lived with that mistake to sustain their pride. But not him. "There was no way George Allen would fluorish under our system," Carroll Rosenbloom said at the time. "And our system was not going to change for him." Our system, of course, was a euphemism for his system. He appointed another assistant coach, Ray Malavasi, as Allen's successor and the Rams got to the National Conference championship game, only to lose to the Dallas Cowboys, 28–0—their fourth title game defeat in the last five years. Whenever the Rams lost, people in their organization worried about Carroll Rosenbloom because of his open-heart surgery in 1974.

"Every Sunday," he once said of being a pro-football owner, "you have the pleasure of dying."

Somehow he got through all those Sundays, but last Monday he could not get through the surf.

SENATOR TSONGAS ON ANGOLA

Mr. KENNEDY. Mr. President, ever since his arrival in Congress, PAUL

TSONGAS has played an active role in shaping U.S. policies on Africa. Already, he has made valuable contributions to our understanding here in the Senate about such vital issues as the present crisis in Rhodesia-Zimbabwe. His first-hand experience of African problems began in 1962 when he went out to Ethiopia as a Peace Corps volunteer. Those years spent in small African villages deepened a concern in PAUL TSONGAS that he has acted on ever since. In 1977, as a Congressman, he and Don Bunker visited countries as various as Kenya, Egypt, and Ethiopia, issuing an important report on the conflict in the Horn of Africa and on human rights violations in Ethiopia.

Last Wednesday, the New York Times carried a clear-sighted assessment by my colleague from Massachusetts of the current state of relations between the United States and Angola. I share Senator TSONGAS' concern that our country cease viewing African nations as passive battlegrounds for the superpowers. I strongly agree with him that we must replace this outmoded outlook with a new realism. We can begin recognizing reality in Angola, and pursuing mutual interest, by immediate recognition of its Government.

Mr. President, I believe that Senator TSONGAS' assessment will be of great value in formulating our future policies toward Angola, and I ask unanimous consent that his article be printed at this point in the RECORD.

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

OF ANGOLA

BY PAUL E. TSONGAS

WASHINGTON.—Our Angolan policy is a fine example of unselfish aid to a faraway nation. Unfortunately, the beneficiary of that policy is not Angola but the Soviet Union. Our firm refusal to recognize the Angolan Government tightens ties between the Soviet Union and Angola. Nonrecognition undercuts our efforts for peace in Southern Africa; it retards the positive potential of American technology and investment in Angola.

The Administration's policy remains mired in the undiplomatic blundering of 1975, when Angola's independence from Portugal precipitated a three-sided civil war. The United States subsidized a losing faction, the National Front for the Liberation of Angola, in a dramatic failure. China, which also invested unwisely in the war, is the only other country that still declines to recognize the result. Thus we have proved to be good losers, continuing to lose in Angola by consistent misjudgment.

The official United States position is to question whether President Agostinho Neto's Government has "effective control" of the country, and to criticize the estimated 20,000 Cuban troops in Angola. This is the rationale for American estrangement from a nation rich in oil, coffee, diamonds, manganese iron, silver, copper and phosphates. On close scrutiny, the official line is lame. "Effective control" is no longer an issue, as it was during the civil war The Neto Government effectively administers Angola. Recently President William Tolbert of Liberia accompanied President Neto to the central highlands, where the guerrilla group known as the National Union for the Total Independence of Angola once had strong support. There the two leaders spoke before 100,000 people in a convincing display of control.

The specter of thousands of Cuban soldiers in Angola is disturbing, and I neither support nor accept their presence. But it is hypocritical to protest their presence after having transported French and Belgian troops to Zaire. Many African regimes are militarily weak and borrow military muscle from reformed colonizers like France and Belgium with no United States protest.

Angola resembles other weak states, but the external threats it faces are specially strong. The region's dominant military power, South Africa, invaded Angola during the civil war. Just last month, Rhodesian planes bombed Patriotic Front training camps inside Angola. Meanwhile, our benign neglect of the Angolan Government cements its dependence on Cuba and the Soviet Union.

What lies behind the flimsy pretexts for our failure to recognize Angola? It is the intellectual armament of the cold-warrior, a vision of the whole world choosing up sides between East and West. But the simplistic assumptions and naive categories of American decision-makers have been refuted by the flip-flops of contending Angolan factions.

The National Union for the Total Liberation of Angola, whose major arms merchant was China, accepted substantial military aid from white-supremacist South Africa. President Neto's victorious faction, the "pro-Moscow" Popular Movement for the Liberation of Angola, underwent a severe crisis in 1977. An ultraleft group supported by the Russians favored an antiwhite policy; President Neto argued for a more open racial policy and a more open door to the West. He put down an attempted coup with some Cuban help.

His overtures to the West, despite our best efforts to alienate him, contradict the cross-eyed vision of East-West ideologues. But his stance is utterly consistent with the long African struggle against colonial domination.

From capitalist Nigeria to socialist Tanzania, African leaders are critically sifting blueprints for development. What they finally select is more an outgrowth of their own culture and history than a product of foreign influence. America's forte in Africa is technological and developmental expertise. This peaceful strength appeals to Angolan leaders, who seek to develop their country's ability to meet human needs. Even without the security provided by diplomatic representation, a number of American firms are already participating in Angolan development. But the potential is there for much greater cooperation. By officially shrugging off the Angolan Government's interests, we also disregard our interests. Our leaders used the Angolan civil war to wage cold war, and managed to magnify the victory of our ideological opponents. Now we must finally stop aiding the Soviet Union in Angola. The outmoded outlook toward African nations as passive battlegrounds for superpowers must be replaced by a new realism. We can begin recognizing reality in Angola, and pursuing mutual interest, by immediate recognition of its Government.

EL AL BEGINS SERVICE TO CHICAGO

Mr. PERCY. Mr. President, on April 2, 1979, El Al Israel Airlines began twice weekly one-stop service from Chicago's O'Hare International Airport to Ben-Gurion International Airport outside of Tel Aviv.

The inaugural ceremonies were led by Robert L. Adler, an outstanding leader of the Jewish community, not only in Chicago but in the entire United States in his capacity as president of the National Jewish Welfare Board. Bob and his volunteer committee, which included Harry Fox and William Levine, from the Public Affairs Committee of the Jewish United Fund organized an impressive and memorable program.

The ceremony not only marked the inauguration of El Al service but the signing of the peace treaty between Israel and Egypt. In my prepared remarks, I announced that I was sending letters to the leaders of Israel, Egypt, and the United States proposing the creation of a trilateral commission to develop tourism in both Israel and Egypt.

Other speakers included Chicago Mayor Michael Bilandic; Tel Aviv Mayor Shlomo Lahat; Mr. Modechai Ben-Ari, executive chairman of the Board of Directors of El Al; Mrs. Ilana Rovner, assistant deputy to Illinois Gov. James Thompson; Mr. Zvi Dinstein, Minister of Israel for Economic Affairs in the United States; Israel Zuriel, Israel Commissioner of Tourism for North America; and Peter Brunswick, of the El Al staff.

Rabbi Hayim Goren Perelmuter, president of the Chicago Board of Rabbis, gave the invocation. The Sager and Skokie Solomon Schecter Day Schools choir, under the expert leadership of Ms. Roz Ebstein, sang joyful Israeli tunes.

It was a day of celebration for the Jewish community in Chicago which now has a direct air link to Israel.

Mr. MATSUNAGA assumed the chair.

SENATOR SAM NUNN

Mr. PERCY. Mr. President, very recently in the Wall Street Journal on page 1 there was an article that appeared entitled "Little Giant."

In the SALT debate, Senator SAM NUNN's role will prove decisive.

Mr. President, I believe that some of my colleagues might have missed this incisive article and would like to read it in full, not necessarily because of the comments about SALT, but because the concurrence of all of those who know Senator SAM NUNN when the evaluation is made by Albert R. Hunt, staff reporter of the Wall Street Journal, citing the fairness, the acumen, and the ability of our distinguished colleague.

Mr. President, I was privileged to serve as ranking minority member of the permanent Investigations Subcommittee of the Governmental Affairs Committee for a number of years. Having served with Senator John McClellan, having served with Senator Sam Ervin, having served with Senator JACKSON, and now serving as ranking minority member with Senator NUNN, I can testify to the fact that it is one of the great joys and privileges I have in serving in the Senate to serve with Senator NUNN.

His sense of bipartistanship, his sense of fairness, his sense of judicious manner, demeanor in his conduct of the committtee, his approach to witnesses, to members of the staff and, of course, to his fellow colleagues on the committee, is a fine example and certainly proves to be one of the most pleasant aspects of my Senate service as well as one of the most interesting aspects of it.

I ask unanimous consent that the column to which I have referred, from the Wall Street Journal, be printed in the RECORD.

There being no objection, the column

was ordered to be printed in the RECORD, as follows:

IN THE SALT DEBATE, SEN. SAM NUNN'S ROLE COULD PROVE DECISIVE

(By Albert R. Hunt)

WASHINGTON.—When the long-awaited Strategic Arms Limitation Treaty reaches the Senate, much attention will focus on a short, balding, owlish-looking Senator, who will have much to say about its fate.

This is Sam Nunn, a 40-year-old Georgia Democrat. If not especially imposing physically, he is intellectually.

At the start of his second term, the cautious and conservative Sam Nunn often wields as much power as anyone in the Senate on military issues, and his influence is widening. He recently became chairman of the Permanent Investigations Subcommittee and is increasingly active in broad economic and tax issues.

"Sam is a man who always seems to know what he's talking about," suggests Sen. Abraham Ribicoff of Connecticut. "He talks softly and thinks clearly." A Carter administration lobbyist calls him "the fastest rising star in the Senate."

As such, he is a study in achieving power and influence in that competitive chamber. The normal route is the seniority leader leading to a powerful committee chairmanship. Sen. Nunn is the fifth-ranking Democrat on the Armed Services Committee—24 years younger than any senior member and thus a good bet to be chairman someday. Meantime he is making a major mark without a formal power base.

With a prodigious appetite for work, he has mastered complicated political-military issues and shunned headline-grabbing tactics; he once rejected a staff suggestion to subpoena organized-crime kingpin Meyer Lansky to a drug hearing "because he wasn't relevant."

His quiet, thoughtful approach has impressed many Senate watchers who don't always agree with Sen. Nunn's conclusions. "He is a serious legislator, interested in how the institution itself works and is more problem-oriented than ideological," says David Cohen, president of Common Cause, the citizens' lobbying group.

An exception to his deliberate approach was his hard-line defense in 1977 of the then budget director, Bert Lance, who remained popular in Georgia at the time. Mr. Nunn still smarts that some Senators sought to "railroad" Mr. Lance out of office.

FRIENDLY RELATIONS

But he generally enjoys the friendly collegial relations that help with advancement in the Senate. He is a member of the Senate prayer group, a golfer who shoots in the mid-70s, and he is able to legislate with liberals and conservatives alike. He spearheaded major changes in the North Atlantic Treaty Organization, working with such diverse Armed Services committee colleagues as the late conservative Republican Dewey Bartlett and liberal Democrat John Culver. His influence was particularly evident last year when he was the decisive voice in persuading the Senate not to kill the neutron bomb.

Sen. Nunn is sometimes criticized as being too pro-military. "Nunn certainly grasps defense issues," one defense expert says, "but he's too willing to accept the military line. He lacks the experience to be sufficiently skeptical."

Some of the critics believe he is philosophically committed to opposing the SALT II treaty. Sen. Nunn, for his part, says he is genuinely uncommitted but plans to take an active role in the Senate consideration. "I hope the debate will focus on the much broader context of the American political and military approach in the world," he declares. "We can use the debate to look down the road."

DELIBERATE APPROACH

Based on past performance, the Georgian will indeed take a deliberate approach without being philosophically rigid. He supported the Panama Canal treaties, for instance, and has been known to criticize some military practices. This reputation for open-mindedness, coupled with an astute knowledge of military matters, is what makes Sen. Nunn so important in the coming SALT struggle.

"Sam carries such a solid reputation in military ranks that other Senators will look at him in SALT," Republican Sen. William Cohen of Maine suggests.

This is understood at the White House. Some weeks ago, President Carter invited Mr. Nunn over for two separate private meetings on foreign policy in the same day, an unusual concentration of Oval Office attention. (Feelings between the two Georgians have varied over the years. Mr. Nunn backed Jimmy Carter in both his gubernatorial races, but beat Gov. Carter's handpicked candidate for the Senate in 1972 and was neutral in the early stages of the 1976 presidential primaries. Associates say the Nunn-Carter relations today are cordial but not close.)

Politically, Sen. Nunn has a lot of leeway on SALT and most other issues. He was reelected last November with an overwhelming 84 percent of the vote. Unlike many of his peers, who dream of sitting in the White House some day, he likes the idea of an extended Senate career.

"The legislative process has never frustrated me," he says. "I guess it depends on your expectations. I never had executive experience. My background and interests always have been in legislative matters."

With more experience and political security, some colleagues expect the young Democrat to branch out, tackling a wider variety of issues and broadening his philosophical approach.

"Sam has real capacity for growth," suggests Democratic Sen. John Culver of Iowa. "He could be a modern Richard Russell in the fullest sense." (The late Sen. Russell, also a Georgia Democrat, was an immense power in the Senate.)

SOME VOTES WITH LIBERALS

Sen. Nunn has sided with the liberals on occasion. In the last Congress he voted for the constitutional amendment to give Washington, D.C., two Senators and against deregulating natural-gas prices. On some issues—such as abortion, economic sanctions against Rhodesia and legislation to expand the redwoods—he has voted, at different times, with liberals and conservatives.

But overall, he has one of the more conservative voting records of any Senate Democrat. He opposes most major social initiatives, votes against organized labor on major issues and with the business community on most important economic and tax issues. He was the first Senate Democrat to endorse the Republican 33% tax-cut plan last year. Subsequently, he was the author of a revised version, tying more-modest tax cuts to spending restraint, which cleared the Senate but not the House. Currently, he favors a balanced-budget constitutional amendment, although he is unsure exactly how it should be framed.

Even critics of these positions often give him high marks for integrity. "You know Sam Nunn is going to make an intellectually honest judgment," acknowledges Howard Paster, lobbyist for the liberal United Auto Workers, "Unlike some others, he doesn't make crass political moves. I just wish he weren't so conservative."

MILITARY EXPERTISE

In his chief area of expertise, the military, Sen. Nunn receives almost universal respect. "Many people involved, with defense tend to be very ideological," says Robert Pranger, the top foreign-policy and defense expert at the American Enterprise Institute think tank. "But Sen. Nunn is very analytical and always open-minded."

Mr. Nunn's interest in the military comes naturally. He is the grandnephew of Carl Vinson, the longtime former chairman of the House Armed Services Committee. With the influence of Rep. Vinson and Sen. Russell, Georgia is steeped in military installations. After winning a seat on the Armed Services panel, he soon attracted the attention of Chairman John Stennis of Mississippi, who encouraged him to pursue a range of activities.

With this license, the tenacious Georgian has mastered many of the complexities of conventional and strategic warfare, and especially military manpower issues. He travels widely, but not on globe-trotting junkets. He led a five-nation Far Eastern trip late last year, and one of his companions, Sen. Cohen, recalls, "On the plane leaving Washington we were greeted by three large notebooks and didn't stop working until we came home."

Sen. Nunn's most tangible success followed months of scrutiny in 1976 of NATO's conventional-force capabilities in light of the big buildup by the Russian in Eastern Europe. Mr. Nunn and his allies moved to actually trim some costs, while at the same time bolstering the fighting forces. It resulted in modernizing equipment, shifting forces to more strategically located positions and changing 19,000 troops from support positions to combat status. "Sam Nunn's work here was seminal," notes Robert Komer, a top aide to Defense Secretary Harold Brown.

SELECTIVE CRITICISM

He has assailed the taxpayer-subsidized military commissaries and the "top-heavy" concentration of generals and admirals. But he is selective. Despite budget-balancing rhetoric, for example, he voids criticizing the generous military persons; Georgia is full of retired military men.

He is opening an inquiry into the volunteer army. There's little doubt now he feels: "I am absolutely convinced it isn't working," he says in an interview. He raises the possibility of a new draft, "with no college deferments this time."

In foreign affairs, he is spending most of his time lately on the Pacific and U.S.-Soviet relations. He opposes U.S. troop withdrawals from South Korea but backs normalization with China as a "long-term stabilizing" move to counter the Soviet threat.

Sen. Nunn thinks that threat is real. A few months ago, he visited Russia with 11 other Senators and frequently became the focal point of discusions with Soviet officials. "Sam was the one person in our delegation who had the knowledge to take on the Soviets on military matters, and it got to them," another participant observes. "They tried to blow him over by getting mad and questioning his facts. But he calmly and cogently discussed, in detail, their buildup in strategic weapons and conventional forces and backed them down. He really won the respect of the other Senators and, I suspect, the Soviets too."

SOVIET SUPREMACY?

The Georgia Democrat views the coming SALT debate as an opportunity to examine these military balance-of-power issues. "We have to decide—and I think the time is now—whether we want to live in a world where the Soviet have a clear military advantage."

That, of course, is a loaded proposition, but Sen. Nunn thinks that's where the recent trend is headed and it must be reversed. Thus, with or without a treaty, he argues for an escalation of U.S. defense spending and an expeditious development of weapons systems such as deployment of the MX inter-

continental ballistic missile. "For a long time, we hoped unilateral restraint would work; it hasn't," he asserts.

Moreover, he sees a favorable political climate here. One of the stronger arguments for SALT I (in 1972), he contends, was that in the midst of Vietnam "there was an aversion to all things military. Today, however, that's changed, and there is an opportunity to gain real strategic momentum," he believes.

On SALT II, Sen. Nunn is bothered by some of the specifics, including the vulnerability of U.S. land-based missiles and adequately verifying Soviet compliance. But an even greater concern, he charges, is the process of the negotiations. The U.S., he claims, hasn't any "clearly defined SALT goals" or any overall "arms-control philosophy." By contrast, he thinks the Soviets "plan their long-range strategic forces and then negotiate an agreement." Thus, in the Nunn view, the Soviets' "strategic programs drive their SALT negotiators, while our SALT-negotiators drive our strategic programs."

SALT III PREPARATIONS

This is more than an academic debate; Sen. Nunn hopes to use this contention to influence U.S. policy as it enters what he thinks is the far more crucial arms-limitation phase of any SALT III.

From this rhetoric, it's easy to conclude Sen. Nunn will oppose the coming treaty. SALT opponents confidently predict so, and he says he has told President Carter he has "real apprehensions" about the treaty.

But Sen. Nunn isn't that simple to figure. He also praises the goal of long-term arms control and admits, "The consequences of rejecting a SALT treaty (in that vein) aren't to be underestimated." It could, he says, "magnify the existing Soviet tendency towards imperialistic paranoia." Further, any resulting big increase in strategic spending could slight outlays for conventional forces, he acknowledges. And as a proponent of a strong NATO, he worries about the impact on European allies, most of whom are in SALT.

PIVOTAL ROLE

Whatever he does, the Georgian's acts will be pivotal. This includes seeking better rate commitments for defense buildups even with SALT II, and the delicate possibility of altering parts of the treaty.

Especially critical will be the effect his stance will have on a half-dozen or so Southern Democrats. "If Sam Nunn goes for SALT, it will provide an umbrella for other Southerners," one knowledgeable Senate source predicts. And no matter how partisan the issue, several Republicans are likely to look to the Georgia Democrat for guidance, too. "Sam Nunn probably carries more weight with our guys on this issue than anybody on the other side of the aisle," says a top GOP Senate strategist.

Other important Senators on the issue include Majority Leader Robert Byrd of West Virginia, without whose support a SALT treaty may not even come to a vote, Armed Services Committee Chairman Stennis whose views and role in the fight are uncertain; Democratic Sen. Henry Jackson of Washington, the leading anti-Soviet arms expert in the Senate and a likely foe, and Sen. Howard Baker of Tennessee, the politically savvy minority leader.

"I can envision winning SALT without Jackson and possibly even without Baker," muses a White House strategist. "But without Nunn, we're dead."

DEVELOPMENT OF ENERGY RESOURCES

Mr. WALLOP. Mr. President, the problems associated with the rapid development of energy resources to meet national needs have gained national attention. Newspapers, magazines, and the television networks have shown the American people the environmental and human price which impacted communities are paying to keep their homes and to keep their businesses operating.

Few analysts dare to actually look ahead to determine the additional impacts and the capital shortfall which these communities are expected to experience in the coming years. The drive for energy independence is far from peaking. The lessons of Rock Springs, and Gillette, Wyo., and of Craig, Colo. cannot be dismissed as passing flukes. Should we fail to address these problems now, they will be remembered not as historic disgraces, but as unheeded harbingers to an insensitive country.

Signed contracts for Wyoming coal indicate that demands will triple in the next 4 years to 136 million tons in 1983. Wyoming is now the leading uranium producing State, yet a 215-fold increase is expected in the next 4 years. Additional powerplants, refineries, and synthetic fuel plants may also be in our future.

Mr. President, Stuart/Nichols Associates, under contract to the Old West Regional Commission, has recently reported on the capital shortfall expected to be experienced in nine energy-impacted counties in Wyoming between now and 1985. They conclude that the total capital needs of the nine county area will be approximately $340 million from 1978–79 through 1984–85. Of that total, there is a projected capital shortfall of between $30 million and $40 million in the nine-county area alone.

Congress will soon consider a previously unused mechanism to help alleviate the impacts caused by energy development on Federal lands and of Federal mineral interests. The mineral development impact relief loan program authorized by section 317(c) of the Federal Land Management and Policy Act of 1976, would provide an advance of Federal mineral royalties to which the State is expected to be entitled over the next 10 years. I addressed the unique nature of the impact problem by making funds available early, when the demands are greatest but the tax base of the locality is only beginning to develop. As the development matures, and the tax base grows, the loan is repaid with interest.

Mr. President, the Senate Committee on Energy and Natural Resources has recommended that this program be fully budgeted at its $50 million authorization.

I encourage my colleagues on the Senate Budget Committee to review the Energy Committee's recommendation with favor. No one pretends that the impact relief loan program will begin to solve all the capital shortfall problems of energy impact in the West, but it represents a necessary, equitable, and immediate first step.

Regulations to implement the program were promulgated on December 11, 1978. What is lacking now is only our collective will to recognize the problems and our obligation, to deal with them.

Mr. President, I ask that the summary of the Stuart/Nichols study be printed in the RECORD.

There being no objection, the summary of the Stuart/Nichols study be RECORD, as follows:

ANALYSIS OF ENERGY IMPACTS FROM 1978–79 THROUGH 1984–85 ON NINE COUNTIES OF WYOMING

This report briefly summarizes the facts gathered and general observations made in nine counties that constitute the major portion of Wyoming's energy impact areas (Fremont, Natrona, and Sheridan Counties were not included). It is based on studies of municipal and county governments and school districts that were recently completed by Stuart/Nichols Associates under contract to the Old West Regional Commission. This report discusses new capital facilities, funding of those facilities, and changes in government services that can be expected with projected population increases. All figures reflect a 7 percent per year inflation rate after 1978.

SUMMARY

In the nine-county study area, capital needs from 1978–79 through 1984–85 total approximately $340 million. Of this total, approximately $75 million has been funded, a maximum of $75 million can be funded from local bond issues, and the balance of $190 million must be funded from other sources or go unmet. State and federal programs can provide approximately $160 million through 1984–85 to meet these needs, but the delayed availability and the inadequate amounts of those funds will mean delays and cancellations in projected capital programs of the local governments studied. Major operating problems of impacted local governments include the need for improved local management, increased employee training and reduced turnover, expanded human services, and improved intergovernmental cooperation to deal with impacts.

COAL PRODUCTION AND POPULATION TRENDS

In the nine counties, we projected coal production to increase 160 percent, from 60 million tons per year in 1978 to 155 million tons per year in 1985; and total population to increase 29 percent, from 142,220 in 1978 to 183,210 in 1985, as follows:

County	Coal production[1,2]		Total population[2]	
	1978	1985	1978	1985
Campbell	28.4	113.5	24,750	36,550
Carbon	11.9	14.2	22,730	29,435
Converse	3.1	3.1	11,700	15,170
Crook			5,400	6,960
Johnson			6,800	8,910
Lincoln	5.0	7.0	11,200	14,040
Sweetwater	12.0	13.9	41,990	49,025
Uinta		3.0	10,150	13,460
Weston			7,500	9,660
Total (9 counties)	60.4	154.7	142,220	183,210

[1] Million tons per year.
[2] Estimates by Stuart/Nichols Associates, October 1973.

CAPITAL NEEDS AND FINANCING

Construction of new capital facilities and changes in government services will be required to accommodate population increases. Specific capital needs from 1978–79 through 1984–85 for the county and municipal governments and school districts in the nine-county area have been estimated to total $297 million, of which $72 million have been funded. The following breakdown of specific needs gives some insight to the nature and importance of total capital expenditures that have been projected.

Total projected needs 1978–79 through 1984–85

Description	*Million*
Schools	$88
Water	49
Municipal and County Roads	34
Vehicles and Equipment	33

Description	Million
Health and Hospitals	$22
Sewer	18
Buildings (Admin., Police, Fire)	16
Airports	15
Parks and Recreation	13
Other	9
9 County total	297

Some areas of the State will be better able to finance these projects locally than others, depending on the relative magnitude of the expenditures and the tax base of the area. The next table summarizes total identified capital needs, total unfunded capital needs, and capital needs in excess of general obligation bond capacity. The table indicates that after allowing for local government bonding to legal limits, the largest remaining capital requirements will be in Carbon County, and that substantial outside funding will be needed also in Campbell, Unita, Sweetwater, and Converse Counties.

SUMMARY TABLE FOR 1978-79 THROUGH 1984-85

[In millions of dollars]

County	Total identified capital needs	Total unfunded capital needs	Unfunded needs in excess of unused local bond capacity [1]
Carbon	64	47	23
Campbell	78	54	18
Unita	21	21	17
Sweetwater	44	31	17
Converse	42	34	17
Weston	13	10	8
Johnson	15	12	7
Lincoln	13	10	4
Crook	7	6	2
Total	297	225	113

[1] Does not include water facility projects, which are not subject to legal debt limits. Water projects total $13,500,000 in Carbon County, $2,700,000 in Lincoln County, and less than $500,000 in the other areas ($17,800,000 for the 9-county area).

It is not realistic to assume that all local governments will issue general obligation bonds up to their legal limits. Although school districts can generally be expected to bonds themselves to the maximum, only about 40% of the counties' needs can be appropriately financed with debt since major requirements are for equipment and vehicle purchases, and on-going development projects. Debt financing will also be limited for municipalities, because the municipalities that face the largest capital expenditures will have trouble funding their normal operating budgets, and cannot also support large debt service costs.

[In millions of dollars]

	Total unfunded capital needs	Available excess debt capacity	Estimated use of debt capacity	Estimated demand for outside funding
Counties (9)	62	30	25	37
Municipalities (32)	112	42	10	102
School districts (15)	51	40	40	11
Total	225	112	75	150

Several additional projects were identified in the nine-county area, but preliminary information was inadequate to include in the above analysis. The estimated total cost of these projects is $40 million which increases the total identified capital needs from $297 million to about $340 million, and the demand for outside funding from $150 million to $190 million. In addition, substantial demands can also be expected from the impact areas of Fremont, Natrona, and Sheridan Counties.

The two major sources of funds currently earmarked by the State for local impact assistance are a portion of the state severance tax, and a portion of Federal Mineral Royalties. Of the $1.1 billion in state severance taxes projected for collection from the nine-county area from 1978-79 through 1984-85, $125 million will be collected as the Coal Impact Tax before it expires January 1, 1985; and approximately $5 million from the Coal Impact Tax will be collected from the balance of the State. Of the projected $110 million in royalties to be collected by the federal government on Wyoming mineral production, about $4 million will be available to fund local capital projects (under the State Government Royalty Impact Assistance Act), while an additional $4 million will be distributed automatically under a statutory formula to all municipalities in Wyoming. In total, approximately $130 million will be available through the Wyoming Farm Loan Board between 1978-79 and 1984-85 to fund local capital facility needs. There will be a shortage of funds in the early years, however, because by mid-1980 over 50% of the capital facilities will be needed while only 20% of the projected revenues will be available.

Wyoming local governments will also be able to obtain additional funds from federal programs, particularly the following: 1) Water systems grants and loans from the Farmers' Home Administration (USDA); 2) Sewer grants from the Environmental Protection Agency; 3) Airport grants from the Federal Aviation Administration; and 4) Federal recreation grants through the Wyoming Outdoor Recreation Commission. A realistic estimate of future federal funding based on past willingness and ability to fund Wyoming projects is $20 to $30 million through 1984-1985, although optimistically over $50 million might be available.

From both existing state and federal programs, impacted Wyoming local governments should be able to draw from a total of $150 million to $160 million in financial assistance, leaving a capital shortfall of about $30 million to $40 million in the nine-county area alone.

APPOINTMENTS BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to 10 U.S.C. 6968(a), appoints the following Senators to the Board of Visitors of the U.S. Naval Academy: the Senator from Maryland (Mr. SARBANES) (at large), the Senator from Tennessee (Mr. SASSER) (Appropriations), the Senator from Texas (Mr. TOWER) (Armed Services), and the Senator from Maryland (Mr. MATHIAS) (Appropriations).

PORTRAITS OF GEORGE AND MARTHA WASHINGTON

Mr. MORGAN. Mr. President, this morning's Washington Post gave a great deal of attention to the fact that the Smithsonian has been negotiating with the Athenaeum in Boston for the purchase of the Gilbert Stuart portraits of George and Martha Washington. They have been the property of the Athenaeum, which is a library, since 1831, but have hung on loan in the Boston museum for over 100 years. They are particularly significant in that they are the only Gilbert Stuart portraits for which the first President and his wife actually sat. All the others which Stuart produced during his rather prolific career were in effect copies of these, including the one which hangs in room S-207, just off the Senate Chamber.

It is no wonder, then, that the people of Boston and the entire State of Massachusetts are concerned that these portraits of great artistic and historical significance might be leaving and that a hue and cry has gone up to keep George and Martha Washington in Boston. Were they hanging in the North Carolina State Museum, I would feel the same way and would do all within my power to see that they stayed there.

But why do I rise to speak on this matter this afternoon? The answer is this: I now serve on the Board of Regents of the Smithsonian as a representative of this body, have been involved in the discussions related to the possible purchase of the portraits and would like to set the record straight as to the role of the Smithsonian in this matter. I am particularly eager that my distinguished colleague from Massachusetts, Mr. KENNEDY, understand what has transpired since the article bearing his signature in the Washington Post today does make one assumption which is incorrect and might tend to affect his relationship with the Smithsonian and perhaps cause concern among some of our colleagues. I note the article attributed to Senator KENNEDY implies that the leadership of the Smithsonian on their own initiative decided the Smithsonian National Portrait Gallery should have the Gilbert Stuarts and went to Boston with a pocketful of cash and made the Athenaeum an offer which it could not resist.

This is not the case at all, and I would like the RECORD to show that.

The fact is that the Athenaeum found itself in severe financial trouble and decided that the only way to solve its money problems was to dispose of the Gilbert Stuart portraits which are hanging in the Boston Museum. They first offered to sell the portraits to the Boston Museum because for many reasons, including some legal complications, they desired to see the portraits remain in Boston and the State of Massachusetts.

However, the Boston Museum could not meet the asking price which originally was some $6 million; and, at that point, officials of the Athenaeum contacted officials at the Smithsonian. Please note: The Athenaeum called the Smithsonian; the Smithsonian did not call the Athenaeum.

Subsequently, the matter of the offer was brought before the Board of Regents and we discussed the offer at some length. Frankly, to a member I think, we believed the asking price was too high and we asked Smithsonian officials to negotiate for a more reasonable price. At the same time we considered the fact that though we did not have the money in hand for such a purchase, we would try to get the resources together. We decided to do so even if it required payments over a period of years in order to see that the portraits stayed in the public domain, which was a main concern of the Athenaeum and the reason Athe-

naeum personnel stated they initiated the negotiations with the Smithsonian.

We started negotiations but, unfortunately, it was not long before we were contacted from Boston and advised that the Athenaeum had received an offer, and perhaps more than one offer, for $5 million and that although officials of the Athenaeum desired that the portraits go to the National Portrait Gallery, they might have to accept an offer from another source unles we could make a firm offer immediately of at least that amount. We also were led to believe that if we did not come up with the $5 million the portraits might well go into a private gallery such as the Getty Museum in California, far from either the National's Capital or Boston, the center of so much colonial history.

At that point we reconsidered, decided to arrange the financing and make a firm offer. I believe this offer was much to the relief of Athenaeum officials who feared they would be forced otherwise to see the portraits lost forever to the American public. I assure my colleagues whom I represent on the Board of Regents of the Smithsonian that the Smithsonian does not have this sort of money burning a hole in its pocket as the article stated and that if the purchase is made, it will require financial sacrifices by the Smithsonian. However, we felt that the portraits are so unique in both an artistic and historical sense, that we must somehow find the money for the purchase.

Those of you here know that I am a fiscal conservative and I approach my duties at the Smithsonian, as your representative on the Board of Regents, from this viewpoint. I have been impressed by the present dedication of Smithsonian officials to sound financial practices and to correcting misimpressions which any Member of the Congress might have received in the past. For this reason, I would not want a misunderstanding of the facts surrounding the negotiations for the Gilbert Stuart portraits to raise unwarranted concerns among my colleagues.

I, for one, would be delighted if the people of Boston could raise the money to purchase the portraits and keep them hanging in the Boston Museum. And I am sure that the other members of the Board of Regents probably share this sentiment, as do officials of the Smithsonian.

We do not covet these portraits and did not set about to entice George and Martha to move their residence to Washington. However, if because of financial problems they must be sold and the moneys cannot be found in the Boston area for their purchase, they could find no more fitting home than the National Portrait Gallery.

The Board of Regents already has indicated it will make every effort to arrange financing for and negotiate their purchase. The purchase price will not come from tax moneys or appropriations from the Congress. It will come from trust funds and possibly private contributions, pointing up, I might add, the clear need to have some unrestricted trust moneys on hand for such emergency purchases by the Smithsonian.

Thank you very much for allowing me time for these comments. I hope that in some way I have been able to clarify the sequence of events and assure you of the honorable intentions of the Smithsonian.

And to that end, Mr. President, I ask unanimous consent that the article appearing in today's Washington Post entitled "They Belong in Washington," along with the article by my colleague, Senator KENNEDY, entitled "They Shouldn't Leave Boston," be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Washington Post, Apr. 9, 1979]

THEY BELONG IN WASHINGTON

(By Marvin Sadik)

That the citizens of Boston should be concerned about the relocation of the Athenaeum portraits from their city to the nation's capital is an attitude that I can appreciate. After all, I have made no secret of my belief that these paintings of George and Martha Washington by Gilbert Stuart are the greatest of all American historical portraits. It is, however, for the very reason that these portraits *are* what they are that I am convinced they justly belong in the National Portrait Gallery in Washington.

Stuart never parted with these portraits, which he painted in 1796, although he made a considerable number of replicas of the George Washington painting, which has become the most familiar image of the Founding Father of our country. In 1831, three years after the artist's death in Boston, the orginal portraits were acquired from his widow and daughter for the Athenaeum. The two pictures were bought for $1,500, of which $800 remained from funds collected by the Washington Monument Association for a statue of the nation's first president, dedicated in the Massachusetts statehouse in 1827; and $700 came from a group of gentlemen, some of whom belonged both to the Athenaeum and the Washington Monument Association. The portraits have been on loan from the Athenaeum to the Boston Museum since 1876.

At the time Stuart's widow sold the portraits, there was no national repository for historically significant likenesses. The National Portrait Gallery, established by act of Congress in 1962 as a bureau of the Smithsonian Institution, opened to the public in the fall of 1968. The gallery has annually held major exhibitions on a wide range of American historical topics, each accompanied by a full-scale publication; has built, through gift and purchase (with both federal and private funds) a permanent collection, which now consists of nearly 2,000 portraits; and has attracted an ever-increasing number of visitors, from 85,000 in its first year to nearly half a million last year. However, there is no doubt that the gallery suffers from the lack of many portraits of nationally significant persons that would have come to it had it been established nearer in time to the founding of the republic. Of these, the Athenaeum portraits unquestionably are preeminent.

During the 14 months that have elapsed since negotiations between the Boston Athenaeum and the National Portrait Gallery began, the Boston Museum has been kept fully apprised of the matter through its president, Dr. Howard Johnson. The board of the Boston Athenaeum, the regents of the Smithsonian Institution and the members of the National Portrait Gallery Commission, as a part of their agreement concerning the Athenaeum portraits, have made provisions to lend the portraits back to Massachusetts (with primary consideration to be given to the Boston Museum); and it is our understanding that these arrangements are acceptable to Dr. Johnson and the members of the executive committee of the board of the Boston Museum.

When the portraits are relinquished to the nation's capital, nothing that is uniquely the patrimony of Boston will be surrendered. The Athenaeum portraits were not painted in Boston, but rather where the subjects resided in 1796 when Washington was in his second term as president, in Philadelphia, then the temporary capital of the United States. Washington's greatest moment in Boston, his defense of the city during the American Revolution, was fittingly commemorated in a full-length portrait entitled "Washington at Dorchester Heights," which Gilbert Stuart painted expressly for the city of Boston.

This immense canvas, which hung for 71 years in Faneuil Hall, has, like the Athenaeum portraits, been displayed since 1876 in the Boston Museum.

It is not only Boston's history as the scene of momentous and sacred events that lends the Athenaeum portraits their towering significance. History makes similar claims for Trenton, or Yorktown, or New York, or Philadelphia or Virginia. Rather, it is the whole of the American tradition that invests these portraits with meaning. It was precisely to encompass all such ties that the national capital was established. It seems to me ineluctably right that these precious icons should at long last reside in the National Portrait Gallery, which occupies the very site L'Enfant in his original plan for the city designated for a Pantheon to honor the nation's immortals. Here the portraits will be displayed two blocks from the National Archives, where the only other American treasures of comparable significance, the Declaration of Independence and the Constitution of the United States, are enshrined—in the nation's capital, the city of Washington.

THEY SHOULDN'T LEAVE BOSTON

(By EDWARD M. KENNEDY)

This is the first time I have ever been asked to defend Martha and George Washington.

It would be a tragedy for the artistic heritage of Massachusetts if the Smithsonian wins the current tug of war and Gilbert Stuart's famous paintings are brought to the District of Columbia from the Museum of Fine Arts in Boston.

Fortunately, though, a concerned public is beginning to stir in Massachusetts. If the courts don't block the sale, public officials and private citizens in the state are likely to find a way to match the Smithsonian's $5 million offer and keep the paintings home.

I am strongly opposed to the transfer. Boston should no more be asked to give up its magnificent Stuart portraits than Philadelphia should be asked to give up the Liberty Bell. That the Smithsonian has this sort of money burning a hole in its pocket should certainly be of interest to the congressional appropriations committees that oversee its budget.

One of the great strengths of the arts in America is that fine works of art are found in communities in every section of the nation. Few paintings are better known to the people of Boston or are a source of greater pride than the Stuart portraits.

One of my earliest memories is of sitting on my grandfather's shoulders at the Museum of Fine Arts, looking straight into the eyes of President Washington and savoring tales I was being told. Honey Fitz, my mother's father, had been a congressman and mayor of the city, and he loved to take his grandchildren on Sunday afternoon outings to the city's museums and famous sites. As a patron of both the Athenaeum and the Museum of Fine Arts, he knew their collections well. He used to stop in front of the Stuart

portraits and other historical paintings he loved, and give me some of the most enjoyable history lessons I ever had. And so, for purely personal and sentimental considerations, I don't think the portraits should leave Boston.

Another reason that Martha and George should not be brought to Washington is that they probably wouldn't like it here. One can imagine a conversation the portraits might be having with each other in the hours after the Boston Museum closed.

George would, of course, express pleasure that a city had been named after him, and he would surely be impressed by the sum—$5 million—the Smithsonian was prepared to pay. But the telling arguments would be Martha's, who would point out quietly but firmly that no one has a kind word for the city of Washington any more, and that the two of them would be far better off keeping their distance from their namesake. Most persuasively, she would remind him that Boston has been their home for almost 150 years—good years—and that it would be a show of unpardonable disloyalty to leave that city, no matter how good the money.

At the word "disloyalty," George would stiffen, conceding that his wife had made the decisive point.

THE CASE FOR A MASSIVE TAX CUT

Mr. JEPSEN. Mr. President, I am proud to be a cosponsor of the famous Roth-Kemp bill, which would cut individual income tax rates by one-third.

I believe that the case for such a massive tax cut is very strong. It would offset the huge tax increase resulting from inflation as it pushes taxpayers up into higher tax brackets, and it would restore incentive to our economy, creating jobs and real economic growth.

Recently, Prof. Irving Kristol of New York University summarized the arguments in favor of the Roth-Kemp bill in an article for the April issue of Reader's Digest. This is an excellent article and I commend it to my colleagues.

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:

THE CASE FOR A MASSIVE TAX CUT

Last year when I offered a young woman her first job, the pay was a modest $9500 a year. But with no family obligations she saw no reason why she should have trouble living on $183 a week, even in New York City. Her disillusionment was swift. Her first paycheck came to $138. Surely there had been a mistake, she inquired in bewilderment. There had been no mistake. It was merely her first encounter with the wedge that taxes drive between wages and what has come to be known as "take-home pay."

Over the past ten years more and more Americans have become aware of that wedge. This awareness has bred a spirit of frustration, indignation and rebelliousness. The passage of Proposition 13, a revolt against high property taxes in California last year, was only one sign of this spirit. Legislation to limit taxes and/or spending is pending in virtually every state. And almost every Congressman now swears his adherence to tax cuts.

It sounds hopeful for the harassed taxpayer. But the fact is that even though Congress is not going to increase our income taxes in the foreseeable future, we will nevertheless be paying a greater percentage of our income to Washington.

Why? Part of the answer lies in the sharply increased Social Security taxes levied by Congress. But the real culprit is inflation—the most insidious "tax" of all. More specifically, it is the unholy alliance between inflation and the progressive income tax which pushes us into higher tax brackets as our incomes increase. The key ingredient is the "marginal tax rate"—the tax you will pay on every dollar you earn above your present level of income.

The young woman I hired last year was paying income tax at the marginal rate of about 30 percent. Had I given her a $600 raise, over $200 would have been deducted for taxes—federal (including Social Security), state and city. Had she been making $14,000 a year and I had given her a raise of $1000, over $400—or nearly *half*—would have been deducted.

This level of taxation used to be reserved for the "rich." Yet many Americans are in this bracket today. Every time a salary is raised, or a spouse goes to work to help cope with inflation, there is movement into a higher tax bracket, with higher marginal tax rates. And, as your income increases, your standard of living nevertheless seems to stand still, or even decline.

It's this situation that has given rise to the tax rebellion exemplified by Proposition 13. Unfortunately, the publicity of that remarkable event obscured the fact that *another* tax rebellion was already under way.

This other rebellion is known as "Kemp-Roth," after legislation first introduced in 1977, re-introduced in 1978, and, in modified form, again last January by Rep. Jack Kemp (R., N.Y.) and Sen. William Roth (R., Del.). Their bill would reduce federal income-tax *rates* by about 30 percent over a three-year period and "inflation proof" the tax law by tying tax rates to the rate of inflation. Note the emphasis on tax *rates*. For while Kemp-Roth would in fact cut our income taxes by 30 percent over those three years, its more significant purpose is to cut our *future* taxes as the economy grows and most of us move into higher income brackets.

The goal of Kemp-Roth is not simply tax relief. It proposes to *encourage economic growth* by assuring us that, as we earn more money, we will not simultaneously experience those prohibitive marginal tax rates by which the government takes 50 percent or more of the additional income. Another provision of the bill would slow the rate of growth of federal spending—from 21 percent of the gross national product in fiscal 1980 to 18 percent in 1983.

Unlike Proposition 13, Kemp-Roth was not based on an outburst of indignation at high taxes. It is based on an economic theory propounded by a small group of academic economists (led by Profs. Arthur Laffer of the University of Southern California and Robert A. Mundell of Columbia University) and economic journalists (notably Jude Wanniski, formerly a writer for *The Wall Street Journal* and author of *The Way The World Works*).

At the root of their theory is the belief that the wealth of nations is created not only from natural resources, but also, and more importantly, by people responding to economic incentives, and that the poverty of nations is the result of a lack of these resources and of people being discouraged by a lack of incentives to realize their full potential. When we are urged to make money, only to discover that the government will permit us to keep less than half of it, we are disinclined to do so.

Although this theory seems elementary, modern economics, in its stress on macro-economics, ignores it completely. Marco-economic theory sees the economy as an interrelationship of statistical aggregates: capital investment, consumer spending, government revenues. Such aggregates, related by intricate mathematical formulas and fed into a computer, would enable us to tell in which direction the economy is moving—if they adequately took into account individual (micro-economic) incentives. But they don't. It is through such a defective macro-economic telescope that the Council of Economic Advisers and the U.S. Treasury see the American economy, and it is on the basis of what they see that they formulate government policy.

Thus, government economists can try to predict how much revenues will increase if income-tax rates are increased; but they cannot tell you how much potential revenue will have been lost as a result of the economic activity that does not take place because of increased tax rates. It is to this lost potential that the Kemp-Roth tax cut addresses itself. It aims not merely to make our tax burden lighter but also (even primarily) to encourage our economic growth by providing us with incentives to work harder, save more, invest more.

Economist Norman Ture agrees with this thesis, and he says that the impact of the Kemp-Roth tax cut would be huge—and would begin the same year as enactment.

Using a computerized "econometric model," Ture says that Kemp-Roth would create 2.1 million new jobs in the first year and 5.6 million ten years hence. These employment gains would be accompanied by sharp increases in productivity and real wage rates: within a year, the average worker would be making $930 more (in constant 1977 dollars) than now projected.

Private investment would increase by $90 billion in the first year and $166 billion a decade later, compared with the investment that would otherwise occur. All this would add to a quantum jump in the gross national product, says Ture—up $175 billion in just the first year and $450 billion within a decade. As a result, federal tax receipts would fall much less than the drastic cuts in rates might suggest.

The historical evidence for a critical relationship between tax rates and economic growth seems to me to be extremely convincing. Many scholars have suggested that the Roman Empire of antiquity, the Islamic Empire of the Middle Ages, the Spanish Empire of the 16th century, all declined with tax systems that stifled the incentive for economic growth. More recently, the Kennedy-Johnson tax cuts of 1964 contributed to a substantial reduction in the unemployment rate and several years of real prosperity before Vietnam expenditures and too rapid monetary expansion got us into inflation.

Pehaps the neatest illustration of what lower tax rates can do for economic growth is provided by the Soviet Union. There, farmers on collective farms must deliver 90 percent of what they produce to the state—in effect, a 90-percent tax. However, they are also permitted to have small private plots on which they can grow food either for themselves or to sell. These plots constitute one percent of the total cultivated land of the U.S.S.R. Yet they produce 27 percent of that nation's agricultural output.

So, to me, the question is not whether or not Kemp-Roth will work. I believe it will encourage economic growth. The controversy as I see it is over the degree to which it will work. At the heart of this controversy is "the Laffer curve"—a bold economic idea formulated by Arthur Laffer.

Obviously, a massive cut in tax rates would seem to mean a shrinkage in government revenues, in turn requiring a substantial cut in government programs and services—or a substantially bigger deficit—unless the tax base of the economy increased. While supporters of Kemp-Roth are aware that many programs and services are wasteful or ineffectual, they also know that efforts to cut back on them will provoke powerful opposition from beneficiaries. Hence, while the bill would restrain the rate of growth of federal spending to less than seven percent a year, the limitations would not require Draconian

slashes in government programs. And it would be left to Congress to decide the relative priorities of any spending program.

For the Laffer curve tells us that we need not attempt any massive cut in government spending—simply slowing down the growth of spending will suffice. I believe a cut in tax rates will generate more jobs, greater economic activity and an expanded tax base which, in several years' time, will yield the same or more revenues, even with lower tax rates. There may be a time lag, but experience suggests that it would be short, and there is never any real problem in financing a deficit that is known to be temporary.

Indeed, in our own lifetimes we have seen this. There have been almost a dozen tax cuts in the United States since 1946, and in each case government tax receipts have increased within a year or two, and in no case have these tax cuts prevented continuing growth in federal tax revenues. For example, in 1963, the Treasury predicted a loss in government revenue of $69 billion over six years, presumably at the existing level of income. However, what emerged was an increase in tax revenues of $54 billion as the result of the enlarged tax base that the tax cut (as well as inflation) produced.

In contrast, when we increased the tax on capital gains in 1969, government revenues from this tax declined steadily. As Representative Kemp likes to note, "If you tax something, you get less of it. If you subsidize something, you get more of it. In America, we tax work, growth, investment, employment, savings and productivity while subsidizing nonwork, consumption, welfare and debt."

The opponents of Kemp-Roth have been shaken by such arguments—but not to the point of throwing in the towel. Even if total tax revenue goes up, liberal opponents dislike the idea of the government ending up with a smaller share of our national income. And some conservative opponents think it is irresponsible to cut taxes when the budget is unbalanced. The latter insist that cuts in government spending must come first. They have been insisting on this for over three decades now, with no notable effect.

The odd thing is that regardless of how the dispute over Kemp-Roth turns out, we probably will get so-called tax cuts in the years ahead. Inflation will continue to push us into higher tax brackets. The American people will make their resentment known to their elected representatives, who will move to cut taxes. But the cuts will be nominal, and we shall be lucky if they even partially compensate us for the effects of inflation.

The real issue, therefore, is whether to cut taxes minimally and belatedly as a reaction to popular resentment, or whether to cut tax rates massively now to stimulate the kind of economic growth that will curb inflation, and increase government revenues to balance government expenditures. That is the choice we must make.

WHY CARRYOVER BASIS SHOULD BE REPEALED

Mr. JEPSEN. Mr. President, I was recently privileged to testify before the Senate Finance Committee in favor of repealing the carryover basis provisions of the Tax Reform Act of 1976, which have been suspended until the end of this year.

At this time I was joined by many distinguished legal experts who argued persuasively that carryover basis is inequitable, unworkable, and ought to be repealed.

Among those who testified against carryover basis was Mr. Arley Wilson of Marshalltown, Iowa, representing the Iowa State Bar Association. Mr. Wilson is one of Iowa's leading probate lawyers, who knows from firsthand experience the problems with carryover basis. In his testimony he raised many issues regarding carryover basis which have not been raised by others. Among these is the problem of negative basis.

I would like to bring Mr. Wilson's testimony to the attention of my colleagues and I ask unanimous consent that it be printed in the RECORD.

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

COMMENTS ON CARRYOVER BASIS

(By Arley J. Wilson)

First, may I express the appreciation of the Iowa Bar Association for the privilege of presenting the practical problems of the application of carryover basis (COB), from both the taxpayer's point of view and that of his attorney.

The practicing lawyer is no longer speaking from an academic, philosophical or hypothetical point of view. He has had 22 months of actual experience with COB before the blessing of moratorium became a reality.

During that 22-month period we have found that COB is not only unworkable in its present framework but is totally uncorrectable in its present concept and will remain uncorrectable until the proponents recognize where the problems really are and will admit the reality of the end result which will be reached ten years from now.

The representations of the proponents of COB are not only hypothetical but worse they are scarcely believable. What they haven't told you or the practical application of which they may have misunderstood, is of even greater impact.

For instance—

1. COB has been referred to as a tax on capital gains at death. That is only a part of the story. It has become apparent in application that COB is in the rural community a tax on ordinary income as much as on capital gains, with even greater tax effect, such as

A. Raised crop, 0 basis.

B. Raised livestock, 0 basis.

MOSTLY MORTGAGED

I have seen no example by any proponent which has even recognized the existence of such type of income. The prime examples of the proponents are all addressed to stocks and bonds which receive a fresh start as of a fixed date, and a fixed value. This is not so with the application of COB to real estate and depreciable personal property used on the farm and small business. The longer the taxpayer owns the property, the less the basis, until eventually it becomes minimal.

2. Probably one of the less desirable representations is that euphemistically the tax is called a tax on appreciation when in reality it is a tax on inflation. Why not recognize the kind of tax this really is?

3. No attention has at any time been given as to how to handle negative basis. What is this critter no one wants to talk about?

Suppose I bought property in 1977 for $100,000. By 1987 the property is depreciated to $50,000. The so-called appreciated value in 1987 is $250,000 but I have borrowed on it $200,000 non-recourse. I die, giving the property to my child. The result—my child has property basis $50,000, mortgage due $200,000, value $250,000. If the child or my estate sells the property for $250,000 and pays maximum marginal tax on capital gains at 28 percent, the tax will be $56,000, the mortgage $200,000. The actual economic loss of $6,000 will occur. This realization event becomes intolerable when the public realizes what has happened. Now, even academically, can one make the assertion that this will free up capital at death?

While negative basis is not commonplace today, by 1987 with current rates of inflation, it will be an everyday event. One cannot help but ask one's self if estate planning of tomorrow will include a plan involving such a property where it will be recommended to borrow as much as possible and then leave the property to some person you don't like.

4. It has been said that this is a "once in a lifetime" settlement of accounts. Nothing could overlook the practical application more. The proposed settlement does not occur in the lifetime but after death, as a result the decedent is deprived of the lifetime benefits he would have if living such as—

(a) loss of exemptions;

(b) loss of zero bracket amount;

(c) loss of investment credit carryover;

(d) loss of net operating loss carryover;

(e) loss of income averaging benefits;

(f) loss of selectivity in both time to recognize gain and the property to be used to pay;

(g) loss of joint return rate schedule.

5. COB does not recognize the reality of the multiplicity of taxation occurring by virtue of the accident of death which are:

(a) Federal estate tax;

(b) Federal income tax for the decedent and for the estate;

(c) State death taxes;

(d) State income taxes for the decedent and for the estate which in total on an estate of $590,000 passing from father to son lead to a collective tax of up to 124%. This is the death knell to the right to inherit the family farm or family small business.

It has been urged that estate tax and income tax are two separate taxes and the results of the application of both taxes should be considered separately. This is as foolish as trying to deny the parenthood of only one siamese twin while claiming the other as your child.

Academically it may sound great, but the taxpayer is more pragmatic. He must pay all the tax regardless of the niceties of what kind it is or its source of origin.

6. With COB it is almost impossible to practically and legally give equal treatment to the heirs or residuary beneficiaries. Even though the relationship among the heirs is harmonious enough to permit the executor to make a non-prorata distribution, Rev. Rul. 69-486, 1969—2 C.B. 159 may recast the non-prorata distribution. The executor faces an impossible dilemma in an attempt to distribute property equitably with COB bearing no predictable relationship to current market value. If there is anything of substance to distribute, the family farm or family business must for safety reasons be distributed prorata and to say the least, this produces an awkward if not unworkable situation.

A simple example of the difficulty is that if John, father of two sons, had purchased an 80 acres when he returned from World War II for $150 an acre or $12,000 basis, and in 1974 he was able to purchase an adjoining 80 acres for $1,500 an acre or $120,000 and he died in 1978 and the value of each 80 acres was $3,000 an acre or $240,000 each, if he left one son the first 80 and the second son the remaining 80, he could not treat the sons equally because the basis of the first 80 purchased would be substantially less than the basis of the second 80 purchased and this exact value could not be well determined until the date of death of the testator.

7. It has been pretty well conceded by all persons of reason who have attempted practical application of COB that it is totally unworkable. Too little available information requires speculation. When adequate infor-

mation is available, identification of the property is equally speculative—which black cow?—which four-bottom plow?—which feed bunk?—the list could almost be unending.

One of the many unanswered problems not yet considered by the proponents is how do you apply COB in a section 351 tax-free incorporation of a small business or farm? As a practical matter the assets have been acquired at different times with different costs and varying levels of depreciation. It is impractical to have a different basis for each share of stock issued. Would this require multiple classes of stock—one representing the home 160—one for the acquired 80—one class for machinery—one class for breeding livestock? The administration and organization of such a vehicle would be preposterous.

Throughout this talk we have related our discussion to the small and medium-sized estate affecting the family farm and the family-operated business. We have not had too much experience with the multimillion dollar estate in our office. We as country lawyers are impressed with the fact that the House of Delegates at the mid-year meeting of the American Bar Association adopted unanimously a resolution approving the repeal of COB. We are further impressed by the fact that there was not one dissenting vote in the House of Delegates nor one voice raised in the defense of COB. Nothing can be more clear than the fact that the COB law as written in 1976 cannot be implemented nor can it be fairly administered by the service without great expense. It is equally clear after 22 months of hard work in trying to apply this law that it cannot be modified or patched up by any device yet suggested.

It is in fact a leaky boat with bad planking and every time one hole is patched and one leak is stopped, two more leaks appear. I have not yet met one practicing attorney in Iowa who believes that this law can be implemented or effectively repaired. That leaves us with two alternatives, one of which is to enact a limitation on the dollar amount you inherit in any event. If social engineering is to be the order of the day and there is to be a dollar limit on the right to inherit, let us have the courage to say so rather than ruin a perfectly workable tax system which predated the 76 act and not indulge ourselves in what Winston Churchill once labeled as terminological inexactitude. The other alternative is to completely repeal COB in its entire concept.

AMERICA UNDER SIEGE

Mr. JEPSEN. Mr. President, Mr. Anthony Harrigan recently delivered an interesting speech before the Institute for the Study of Comparative Politics and Ideologies at the University of Colorado entitled, "America Under Siege."

Mr. President, Mr. Harrigan raises some very interesting points about the world in which we, as Americans, find ourselves in. He argues that America is essentially surrounded by hostile ideologies, movements and governments. Among these is the Soviet bloc, which fears American power, the Third World, which is envious of our wealth, and from the anti-growth, anti-industrial ideologies which even infect our own Nation.

I think that Mr. Harrigan's remarks would be of interest to all Americans and I ask unanimous consent that they be printed in the RECORD.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

AMERICA UNDER SIEGE

(By Anthony Harrigan)

If we examine the world around us, we find a hostile environment for the United States with its special traditions and way of life. The power position of the United States, which safeguards American liberties and assures national survival, is deteriorating relative to its adversaries and competitors.

The Soviet threat is understood by the public, though the Executive and Congress have failed to strengthen America's security forces to the necessary degree. Other threats are less clearly perceived.

Neither the American government nor people seem to grasp the extent to which the United States is menanced by hostile political forces in the Third World.

These forces are envious of the wealth of America and jealous of America's traditional role as the industrial leader of the West. They demand massive wealth transfers to the Third World. Tragically, powerful elements in America's government, media and academic life, lacking faith in our country's institutions, are overcome with guilt because of our technological superiority and wealth, and insist that the United States do penance by agreeing to the wealth transfers demanded by the leaders of the Third World nations. Our government doesn't reject the pretence and arrogance of such demands.

American confidence has been eroded by defeats and withdrawals around the world and by concessions to hostile regimes of all sizes—from the Soviet Union to little Panama. We seem to have developed an appetite for humiliation.

We have another problem in that the deterioration of our strategic military power is paralleled by a decline in our industrial might. Our once formidable industrial machine is running down; much of our industrial infrastructure is antiquated. For years we have been told that we are in a mature post-industrial phase and can live on service industries. As a result, heavy industry has been neglected. Heavy industry counts in war and peace—in economic warfare and in armed conflict between nations. The Soviets understand this and drive for industrial as well as military supremacy—often with our misguided help.

In many ways, we are our own worst enemies. For example:

Our nation's strength is threatened because we have an anti-industrial craze or de-industrial ideology in this country, an anti-nuclear, anti-technological populism. We have a "small is beautiful" movement that would have America return to the cottage industries of the Middle Ages, to the windmill and waterwheel. We have enthusiasts for power systems that don't exist or that will be prohibitively expensive for years to come. We have anti-nuclear stormtroopers, who seek to shut down the nation's nuclear plants that were our salvation in recent winters.

These are a few of the problems we face in the United States, a few of the reasons why we are in peril. We have a poor perception of the threats we face and of the inadequacy of our response of those threats, whether the Soviet armaments drive or the campaign for de-industrialization of the United States. If we fail to appreciate these threats and or fail to respond to them—we soon will be unable to defend our liberties or the freedom of other countries in our civilization.

As a result of these various forces, we are under siege today as never before. We are under siege from the Soviets. We are under siege from the countries of the Third World which possess little capacity to create wealth but which have a huge appetite for the wealth produced by a dozen generations of Americans. We are under siege from elements in our own population that would have us accept an anti-industrial philosophy that would cost us our prosperity, well-being and, in the long run, our lives. Finally, we are under siege from economic competitors, who, sensing our current lack of industrial drive are determined to dominate our domestic markets—relying, at times, on the methods of economic warfare.

The grave problems we face at home and abroad serve as a reminder that no country is guaranteed permanent success in this world. The decline and fall of nations is a truth written on every page of history.

If we bear in mind the lessons of history, we will rebuild our national strength. We will drive to regain the military supremacy we enjoyed for two decades—and then lost. We will reject the concept of "distributive justice" at home and abroad. We won't accept the dwarfing of our nation, but will insist that our industrial machine be repaired and expanded, with access to abundant nuclear energy.

Unfortunately, the present leadership of the United States isn't engaged in any of these tasks. On the contrary, the Carter administration is 1) cutting back our defenses by rejecting new weapons systems and slashing naval construction 2) failing to stand up to the Soviets in its indirect conquest of key African territories 3) fawning upon hostile Third World countries in Africa and Asia 4) pursuing an anti-nuclear development program abroad that alienates such powerful friends and allies as West Germany and Brazil 5) bitterly opposes advanced nuclear energy development in the United States and 6) fails to alert the country to the decline in America's industrial power or arrest the intrusion into U.S. domestic markets of foreign competitors that have state-directed, guided or subsidized industries.

The Carter administration has a curious view of the threats to Western civilization. Its fiercest condemnation is directed against South Africa, Rhodesia and Chile, as though those nations posed grave threats to the security of the United States and its allies. The administration also goes out of its way to alienate a longtime ally, Brazil. In the various cases, the administration favors economic pressure, restrictions on transfers of technology, or political isolation because of disapproval of the country's domestic policies. The administration professes to give primacy to human rights concerns, but its human rights standard is unevenly applied. It is friendly with numerous one-party states and military dictatorships in Africa. It recognizes Red China while the Peking regime has seven million people in forced labor camps.

In a colossal error of judgment, the Carter administration seems determined to play the "China card" by helping Peking industrialize and gain authentic superpower status. Assistance to the Peking regime will create, in the words of V. H. Krulak, an economic "gargantua whose shadow will fall everywhere, with no palpable benefit to us in return."

This infatuation with a China strategy—devised without study of the long-range consequences to the United States—is evidence of the foolishness and irresponsibility of the Carter foreign policy. It isn't designed to cement ties with countries that are traditional friends or share America's values. It isn't designed to give the United States access to essential minerals or to protect permanent strategic interests. Rather it is an exercise in superficiality and political faddism

Indeed the administration can be charged with abandonment of American principles. Dr. Brzezinski, in an important essay in *Foreign Policy* in 1976 said that "Structural changes in the American way of doing things

become inevitable . . . Resist as it might, the American system is gradually compelled to accommodate itself to this emerging international context."

That conclusion runs against the American grain. The American people didn't yield their principles in earlier periods when the U.S. was challenged, when, for instance, the Axis powers appeared to represent the emerging international context. Nevertheless, Dr. Brzezinski and other senior administration policy planners clearly view the hostile nations of Afro-Asia and Latin America as representing the global wave of the future. It's a serious mistake, however, to imagine that sheer numbers are decisive in history.

North America is an island on this planet. Its population is numerically inferior to the explosive populations of Asia, Africa, South America, and the Indian sub-continent. But North America and Western Europe possess an enormous qualitative edge. Our part of the world has the capacity to defend itself, to overcome the human wave approach of the Third World, and to maintain and widen the distance between the advanced and the retarded nations.

To accomplish this end, however, requires will power and understanding. Americans must grasp the variety of threats that they face. The greatest threat is posed by the Soviet Union, which is powerfully armed and dedicated to the overthrow of the West. It also is capable of employing subversive warfare in all its forms—from support of terrorists to global political agitation on such issues as the neutron bomb.

Then there is the threat from the Third World, which is a threat in part, because some people in the West attribute a moral force or edge to those countries that they don't possess. To be sure, the Third World is not unmindful of the power of numbers—the impact of a human wave strategy. I call to your attention the statement of the late President Boumedienne of Algeria who said:

"Billions of human beings someday will leave the poor southern part of the world to erupt into the relatively accessible spaces of the rich northern hemisphere, looking for survival." This isn't an abstract issue for the United States for, as Richard L. Strout pointed out in the *Christian Science Monitor*, "the only place in the world where there is a direct land confrontation between the so-called 'first' world (affluent industrial nations) and the third world (high birth rate developing countries) is the U.S. and Mexico." This is a matter of profound demographic importance. While we hope that our Mexican neighbors will solve their problems and while we endeavor to assist them, we have to recognize that we face a potential Bangladesh on our national doorstep if the Mexican population crisis isn't solved. However, the discovery of immense oil reserves in Mexico may provide a solution to Mexico's economic problems and also prove a great boon to the United States.

These are a few of the external threats. The principal internal threats are failures of understanding and perception. A not inconsiderable group of Americans argue that the wealth of U.S. results in others' poverty. They preach the doctrine that Americans should voluntarily lower their standards in order that other countries raise theirs. It is urged that the U.S. turn away from nuclear power plants, steel mills and all the apparatus of industrialization and embrace a lifestyle of meditation retreats, personal growth groups, consciousness expansion, and exploration in interpersonal relationships. It is hard to believe, however, that the majority of Americans find such advice or social criticism logical or acceptable. The majority sees no merit in consuming less, in equalization—between nations and global regions—at the expense of America—in adopting the role of global egalitarians.

Moreover, as Prof. Paul Seabury has written in *The New Oxford Review*, it is "somewhat naive to think that a tutelary America counting on the force of its ethical example can, in acts of purification, render the rest of the world more pure (and better off)." It is to be doubted whether a small-is-beautiful America would help free men preserve their liberties. If America divested itself of its wealth, the divestiture dividend for the world's poor would be infinitesimal.

In classical times, Rome was an advanced society, possessed of organizational and military advantages such as our own possesses over the Third today, but the collapse of the Roman order—its communications, structures and policy, including its military power—didn't benefit mankind. On the contrary, it produced a truly Dark Age.

The type of thinking described here—a combination of Luddite machine-wrecking notions and hairshirt philosophy—indicates how far we have retreated psychologically from the high tide of victory in World War II and the early 20th century pride in our material and technological accomplishments. The inner retreat that these attitudes reveal match the real, external retreats in terms of national power.

The conscious, and occasionally openly expressed desire for Western inferiority on the part of the anti-national, anti-industrial types who are influential in making policy in the United States today indicates the true extent of our problem. National recovery depends on the total removal from government and other power centers of those who prefer that the United States seeks peace through weakness, de-industrialization, and inner retreat.

Our overall task is to view objectively the condition of our country and the environment in which it exists. The future is concealed from us. But we can't reasonably expect it to be as happy as the past if our national power is shaky, if our industrial machine is less than invincible, if we perpetuate myths about the prospects for peace and international cooperation, and if we are lacking in national will, drive and solidarity.

We have it in our power to be strong and free. The question is: do we have the will and the understanding to do what is necessary? Only time will tell.

DOT REGULATIONS ON ACCESSIBILITY

Mr. PROXMIRE. Mr. President, Transportation Secretary Adams has submitted the final regulations for the implementation of section 504 of the Rehabilitation Act of 1973 for review to the Department of Health, Education, and Welfare. While the actual detail of the regulations will not be available until they are published in the Federal Register, the summary of the regulations indicate that the Department of Transportation has opted for a wise and prudent course between the demands of our handicapped citizens for complete accessibility to transportation facilities and the spending constraints mandated by the necessity to limit Federal spending and bring inflation under control.

As chairman of the Senate Committee on Banking, Housing, and Urban Affairs, which has jurisdiction over the transit program—the program that will require the greatest costs to meet the 504 requirement as it applies to transportation—I am well aware of the difficulties inherent in developing these regulations. While no perfect solution was possible, the flexible approach adopted by the Department of Transportation will fulfill the congressional intent of section 504 in a manner that will permit the maintenance and development of the transportation programs now receiving Federal funds.

DOT estimates that implementing the final regulations would cost less than half the amount contemplated to implement the proposed regulations issued last year. Two additions to the proposed regulations regarding the conversion of existing stations on both intracity and intercity rail systems are responsible for a major portion of that cost reduction. These additions include the adoption of a "key station" concept, whereby a percentage of all rail stations will have to be retrofitted. The key station plan will reduce costs to local operators substantially, without compromising accessibility. In the five major old urban rail systems, DOT estimates that the key station approach will save $600 million. However, the stations which are modified to permit accessibility will still handle more than 70 percent of all passengers. There will also be transfer service between the key stations and other stations.

The second addition to the regulations will permit transit operators to request a waiver of the stated requirements of the regulations if they can demonstrate that they are providing alternate services which furnish services that are substantially as good as or better than those that would be provided under the stated requirements; the operators must also demonstrate that there is general support for those alternate services in the local handicapped community. If such waivers are obtained, the cost will decline further.

I have often been critical of government regulations and the costs they generate. These provisions and others included in the final 504 regulations demonstrate the appropriate balance and flexibility which should be adopted generally by government agencies. The regulations will accomplish the congressional intent stated in section 504. At the same time, DOT is not arguing for additional funding to meet the requirements. It is allowing an adequate time period to complete their implementation. This flexible approach should allow us to meet the accessibility needs of our handicapped citizens without putting further pressure on the Federal budget.

CONSCRIPTION IS A TAX

Mr. PROXMIRE. Mr. President, there may be no clearer explanation of the costs of conscripting manpower for the armed services than described in the excellent article in the Wall Street Journal on Thursday by William H. Meckling, the former executive director of the President's Commission on an All Volunteer Armed Force.

Conscription is a tax, as Dr. Meckling points out. It is a hidden tax that falls first on those conscripted and then on society which must bear the loss of productive manpower and the infusion of real wages. To do away with the All Volunteer Army to avoid increasing costs

simply substitutes the burden to a different sector of our population.

A draft will take productive personnel out of the economy unless we specialize in drafting the poor and unemployed which would be a policy fraught with injustice and possibly dangerous in its implications for morale and force effectiveness.

As with any economic activity supply is directly influenced by price. The price of manpower is going up annually, along with just about everything else. The shortfalls in manpower are not generalized throughout the military system. They can be compensated for by programs designed to attract and retain those individuals that are required. It will not be an inexpensive process.

During times of relatively high employment, such as now, the price will be high. During times of high unemployment that price will decline. The system should be expected to experience ups and downs as would any economic factor affected by the marketplace. As long as the fluctuations do not impair our national defense, and they do not nearly come close to that now, then we should concentrate on improving the mechanisms of the system rather than throwing it away and replacing it with one riddled with hidden liabilities. A return to the draft will guarantee a loss of morale, a decline in combat capability, a resurrection of national unrest among young people, and the worst kind of work-service atmosphere—that of coercion.

I recommend the Meckling article to my colleagues and ask unanimous consent that it be printed in the RECORD.

There being no objection, the articles are ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Apr. 5, 1979]

THE DRAFT SHIFTS DEFENSE COSTS TO NATION'S YOUTH

(By William H. Meckling)

The "let's revive the draft" symphony is being played in earnest on Capitol Hill. The dominant theme is that "the all-volunteer force isn't working." Sen. Stennis, for example, was recently quoted as saying that "the military isn't getting enough and the right kind of personnel" and that military leaders have had "a full and fair opportunity to determine if the all-volunteer force will work. It has failed its test and proved not to be the answer for peacetime or wartime needs."

The logic of the proposition that military conscription should be revived *because* the all-volunteer force is not working will not withstand careful scrutiny. No one would take seriously the proposal that we undertake conscription of federal employees because the Civil Service System was failing to provide the numbers and quality of employees Congress desired. Most of us would recognize that it is a responsibility of Congress and the administration to see that compensation and conditions of employment produce the number and quality of civil service employes desired.

Congress and the administration can attract whatever number and quality of volunteers for the military it wants—at some level of compensation.

Proponents of conscription interpret the proposition that voluntarism will always work at *some level of compensation* as extremist. They are indignant at the idea of paying whatever it will take to get the desired number and quality of volunteers. What if we have to pay very high wages to get enough of the right quality of volunteers? The nation couldn't afford it.

That reaction reflects a pervasive and fundamental fallacy about conscription. If we have to pay very high wages to attract volunteers, that fact tells us that defense manpower is very costly, but conscription does not enable us to avoid those costs. All conscription does is decide who will pay the costs. We cannot avoid the manpower costs of defense by substituting conscription for voluntarism. Conscription is a form of taxation. Conscription simply imposes the burden of taxation for defense in our youth rather than the general public.

Over 200 years ago, Benjamin Franklin, in commenting on a judicial opinion concerning the legality of impressment of American merchant seamen, recognized the heart of the issue, and even estimated the hidden tax. He wrote: "But if, as I suppose is often the case, the sailor who is pressed and obliged to serve for the deference of this trade at the rate of 25s. a month, could have £3. 15s, in the merchant's service, you take from him 50s. a month; and if you have 100,000 in your service, you rob the honest part of society and their poor families of £250,000. per month, or three millions a year, and at the same time oblige them to hazard their lives in fighting for the defence of your trade."

Once we understand that conscription is a tax, it is easy to see why Congressmen find it appealing, especially at a time when they are under great popular pressure to reduce taxes. Reinstitution of a specialized hidden tax will enable them to preserve a larger government than would be possible if they were forced to rely entirely on explicit general taxes.

To say that at some level of compensation the services can attract the numbers and quality of volunteers desired is not to say that compensation will have to be very high in order to achieve those goals; it does not even say that compensation ought to be increased. Moreover, it does not imply that higher compensation is the only course of action available to make military service more attractive.

The truth is that all four of the active duty forces have generally been able to maintain authorized strengths since conscription was abolished. Only in specialized areas such as medicine and the reserves has there been any problem, and the shortfalls there can be eliminated whenever Congress and the administration make up their minds that they really want to do so. We can build up the reserves and we can increase the number of M.D.s in the services if we are prepared to bear the costs.

Because congressional desires about quality are not well defined, it is more difficult to say whether their desires in that dimension are being met. What we can say is that the quality of military personnel today compares favorably with the experience under conscription. In 1977, 69% of those recruited were high school graduates. In 1970 and in 1964, 68% of those recruited were high school graduates. In 1964 one of seven recruits fell in mental group IV, the lowest mental group eligible for recruitment. By 1977, this ratio had dropped to one in 20.

All of this is being accomplished at modest levels of compensation. The Department of Defense estimates that pay and allowances for a new recruit works out to 33 cents an hour less than the minimum wage for a 48-hour week.

There are those who argue that while overall figures give the impression that things are satisfactory, those figures conceal some special problems; for example, that the quality of Army recruits is too low, or that personnel turnover is too high, or that the proportion of blacks in the Army enlisted ranks is too high. If Congress believes that these are real problems, it is its responsibility to alter compensation and conditions of service to solve them.

There is, indeed, much room for improvement in military recruiting, retention and compensation policies. There is, for example, a pronounced reluctance to take into account what the problems are and how they can be resolved. The Army, for example, has always had more difficulty attracting volunteers than the Air Force, Navy and Marine Corps. While that fact has, at least in part, been recognized by providing ($2,500) bonuses for Army combat enlistments, the Army is not permitted to advertise those bonuses as an attraction to volunteers. Invoking such restrictions while simultaneously contending that voluntarism is not working raises serious questions about congressional intent.

U.S. HISTORY PROVIDES SOUND REASONS FOR RATIFICATION OF THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, all too often in recent times the United States has come to be regarded chiefly as the world's arms supplier rather than as a world leader in the area of human rights. In view of our recent pledge to supply Israel and Egypt with over $5 billion of arms aid, this can hardly be seen as surprising. Yet, Mr. President, this was not always so. Our own history was once viewed by the world as demonstrative proof that human rights could form the cornerstone of a system of government.

Mr. President, have we forgotten our own history? For we need look no further. Our country has built its foundations on certain inalienable rights: "Life, liberty, and the pursuit of happiness." Our own history demonstrates better than any other example that high ideals can be realized through a concerted effort over a period of time.

Our Declaration of Independence and Bill of Rights are monuments to the high goals of our Founding Fathers. But effective as these documents were, justice was not immediately established.

The Declaration stated that all men were created equal. Yet we know that slaves were not given their political rights. Women were also discriminated against, being denied the right to vote until early this century.

Mr. President, the United States has made magnificent progress in guaranteeing justice and freedom for all Americans. But this was possible only through long centuries of struggle and turmoil. It has been a long, hard road, but it has been a road which this country has continually decided to travel.

In the same way, Mr. President, the Genocide Convention represents an initial step along the road toward the complete elimination of the crime of genocide. It may not end once and for all each and every instance of the crime, but it is a solid step in that direction.

Mr. President, I call on the Senate to renew our commitment to this most fundamental of human rights and ratify the Genocide Convention.

MESSAGES FROM THE PRESIDENT

Messages from the President of the President of the United States were communicated to the Senate by Mr. Chirdon, 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.)

MESSAGES FROM THE HOUSE

At 12:30 p.m., a message from the House of Representatives delivered by Mr. Gregory, one of its reading clerks, announced that, pursuant to the provisions of 22 United States Code, 276a–1, as amended by Public Law 95–45, the Speaker has appointed Mr. PREYER, Mr. PICKLE, Mr. BOWEN, Mr. FOUNTAIN, Mr. MAZZOLI, Mr. LONG of Louisiana, Mr. LEVITAS, Mr. MCCLORY, Mr. BROWN of Ohio, and Mr. BUTLER as additional members of the delegation to attend the conference of the Interparliamentary Union, to be held in Prague, Czechoslovakia, on April 16–24, on the part of the House.

The message also announced that, pursuant to the provisions of section 1, Public Law 689, 84th Congress, as amended, the Speaker has appointed Mr. PHILLIP BURTON, Chairman, Mr. HAMILTON, Vice Chairman, Mr. BROOKS, Mr. ANNUNZIO, Mr. ROSE, Mr. IRELAND, Mr. ADDABBO, Mr. RUSSO, Mr. BOB WILSON, Mr. BROOMFIELD, Mr. FINDLEY, and Mr. WHITEHURST as members of the U.S. Group of the North Atlantic Assembly Meeting, to be held in Oslo, Norway, May 26–28, 1979, on the part of the House.

The message further announced that the House agrees to the amendment of the Senate to House Joint Resolution 283, a joint resolution reaffirming the U.S. commitment to the North Atlantic Alliance.

ENROLLED JOINT RESOLUTION SIGNED

At 1:17 p.m., a message from the House of Representatives delivered by Mr. Gregory, announced that the Speaker has signed the following enrolled joint resolution:

H.J. Res. 283. A joint resolution reaffirming the United States commitment to the North Atlantic Alliance.

The enrolled joint resolution was subsequently signed by the President pro tempore (Mr. MAGNUSON).

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 99. A concurrent resolution providing for an adjournment of the House and a recess of the Senate from April 10, 1979, to April 23, 1979.

REPORTS OF COMMITTEES SUBMITTED DURING THE RECESS

Under authority of the order of the Senate of April 5, 1979, the following reports of committees were submitted on April 6, 1979:

By Mr. WILLIAMS, from the Committee on Labor and Human Resources:

Special report on the activities of the Committee on Labor and Human Resources (Rept. No. 96-60).

By Mr. MCGOVERN, from the Committee on Agriculture, Nutrition, and Forestry, without amendment:

S. 292. A bill to reduce the fiscal year 1980 authorization for appropriations for the special supplemental food program (Rept. No. 96-61).

By Mr. TOWER, from the Committee on Armed Services, with an amendment:

S. 429. A bill to authorize appropriations for fiscal year 1979, in addition to amounts previously authorized for procurement of aircraft, missiles, naval vessels, and other weapons, and for research, development, test, and evaluation for the Armed Forces, and for other purposes (together with additional views) (Rept. No. 96-62).

By Mr. MUSKIE, from the Committee on the Budget, without amendment:

S. Res. 125. A resolution waiving section 303(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 413.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. PROXMIRE, from the Committee on Banking, Housing, and Urban Affairs:

Special report entitled "First Monetary Policy Report for 1979" (Rept. No. 96-63).

By Mr. CRANSTON, from the Committee on Veterans' Affairs:

Special report entitled "Legislative and Oversight Activities During the 95th Congress by the Senate Committee on Veterans' Affairs" (Rept. No. 96-64).

By Mr. TALMADGE, from the Committee on Agriculture, Nutrition, and Forestry:

Special report entitled "Legislative Review Activities During the 95th Congress" (Rept. No. 96-65).

Mr. TALMADGE. Mr. President, pursuant to section 136(b) of the Legislative Reorganization Act of 1946, from the Committee on Agriculture, Nutrition, and Forestry, I send to the desk its legislative review report for the 95th Congress.

By Mr. PELL, from the Committee on Rules and Administration, with an amendment and an amendment to the title:

S. Res. 114. A resolution authorizing the printing of additional copies of the Geological Atlas of the United States (Rept. No. 96-66).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. STENNIS, from the Committee on Armed Services:

Michael Blumenfeld, of the District of Columbia, to be an Assistant Secretary of the Army.

(The above nomination from the Committee on Armed Services was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

Mr. STENNIS. Mr. President, as in executive session, from the Committee on Armed Services, I report favorably the nominations in the Air Force of 3,087 officers for promotion to the grade of captain (list begins with Gregory J. Aaron) and in the Navy and Naval Reserve, 322 appointments/reappointments to the grade of captain and below (list begins with Susan R. Allen). Since these names have already appeared in the CONGRESSIONAL RECORD and to save the expense of printing again, I ask unanimous consent that they be ordered to lie on the Secretary's desk for the information of any Senator.

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

(The nominations ordered to lie on the Secretary's desk were printed in the RECORD on March 26, 1979, at the end of the Senate proceedings.)

By Mr. WILLIAMS, from the Committee on Labor and Human Resources:

Marjorie Fine Knowles, of Alabama, to be Inspector General, Department of Labor. (Referred to the Committee on Governmental Affairs, pursuant to order of March 1, 1979.)

(The above nomination from the Committee on Labor and Human Resources was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. MAGNUSON (for himself, Mr. JACKSON, Mr. STEVENS, and Mr. GRAVEL):

S. 917. A bill to authorize appropriations to carry out the Fishery Conservation and Management Act of 1976 during fiscal years 1980, 1981, and 1982, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. NELSON (for himself, Mr. NUNN, Mr. CULVER, Mr. HUDDLESTON, Mr. SASSER, and Mr. WEICKER):

S. 918. A bill to authorize the Small Business Administration to make grants to support the development and operation of small business development centers in order to provide small business with management development, technical information, product planning and development, and domestic and international market development, and for other purposes; to the Select Committee on Small Business.

By Mr. MAGNUSON:

S. 919. A bill for the relief of Jennifer Ferrer; to the Committee on the Judiciary.

By Mr. INOUYE:

S. 920. A bill to authorize the Secretary of the Navy to convey certain real property in the State of Hawaii to the present lessees of such real property; to the Committee on Armed Services.

By Mr. MCGOVERN:

S. 921. A bill to amend chapter 55 of title 10 of the United States Code to qualify certain former spouses of members of the uniformed services for medical and dental benefits, and for other purposes; to the Committee on Armed Services.

By Mr. JOHNSTON (for himself, Mr. LONG, Mr. BENTSEN, and Mr. TOWER):

S. 922. A bill to recognize the joint development by the State of Texas and the State of Louisiana of a recurring and environmentally sound source of energy represented by the Toledo Bend Dam and Reservoir and exempt Sabine River Authority, State of Louisiana, and Sabine River Authority, State of Texas, from charges for use, occupancy, and enjoyment of certain lands of the United