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, 180 supporters of the council system rallied to support 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 debate, and contributed to a spirited 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 one of only four towns in the Commonwealth with the town-manager form of government.

In the meantime, two incidents occurred, which joined 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.J. 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 recommend action for the 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 falling 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 turnaround 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 the vegetables 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. Rounded 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 C.C.B.G. the council was able to hire staff and workers to renovate the building. The Chamber and Q.V.C.A.H. now occupy the ground 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 real-estate base, the Gateway Players 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."  

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. B. Nelson, 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 turn not from the cross that re-claims 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 redemption 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:


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 Journ
NATIONAL OCEANS WEEK

Mr. STEVENS. Mr. President, on behalf of Mr. Hollings, Mr. Magnuson, Mr. Wicker, 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 to 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. BYRD. 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 for 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 Presidential interference.

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 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 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
(With 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—millions of dollars 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 Kleindeinecke. How many questions before a federal grand Jury in the Lance case, the disposition of the peanut warehouse investigation, the warehouse investigation? Why has there not been a thorough independent investigation, the foundation of trust to which this administration has been so outspokenly committed will sink in the quicksand of public suspicion?

In contrast to that situation, the nation's 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.

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 60 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. This means that every single oil well is pouring into the offshore wells from which we get only about one-fifth of our oil supplies awaiting higher prices.

I want us to deal with the facts, not with the false dawns and false sunrises to which we are so often addicted. Let us take a look at the facts.

The President has asked the Congress to enact a windfall profits tax to protect the public against the awesomely increasing inflationary impact which immediate decontrol will have. The president would concur with the Administration's proposals to freeze domestic prices for the next 60 days, to redirect newly derived revenues in the hands of the oil companies to be plowed back into exploration and development of new oil reserves, to create an Energy Security Fund to provide necessary moneys to ease the burden of high energy costs on the poor, to provide adequate investment in alternate energy sources which will provide a realistic transition away from our ever-growing and evermore dangerous dependence on foreign oil, to enact a windfall profits tax to protect 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 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, to keep the gas tanks filled. This is an increase of almost 26 percent since the 1973 Arab oil embargo. We are relying on an unstable and increasingly expensive source of oil, and we are diamonding 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 1977, 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 to producers 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 is left with no choice but to place a heavy burden on its 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 and to reinvest and explore for oil. But the American people are going to demand that there be some limits. To the President, that oil companies a high-risk enterprise. But what we are talking about here are unwarranted profits.

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April 9, 1979

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 have taken a hand 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—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 a livelihood for thousands of our people in poultry and egg processing plants, markets for carton and packaging 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.

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 Agrcultural 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. 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 understand the Senator has a plan there and it 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 of 1 percent to the increased profits 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. There is a warmed-over version of the crude oil equalization tax which Congress rejected last year.

Mr. President, the Senator from Kansas spiced up the crude oil tax with the example of the increased profita 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. There is a warmed-over version of the crude oil equalization tax which Congress rejected last year.

Mr. President, the Senator from Kansas compared the crude oil tax with the example of the increased profits that will be generated by oil decontrol which has been called a windfall profits tax. However, windfall profits is a misnomer. The President's proposal is an excise tax on crude oil. There 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 tax. Mr. President, the Senator from Kansas opposed the crude oil tax.

I hope when we grapple with this in the Committee on Finance that we can create a tax that will bring the American people concerned about producing energy and not producing more taxes.

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

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

THE SELLING OF SALT

Mr. DOLE. Mr. President, the debate on strategic arms control has already begun. It will be the major Senate debate 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 weeks, President Carter's negotiators have leaked key treaty provisions in an attempt to defeat the controversy each successive compromise with the Soviets represents. Although we in the Senate have tried to keep pace and understand these delicate issues, cleared 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 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 to maintain equal 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 limitation process, can we 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 counsel and testimony the Senate should 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:


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. It specifically identified as the Senate’s principal concern the threat of a new arms race which would preclude the development of a stable balance of power. In the interim, the Amendment also urged both the Executive and Legislative branches to press forward with comprehensive arms control negotiations.

In keeping with the spirit of the Jackson Amendment, President Ford sought to design with Chairman Brezhnev a formula which would equate 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 Senate’s principal concern. In fact, it is 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 of either side of a first-strike capability. This would thereby ensure a stable balance of power. In the interim, the Amendment also urged both the Executive and Legislative branches to press forward with comprehensive arms control negotiations.

In addition to the deplorable feature of the SALT II Treaty, the Treaty violates the principle of equal aggregates by allowing the Soviets to occupy a first-strike capability in strategic weapons which are not included in the SALT count. The most gratuitous exclusion to the Soviets is the Backfire bomber. U.S. negotiators in the Senate declaration that the Backfire is a theater weapon which will not be used against the United States is either unadmittedly debatable, but there is no argument in the U.S. intelligence community about the fact that the aircraft is inter-continental. The U.S. refers to it as a missile with one-man. For example, without refueling, the Backfire’s role is that it would be used to launch the SS-20.

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

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

In addition to the exclusion of the Backfire bomber, the 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 each in size. After one of those warheads was removed, the weapon could strike the U.S. It would be an ICBM, not an ICBM.

Moreover, the SS-20 can be augmented by a third stage, converting it to the SS-26, a true ICBM. And the SS-16 can be launched from the same tracked vehicle used for 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 this Treaty. However, to their credit, they do forecast a production of at least 1,000 SS-20s, a figure clearly in excess of their theoretical production capacity. Therefore, some of the SS-20s are to be converted into SS-16s, a process which cannot be identified by our national technical means of verification.

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

The advantage being authorized to the Soviets in strategic level, 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, and that only at one point, do they ever have had superiority in recent years. And, now, superiority is being granted to the Soviet Union at the strategic level through the parity 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 us and Soviet-surgeon forces. Now, escalation is no longer a rational U.S. option. Indeed, now, that the Soviets enjoy superiority at the strategic level, the United States can expect their leaders to be more adventurous in the months ahead with conventional forces in strategic areas. 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 reason, some might fear 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 our national interests. The United States will be using weapons that could make a mockery of the Cold War treaties. Now, for some time, the United States military doctrine has called for the Soviets to be made to feel that even in a conflict, even those that might involve us, the United States military doctrine is to be our “riding out” an initial attack. Soviet strategy, on the other hand, does not predict 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 are not consistent with these strategic aims.

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

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, on the contrary, grants to one side—denies to the other—arms and strategic options of critical importance.

Finally, one should recognize that the SALT II formula is explicit in its 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 a higher “balance,” such as it is. The evidence now suggests that new weapons are on the horizon. The question, therefore, is: can the SALT II and there is good reason to believe that some of these new weapons could be developed within the timeframe of SALT II? and, if they are, technology is moving faster than diplomacy.

In the euphoria of a SALT II agreement one cannot imagine this Administration in...
A bill (S. 480) 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.

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 Thursday 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 palatable prospect than facing an unacceptable Soviet military superiority.

The motion was agreed to.

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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 Acting President pro tempore. The pending business is S. 450 and the amendment of the Senator from West Virginia (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. 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 managers of this bill and to express its will.

(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:

"§ 1364. Limitations on jurisdiction.

"(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 an Act interpreting, applying, or enforcing any State statute, ordinance, rule, or regulation, which relates to voluntary prayers in public schools and school districts.

"(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:

"§ 1264. 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, and that such amendments shall apply with respect to any case which, on such date of enactment, was pending in any court of the United States.

Waver of Pastoral Rule

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Senators may be permitted to use up 2 minutes to introduce bills by virtue of the action which has been taken. I ask that Senators 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. None.

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?
April 9, 1979

CONGRESSIONAL RECORD—SENATE

DECONCINI: Mr. President, in many matters involving the jurisdic-
tion of the Supreme Court, I strongly support it. Quite clearly, we
have mandated that the Supreme Court take upon many matters
considered of vital importance to the welfare and security of the
United States. That is why I support S. 450, sponsored by the distin-
guished Senator from Arizona Mr. DeConcini, to provide for the
assurance of the proper use of the time of the Justices of the Supreme
Court, as well as insurance that there is no erosion of the Supre-
me Court's jurisdiction. It eliminates certain required areas of jurisdic-
tion. It is a worthy goal and has strong support, and it is a goal I
support.

Mr. President, this amendment by the Sena-
tor from North Carolina will be defeated.

Mr. DeConcini. Mr. President, the
bill before us is S. 450, which is a bill amend-
ing the jurisdiction of the Supreme
Court. I am 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 germaine bills. It makes a lot of
sense to have the Helms amendment con-
sidered with S. 450.

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

The main thrust of S. 450, the Supre-
me Court Jurisdiction Act, is to elimi-
nate the last vestige of the Supreme
Court's mandatory jurisdiction over cases arising under one or more
sections of the code and substitute for the obliga-
tory jurisdiction, a review by the Court's de-
clination of jurisdiction.

The line between the mandatory jurisdic-
tion 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 Su-
preme Court concerning S. 450 and urg-
ing 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 express one opinion on the subject
matter.

The letter is as follows:

S. 3100

DEAR SENATOR DECONCINI: In response to your
invitation and inquiries, we write to clarify the
principles underlying the Supreme Court's mandatory jurisdiction, specifically those contained in S. 3100. Various
Justices have spoken out publicly on these
issues prior occasion, but I believe if I were to
essentially the view that the Court's mandatory
jurisdiction should be severely limited or eliminated altogether, my invitation, how-
ever, enables all of us, after discussions
within the Court, to express our common
view on the matter.

An endorse S. 3100 without reservation
and urge the Congress to enact it promptly.

Our reasons are similar to those so ably
presented by the distinguished Senator from
Arizona Mr. DeConcini before the Senate
on June 30, 1978, by Solicitor General McCree,
Assistant Attorney General Meador, Profes-
sor Rehnquist and other in our invitation, how-
ever, enables all of us, after discussions
within the Court, to express our common
view on the matter.

S. 3100
The problem we describe is substantial. We are attaching to this letter an appendix consisting of statistical tables covering the October 1976 Term. For example, during the 1977 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 remains substantial and unduly expends the Court's resources on cases better left to other courts.

Second, the retention of mandatory jurisdiction is an open-ended and growing requirement for the Court to resolve the generally unsatisfactory device of summary dispositions of appeals. There is no way of judging the difficulty of the legal questions in a case and its public importance. Accordingly, the Court often presents opportunities for full briefs and oral argument in difficult cases of no general public importance. If the Court cannot, however, accord plenary review to all appeals, to heard during the October 1976 Term, for example, would have required at least 13 additional weeks of oral argument, along with the argument of counsel—aver— an entirely impossible assignment. As a consequence, the Court must dispose of many, if not all, of the 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. Bradly, 432 U.S. 173 (1977); Hicks v. Miranda, 432 U.S. 496 (1977). As we have often observed, our society is not inconsistent with the nondiscretionary function of the judicial process which the Court's treatment of appeals has emulated 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 constitutional function as exponent 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. Whenever we 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 impose a vital role on the Court 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. It is in the nature of an attempt to distingushed 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 another amendment amending 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. 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 think there could be any question in anyone's mind about the fact that the amendment is simply a means of by-passing 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 by-passes 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 blantly 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. Are the Members of the Senate supposed to have an interest in the Federal law 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 yield the floor.

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 the Senator 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 1883 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. 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 rebellion would not be conclusive that the claimant 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 held that such a statute was unconstitutional.

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 if a claimant of such a pardon the Supreme Court held that such a statute was unconstitutional.

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, 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 we do not, the right to a particular area of jurisdiction 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 and it would be really destructive of the basic values of the Republic.

Mr. MATHIAS. 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 the judiciary from direct 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 harm a man.

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 yield the floor.

The PRESIDING OFFICER (Mr. Bosken). 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 consequence to have additional days of hearings. I can remember, as does my good friend, the chairman of the Constitutional Rights Subcommittee, Chairman METCALFE, of the Federal college, where just last month many of the voices now pleading that we adopt this very significant constitutional change without any hearings were then pressing the Judiciary Committees “Let us have 2 more days of hearings. Let us have 5 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 much time and effort and interest and energy on matters affecting the judiciary process. The judicial 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 Judiciary 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 over 5 years, and the subject 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 to say so. 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 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 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 unwised 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 like to quote 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 Franklin Furter himself said:

"Congress need not give this Court any appellate power. It may withdraw appellate jurisdiction once conferred, and it may do so at any time while cases are 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. And I make the suggestion that has been made to the contrary.

The opponents of the right of voluntary prayer in the schools, I think, Mr. President, have seriously misrepresented the true intent 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 or the effect of the amendment which was approved by the Senate this past Thursday.

The amendment now before the Senate, submitted by 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 the last time. In my interpretation I have heard concerning my amendment I 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 a mechanism for solving 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 prayer in the schools is the 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 the management 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 disputed by the Supreme Court's landmark decision involving the supremacy clause, Cooper against Aaron. The Cooper case involved the actions of the Governor of Arkansas to block the desegregation of public schools in Little Rock, Ark. Chief Justice Earl Warren succinctly framed the issue to be decided by the Supreme Court in that case. He stated that the Court would decide the "claim by the plaintiff of the right to be flagellated in the public schools because of his total disagreement with the prevailing Negro majority."

"It is true that a statute or regulation can be declared unconstitutional, but it is not clear that an order of a state Supreme Court can be overturned by the Supreme Court." 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 extend to pending and similar 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 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 suggested that this 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 or controversy defined by an act of Congress and the Federal court 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 restore voluntary prayer in the schools by limiting the jurisdiction of this 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 jurisdiction of the Supreme 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 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 today, and it is the kind of mistake relating to 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 intended to set aside 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 people have a tendency to think that any ruling by this Chamber 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 was sent to the Committee on Education of the 90th Congress, 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 the trial court of any State in any criminal proceeding 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 does this lawyer who has argued against this amendment get the misstatement 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 to cases arising out of controversies that were taken, recommended by various committees in the Senate or the House of Representatives.

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 school children exercise the right of voluntary prayer in schools? Do I not understand it, Mr. President? I just do not understand it.

Another precedent: Congress limited the jurisdiction of the 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 the United States, or as somebody else would put it, obviously an unprecedented proposal, that they study these past actions by Congress.

Mr. President, I am not a lawyer, but I can read history. I think I can 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 been harmed because he or she is not allowed 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 spurious 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, Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. THURMOND. 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. HELMS. 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. THURMOND. 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.

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 under the various forms of legislation, or even those that were not passed but which the Helms amendment and the other amendment that North Carolina would be unable to use 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 by Congress which 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 and, and generations. 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 on 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 a series of appellations 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 issues 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 the omnibus crime 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 dealing 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 constitutional claims arising out of Federal legislation, or even those that were not passed but which are the subject of much heated and inconclusive scholarly debate. The Supreme Court itself has never been faced with such a question. Article III 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 under such regulations as the Congress shall make." Thus the Federal courts were only to foreclose Federal court review of Acts in the context of an original petition. The Constitution's language, as a proposition to eliminate such matters from their judicial power, binding on both the Federal courts and the courts of every state. U.S. Const. art. VI, cl. 2. To promote the constitutional issue from the Supreme Court's jurisdiction, these commentators argue, would destroy the uniformity sought by the Federal Constitution. Rather, the first one Constitution on an issue, we would have fifty. It has further been argued that "exercising" a constitutional issue from the Court with respect to constitutional claims from the Court any more, 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, this has passed both houses. Perhaps the closest Congress has come to eliminating Supreme Court jurisdiction over cases raising the constitutionality of three Acts in Ex parte McCardle, 74 U.S. (7 Wall.) 500 (1869), the Court found this constitutional restriction unconstitutional. The Court noted, however, that "the case of such a nature as to destroy the constitutionality of the Reconstruction Acts in the context of an original petition for review at the circuit court, the Court would still hear such cases. In contrast to the situation presented in Ex parte McCardle, Senator Heims' 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 would not be too late to vote on this amendment, on the Constitution. And, of course, if the amendment were passed by such cases would be left to be decided by the United States Districts of Columbia, thereby raising the same questions involving "voluntary" prayer in public schools and public buildings. In order to determine whether prayer is voluntary, the amendment would virtually assure the involvement of the courts in deciding not only this constitutional issue of Congress' power to affect federal jurisdiction in this manner, but also the narrower jurisdictional question of whether any particular prayer practice falls within the prostration of the amendment. For the foregoing reasons, therefore, I would strongly urge the Senate to reject the Heims amendment.

Sincerely,

GRiffin B. Bell, Attorney General.

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

Mr. ROBERT C. BYRD. Mr. President, this is the predication I am in, and I think everybody knows it. At 1:55 yesterday--after 2 p.m. today, the Senate will vote on the unfinished business, the Department of Education bill. The amendment by Mr. Helms probably would go on this 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 we are going to be talking about this issue on a series of different measures during the course of this year, and I will prepare to debate those. I will accept 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. Byrd. Yes.

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

Mr. HUMPHREY. I yield.

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

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

Mr. ROBERT C. BYRD. I wish the Senator would read the Report, 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 power, it may withdraw appellate jurisdiction once more, as was done in the (National Mutual Ins. Co. v. Tidewater Transfer Co., 1948).

Mr. President, in the case of Ex parte McCardle, 74 U.S. (7 Wall.) 500 (1869), the Court held that the State of New York had violated the Constitution by allowing public school children to recite a non-denominational 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 allusion of judicial power, the framers of our Constitution wisely gave Congress the authority, by a majority in 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 1882, 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 its power under the Constitution, and the power to make a regulation 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, it 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 matters which 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 more, as was done in the (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 have original jurisdiction in actions relating to the recitation of prayers in public schools—granting or denying 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 knows 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 expect everyone 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 evidently is subject to inadvertence, 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 like 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 propose such a request.

Mr. ROBERT C. BYRD. Mr. President, I suggest that the vote be on the amendment which I have introduced at no later than 2:20 p.m.

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 receiving tomorrow night, but it does not appear that it will be.

I say I thought the Senate would be receiving 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?

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 2:20 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 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, 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 consideration; and that there be a time for debate on the bill itself of not to exceed 30 minutes, to be divided between the Senator from Delaware and the distinguished minority leader or his designate. And now about 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. Senator from Delaware, 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.

Mr. BAKER. Germaneness.

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.

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 co-sponsor. I hope the Senate will see fit to stand by its decision of last week and again to pass the Helms 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 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 them 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." The national anthem, "The Star Spangled Banner," refers to "God;" the Pledge of Allegiance refers to "God." We have chaplains here in this Capitol of the United States. This is in the very buildings that constitute this great Government from which all law-making 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 there is a chaplain in the White House. I see no reason why they have not 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, a teacher does not have to listen, a student does not have to listen. A teacher does not have to listen, a student does not have to listen. A teacher does not have to listen, a student does not have to listen. A teacher does not have to listen, a student does not have to listen. A teacher does not have to listen, a student does not have to listen. A teacher does not have to listen, a student does not have to listen. A teacher does not have to listen, a student does not have to listen.

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, and the American people show overwhelmingly by their 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, has a provision referring 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." It 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 Vice President's office. 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 stop the children from doing the same thing? Congress has the right to make that exception, and I would hope that the Members of this body will see fit to pass that particular amendment.

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 down that amendment 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 pass the amendment.

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

Mr. THURMOND. Mr. President, 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, and I wish Senators from North 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 maintain 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, Executive Director of the National Religious Broadcasters, Lynchburg, Virginia, is one of the largest religious radio networks in the nation.
- Dr. Ben Armstrong, Executive Director of the National Religious Broadcasters.
- Dr. Harold O. J. Brown, Professor of Theology at Trinity Evangelical Divinity School, Deerfield, Illinois, and chairman, Christian Action Council.
- Dr. Thomas A. Carruth, Asbury Theological Seminary, Wilmore, Kentucky.
- Dr. James Beal, Trenton, intended the establishment of a Godless Society. More power to you.

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:

**ASSEMBLY OF GOD CHURCHES**

Bethel Temple, Rev. Powell H. Lemore, Fresno, Calif. 93727
- Keyser Assembly of God, Rev. Donald W. Goldizen, Keyser, W. Virginia 26722
- Valley View Church, Rev. Robert J. Smith, Salt Lake City, Utah 84118
- Calvary Pentecostal Church, Rev. Stephen Landis, Keyser, W. Virginia 26720
- Ester Assembly Church, Rev. Eugene C. Woode, Fairbanks, Alaska 99701
- Full Gospel Church, Rev. Robert W. Kostin, Alcoa, N.Y. 12007
- Haze River Church, Rev. Stanley Bourbeere, Castleton, N.Y. 12031
- Assembly of God, Rev. Park Benner, Latrobe, Penn. 15650
- Assembly of God, Rev. Willard Hutsell, Emery, Missouri 65398
- Cathedral of Light, Rev. L. D. Field, Selma, Calif. 93662
- Assembly of God, Rev. Archie M. Minneewa, Bonita, La. 70422
- Mission Sendero de La Cruz, Rev. Dennis Rivera, Fycatello, Idaho 80301
- Assembly of God, Rev. Edrud E. Neuhaus, Fitchburg, Maine 04120
- Assembly of God, Rev. Richard J. Thomas, Ithaca, N.Y. 14850
- The Calvary Assembly of God, Rev. Wayne Hampton, Cobleiti, N.Y. 11204
- First Assembly of God, Rev. Wesley J. Branafor, Ketchikan, Alaska 99901
- Assembly of God, Rev. Darrell Reeder, Anchorage, Alaska 99519
- Assembly of God, Rev. Fred Francis, Dalton, N.Y. 14936
- Assembly of God, Rev. Leroy J. Miller, Ely, Arizona 85351
- Assembly of God, Rev. Franlaca Riedel, San Leonor, Calif. 94957
- First Spanish Assembly of God, Rev. Simon Melendres, Greesley, Colo. 80631
- First Assembly of God, Rev. C. E. Wilson, Bristol, Virginia 24201
- Ambridge Assembly of God, Rev. Clinton P. Elliott, Baden, Penn. 15006
- Calvary Assembly of God, Rev. Edgar R. Lee, Atlanta (Duwony) Georgia 30338
- Christian Life Center, Rev. Tom Miskovich, Dillon, Montana 59725
- First Assembly of God, Rev. R. T. Sandhu, Belvidere, Ill. 60090
- First Assembly of God, Rev. Carl E. Guiney, Woonsocket, Wash. 98814
- First Assembly of God, Rev. Robert D. Gore, Fremont, Calif. 94536
- Teen Challenge Chapel, Rev. Mike Zullo, Washington, D.C. 20001
- Assembly of God, Rev. Bruce Thomas, Priestriver, Idaho 83856
- Assembly of God, Rev. Louise Barrett, Martinsburg, W. Virginia 25404
- Pentecostal Church, H. F. Church, Rev. Oscar E. Bryant, Gordenerson, Virginia 22942
- Assembly of God, Rev. Ed. R. Neuhau, Fitchburg, Mass. 01420

**BAPTIST CHURCHES**

Galilee Baptist Church, Rev. Fred J. Barts, Austintown, Ohio 44515
- Community Baptist Church (G.A.R.B.C.)*, Rev. Dan D. W. Virginia 26401
- Baptist Church (G.A.R.B.C.)*, Rev. Ernest Bloom, Akron, Ohio 44312
- First Baptist Church, Rev. Paul C. Williams, Martinsburg, W. Virginia 25404
- Berean Baptist Church, Rev. Richard Rahlbrin, Springfield, Ill. 62703
- Heritage Baptist Church, Rev. Dr. John Kagi, Jacksonville, Fla. 32221
- Baptist Church, Rev. Gerald C. Armstrong, Lebanon Junction, Ky., Route 1, 40450

**FOOTNOTES AT END OF ARTICLE**

New Unity, Rev. James S. Williams, Baltimore, Md. 21213
- First Baptist Church, Rev. W. E. Hunspeth, Pennsylvania 43111
- Baptist Church, Pastor Earl Abbott, London, Ky. 40741
- First Baptist Church, Rev. Wilson B. Waldor, Charlotteville, Virginia 22901
- Bethel Baptist Church, Rev. Gerald F. Tucker, Pulaski, Idaho 83856
- Emmanuel Baptist Church, Rev. Robert L. Weiss, Loveland, Colo. 80537
- First Baptist, Oglesby (G.A.R.B.C.)*, Rev. Thomas M. Parsons, Oglesby, Ill. 61346
- Community Baptist Church, Rev. Elvin G. Nynas, Edwardsburg, Mich. 49112
- Bethel Baptist Church, Rev. Clay Nutter, Fruitport, Mich. 49445
- First of Kouts Baptist Church (G.A.R.B.C.)*, Rev. 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 Vickers, Pulaski, Idaho 83856
- Baptist Church (Independent), Pastor Mick Hill, San Jose, Calif. 95123
- American Baptist Church, Pastor R. D. McCracken, Ithaca, N.Y. 14850
- Flint Hill Baptist Church, Pastor R. W. Weeks, South Birmingham, Ala. 35205
- Joy Baptist Church, Pastor Henry L. Brinkley, Washington, D.C. 20001
- Faith Baptist Church (G.A.R.B.C.)*, Rev. Merlyn E. Jones, Defiance, Ohio 43512
- Baptist Church (Independent), Pastor Dr. Robert B. Differe, Oxford, Hill, Md. 20775
- 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, Greenwich, Ohio 43331
- Leonard Heights Baptist Church, Pastor John H. Kiel, Grand Rapids, Mich. 49504
- Baptist Church, Pastor Bill Berry, Tucker, Ga. 30004
- Immanuel Baptist Church, Pastor Murray M. Boyd, Ridgewood, N.J. 07450
- Baptist Church, Rev. Paul Randall, Parma, Mich. 44060
- Southwood Baptist Church, Rev. Jack Williamson, Jamestown, N.Y. 14740
- Baptist Church (G.A.R.B.C.)*, Rev. Paul Hawkins, Weaverville, Calif. 92886
- Shaw Heights Baptist Church, Pastor E. A. Slaughterhaupt, Denver, Colo. 80221
- Biblo 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. Schirmelhake, Mt. Lake, Md. 21560
- Union Baptist Church (G.A.R.B.C.)*, Pastor Eugene Evans, Ind. 46326
- Baptist Church, Pastor Richard T. Bray, Jr., Roanoke, Va. 24014
- Baptist Church, Pastor James W. Abingon, Austin, Texas Baptist Church, Pastor Stanley Badley, Baptist Church (G.A.R.B.C.)*, Pastor Norman C. Warner, Soney Fork, Ky. 40988
- Palson Baptist Church, Rev. W. D. Branch, Palson, N.C. 28341
- Baptist Church, Pastor Adam Bauman, Yakima, Washin 98902
- Baptist Church, Treas. Kester O. Williams (for the church), Star, N.C. 27050.
April 9, 1979

CONGRESSIONAL RECORD—SPEAKERSHIP

7641

Primitive Baptist Church, Elder Loren H. Wilson (for the church), Fairfax, Va., 22030. 

Mickel Baptist Church, Pastors Martin F. Bishop, Birmingham, Ala., 35214. 

Baptist Church (Independent), Rev. Daniel Schieber, Mt. Ephram, N. J. 08069. 

Baptist Church, Pastor James W. Wynn, Scott, La. 70583. 

Baptist Church, Pastor R. D. McClain, Itham, N. Y. 11758. 

Baptist Church (Independent), Rev. Don P. Porter, Key Largo, Fla. 33037. 

Baptist Church, Pastor A. R. Wynn, Sheffield, Ala. 35604. 

Baptist Church, Rev. Louie J. DiPiacco, Wheaton, Md. 20909. 


Baptist Church, Pastor Wallace R. Berry. Corryton, Tenn. 37721. 

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. 


Rocky Fork Baptist Church, Pastor Harold M. Gray. Galena, Ohio, 43833. 


Spruce Street Baptist Church, Rev. Dr. James L. Lowe, Newton Square, Pa. 19073. 

First Baptist Church, Rev. Leland Hud- hand, Lock Haven, Pa. 17746. 

Grace Baptist Church, Rev. Thomas W. Noyes, Norristown, Pa. 19403. 


Bible Covenant Baptist Church, Rev. Rob- ert G. Walter, Media, Pa. 19033. 

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 Cur- tis, Oberlin, Ohio 44074. 

Tabernacle Baptist Mission, Pastor Fred Patrick, Louisa, Va. 23050. 

First Baptist Church (G.A.R.B.C.)*, Pastor Roger L. Williams, Mesa, Arizona 85206. 

First Baptist, Rev. L. D. Grant, Caro, Mich. 48723. 

Temple Baptist Church (Independent), Pastor Lennom E. Hakes, Glen Burnie, Md. 21060. 

Faith Baptist Church, Rev. Victor E. Bilboe, Smyrna, Del. 19977. 

Grace Independent Baptist Pastor Thomas J. Hawkins, Cleveland, N.C. 21032. 

Evangel Baptist Church, Rev. Ernest Thompson, Hagerstown, Md. 21740. 

Grace Independent Baptist Church, Rev. E. Duane King, Frostburg, Md. 21532. 

Bible Baptist Church, Pastor Willmont L. Thurston, Mattawan, N.Y. 10534. 

Cedar Run-Crooked Tow Baptist Church, Rev. Floyd T. Binns, Culpeper, Va. 22701. 

Baptist Church, Rev. Milton S. Jones, Orange, Va. 22060. 

Trinity Baptist Church, Pastor Jack R. Jackson, Verona, Va. 24482. 


First Baptist Church, Pastor Wayne C. Vawter, Plainfield, Ill. 60544. 

*General Association Regular Baptist Church.
CHURCH OF THE BRETHREN
Community Brethren Church, Rev. George Arthur Carey, Grass Valley, Calif.
First Church of the Brethren, Rev. Guy S. Fern, Allona, Pa.
Church of the Brethren, Rev. Clarence M. Moyer, Staunton, Va.
Church of the Brethren, Rev. Dwight Hargett, Decatur, Ind.
Stone Hill Church, Rev. Roscoe Pringle, Goshen, Ohio
Bethel Church, Rev. James O. Eikenberry, Carlisle, Pa.
Church of the Brethren, Rev. Stanley M. Waybright, Oakland, Md.
Muskogee Church, Rev. Otto S. Suck- schwert, Muskogee, Michigan
Little River Church OTB, Rev. Elwood F. Humphreys, Craigsville, Va.
Church of the Brethren, Rev. Clyde Carter, Doylesville, Va.
Spindale Church OTB, Rev. Chas F. Rinehart, Spindale, N.C.
Church of the Brethren, Rev. Walter Snyder, Freedom, Pa.
Germantown Brick Church, Rev. Sylvius D. Flora, Rocky Mount, Va.
Prairie View Church, Rev. Richard L. Deemy, Friend, Kansas
Monroeville Church, Rev. Chalmers C. Dilling, Johnstown, Pa.
Stover Memorial, Rev. Berwyn L. Ottman, Des Moines, Iowa
Pittsburgh 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, Inda.
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. Crumpecker, Roanoke, Va.
Church of the Brethren, Rev. John E. Gilmley, Brookville, Ohio
Church of the Brethren, Rev. R. Dean Pawley, Bridgeville, Va.
Church of the Brethren, Rev. Andrew S. Bontrager, Paradise, Calif.
Poage Mill Church OTB, Rev. Dr. Allen D. Pugh, Roanoke, Va.
Church of the Brethren, Rev. B. A. Smith, Christiansburg, Va.
Mount Ida Church OTB, Rev. Ralph Looshbaugh, Westphalla, Kena.
Church of the Brethren, Rev. Fred R. Clayon, Kasson, W. Va.

CATHOLIC
St. Thomas Catholic Church, Rev. Bernard Michalk, Riverside, Calif.
Sacred Healer, Rev. D. A. Farinba Jr., Patterson, N.J.
Fatima, Rev. Anthony McGowan, San Clemente, Calif.
Queen of Heaven, Sister Rosanna, Erlanger, Ky.

CONGRESSIONAL
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. Zant, Roseburg, Oreg.
Lutheran Church, Rev. L. Beale, Anahalem, Calif.
Lutheran Church, Rev. Dennis A. Kastens, Aiea, Hawaii
St. Luke Lutheran Church, Rev. Luther Herman, Benton, Ark.
Peace Lutheran Church, Rev. Norman L. Hammer, Honolulu, Hawaii
Lutheran Church, Rev. Gregory Eoye, Dayton, Wash.
Lutheran Church Missouri Synod, Rev. Ralph A. Weimrich, Cocoa Beach, Fla.
Lutheran Church, Rev. Kasmir Kachmarek, Sweet Hope, Oreg.
American Lutheran Church, Rev. Herbert W. Wolber, Englewood, Fla.
Bethelehem Lutheran Church, Rev. Eldon L. Pickard, Sodo Woolley, Wash.
Lutheran Brethren Church, Rev. Allen J. Poss, East Hartland, Conn.
Lutheran Church, Rev. E. G. Meske, Baldwin, Ill.
St. Peter Lutheran Church, Rev. E. H. Pfetler, Carlsbad, New Mexico
Lutheran Church, Rev. Robert E. Ward, Portland, Oreg.
Lutheran Church Missouri Synod, Rev. Eldon K. Winker, Bytheville, 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, Bonnivelle, Ill.
Lutheran Church, Rev. Norman M. Nessett, Corvalis, Oreg.
Lutheran Church, Rev. William Giltner, 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. Stromsohn, Portland, Oregon
First UPC, Rev. Frank D. Syvobda, East Islip, N.Y.
Oliver UPC, Rev. Victor I. Alleen, Minneapolis, Minn.
Bedford Presbyterian Church, Rev. Thomas A. Hough, Washington, D.C.
United Presbyterian Church, Rev. Gabriel Abdullah, Jacksonville, Fla.
Lakewood Presbyterian Church, Rev. Ernest Eric Byers, Wash.
United Presbyterian Church, Rev. Lane G. Adams, Memphis, Tenn.
United Presbyterian Church, Rev. Andrew J. Jarvis, New York, Wash.
Southern Presbyterian Church, Rev. Harry W. Alexander, Lexington, Ky.
United Presbyterian Church, Rev. Elliott B. O'Brien, Charlottesville, Va.
Summer First UPC, Rev. R. B. Stelling, Summer, Wash.
Community UPC, Rev. Carol D. Buelow, Elkhart, Ind.
Church of the Atonement, Rev. Stewart J. Rankin, Silver Spring, Md.

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INTER OR NONDENOMINATIONAL

Church of the Open Bible, Rev. Roger V. Seacord, Greenwich, N.Y.
Catacombs Outreach Church, Rev. Randy Shanley, Shreveport, La.
Ivis Bible Church, Rev. David Minturn, Hindon, Ky.
Christian Church, Rev. Phil Hansen, Rochester, Wash.
First Christian Church, Rev. E. T. Phelps, Jr., Flora, Ill.
Church of the Northern Virginis, Rev. J. Toppling, Oakton, Va.
Oreut Church, Rev. Kevin Donlevle, Santa Maria, Calif.
First Christian Church, Rev. George W. Johnson, Jr., Brightwood, Va.
Forcye Memorial Church, Rev. Gerald G. Smalls, Silver Spring, Md.
Free Holiness Church, Rev. Presley L. Pulley, Crovigsdale, Va.
Evangelistic Center Church, Rev. A. J. Rowden, Westphalia, Fla.
Faith Community Church, Rev. J. Harvey Dixon, Salisbury, Md.
Interdenominational Church, Rev. David H. Hine, Portland, Ore.
Full Gospel Church, Rev. Fred P. Cochen, Carncich, Calif.
Some-One-Cares, Rev. Lance J. Antonz, Wheaton, Ill.
Life Fellowship, Rev. David H. Hine, San Bernardino, Calif.
Stokesville Community Church, Rev. Ray E. Tabor, Staunton, Va.
Four States Christian Missions, Rev. James M. Red, Hagerstown, Md.
The Federated Church, Rev. Russ Rehm, Waterville, Wash.
Moores Corner Church, Rev. William C. Fogle, Liverett, Mass.
Interdenominational Church, Rev. S. R. Schwambach, Evansville, 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 APPELLATE 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 favor of an amendment by Senator Jesse Helms (R-NC) to the Department of Education bill. Senator Helms' amendment was approved by a vote of 73-0 and is designed to ensure the right for 'voluntary prayers in the public schools.' The vote is to be reconsidered by the Senate today. We are extremely pleased to support the amendment in firm and resolute action by the Senate."

The release was printed in the Record.

Associate Director Floyd Robertson, with the associate director of Public Affairs and communications, has 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 prayer by anyone. It would not mean we would enter 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 of church attendance in 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 private religious freedom be preserved. This statement became a resolution in a plenary session of the NAE 1960 Annual and Convention which was 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 reasserted no less than half a dozen times in other resolutions adopted since 1960.

Dugan and Robertson stated that the enunciation of the Helms Amendment in public school law was to be made in return for 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 in public schools. It would not imply the 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 service for the cause of the Christian faith in the United States. The NAE was organized in 1949, the NAE today represents 38 complete denominations and individual churches from at least 50 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 and 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, 1978.

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.

Ben Armstrong,
National Religious Broadcasters.
The Helms amendment would partially remove the jurisdiction of the Federal courts over any act by a State government involving 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 commenting Senator HELMS, I believe that the Constitution and our own traditions offer room for voluntary prayer in each student's own fashion in the public schools. I have no qualms about our Constitution being used to support or subvert the U.S. Supreme Court. Pressures and other measures, will call forth pressure, once applied in this instance, will become ever easier to exert. The appetite for redress of their grievances, will grow 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 the aim of the Senator from North Carolina, whom 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 redress of grievances, will grow 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.

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, I believe that the Constitution and our own traditions offer room for voluntary prayer in schools 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.

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 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 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 were 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 of our 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 directly 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 in the suit.

Mr. MORGAN. I am not sure I heard correctly. Is the Senator saying that if a Federal 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 inconsistent with 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 means 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. Well, all the Senator is saying anywhere to a 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 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 any 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 putting them on the same basis.

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 has pending a case a petition for writ of certiorari. 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 States of North Carolina or the State of Minnesota, or what have you, have 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 as it would to a case being argued by the Supreme Court by writ of certiorari would care to review the case. That would not be the same. The Supreme Court may or may not hear from you 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 from you. I am struck, in that 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 your Government does not want you to exercise that right."

So I share with my friend the very grave concern about the proposed legislation. Perhaps I am lucky, I hope, but it is my belief that the Court, as a matter of right 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?

Mr. McClure. Does the Senator from North Carolina have time?
The yeas and nays were ordered.

Mr. McCLEURE. Mr. President, let me respond only to this extent, that for the very reason, as stated by the Senator from Arizona, I opposed 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 to this time. 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 the Court can accept the case, and having 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. McCLEURE. Mr. President, I yield to the Senator from South Carolina.

MR. THURMOND. Mr. President, I do not think that under the provisions of 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 the current statutory scheme 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 to be 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 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-
during 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 an inordinate amount 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 so that they would 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 have that power. If they feel that the case is not 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 cases? 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. There are no of 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 this uncertainty in this area.

I enjoyed having the opportunity of attending 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 writ of 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.)

STROM 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 it 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


By: 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 writ of 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.

Sincerely yours,
HERBERT S. SKEEL.

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. HOILLINES), the Senator from Michigan (Mr. HART), and the Senator from Tennessee (Mr. SASS consumer) 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. CHAFFEE), the Senator from Delaware (Mr. RORRIS), 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 Log.]

YEAS—61

Baker
Bellmon
Bentsen
Biden
Boren
Byrd
Harry F., Jr.
Byrd, Robert C.
Cannon
Chiles
Church
Cousine
Conrad
Connelly
Durenberger
Durkin
Durkin
Ford
Garn
Glenn

NAYS—30

Armstrong
Baucus
Bayh
Bingelz
Bradley
Burdick
Cochran
Granston
Guinee
Danforth

Not Voting—9

Bumpers
Chafee
Chafee
Eagleton

So the bill (S. 450) as amended, was passed as follows:

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 amended by deleting subsection (d) and inserting the following in lieu thereof:

Section 1252 of title 28, United States Code, is amended by deleting subsection (e) and inserting the following in lieu thereof:

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. 3. Section 1252 of title 28, United States Code, is amended by deleting subsec-
tion (2), by redesignating subsection (2) as subsection (1), 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 by the Supreme Court by writ of certiorari where the validity of a statute or treaty or statute of the United States is drawn in question or where the validity of a statute or treaty or any State law, 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 statute or treaty of the United States is drawn in question or where the validity of a statute or treaty of Puerto Rico is drawn in question or where the validity of a statute, treaty, or law of the United States, or where any right, privilege, or immunity is specially set up or claimed under 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.
Sec. 1252. Repeated.
Sec. 1253. Direct appeals from decisions of three-judge courts.
Sec. 1254. Court of appeals; certiorari; certified questions.
Sec. 1255. Court of Claims; certiorari; certified questions.
Sec. 1256. Court of Customs and Patent Appeals; certiorari.
Sec. 1257. State courts; certiorari.
Sec. 1258. Supreme Court of Puerto Rico; certiorari."

SEC. 7. Section 314 of the Federal Election Campaign Act of 1971, as added by section 209(a) of the Federal Election Campaign 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 (35 U.S.C. 652) is amended by deleting "with the right of either party to appeal to the Supreme Court of the United States", in subsection (d) of section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652(d)), is amended by deleting the last part thereof and inserting in lieu thereof the following: Any review of the interlocutory or final judgment, decree or order of such court may be had only upon direct review by the Supreme Court of certiorari.

Sec. 10. This Act shall take effect ninety days after its 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 section 1257, 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 85 of title 28 is amended by adding at the end thereof the following new item:

"1269. 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:

"1259. Limitations on jurisdiction
Notwithstanding any other provison 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 1257 of this title.

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

"1269. 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 enrollment of S. 480.

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

DEPARTMENT OF EDUCATION

The Senate continued with the consideration of the bill S. 311.

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. 480 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 will be 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 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 adopt this amendment this last Thursday by a vote against a tabling motion, vote for the motion to reconsider by Mr. RIECSCOFF, and then vote down the amendment by Mr. HELMS.

Mr. SUBICOFF. 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, § 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 § 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 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 more than just a question of freedom; It is more than just a question of consciense; 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, today, in view of your sustained support for the creation of a Department of Education, 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 constituent 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 defendant in a case down in 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 very well-intentioned people. In my judgment, Mr. President, there is not very much in this amendment that has already been presented his amendment. 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 be the last thing 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 of extraordinary importance. It is not coercion; 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. It is more than just a question of freedom; It is more than just a question of conscience; It is important, it is fundamental; it is not complex.

The President 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 resind 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 those who stand with 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 Chamber, 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 minority leader, who voted for the Helms amendment with a 47-to-37 margin. Now that there has been a motion to reconsider, and I know that many Members who voted very much 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 be the last thing 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 of extraordinary importance. It is not coercion; 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. It is more than just a question of freedom; It is more than just a question of conscience; It is important, it is fundamental; it is not complex.

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. In the early schools of America, Bible reading and prayer were an ac-
concluded 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 or something worse.

Our Constitution guarantees us all the "free exercise of religion." It guarantees us all freedom of religion—not freedom from religion. This amendment only guarantees freedom of religion—that is to say, the right to pray in schools if they wish; it does not tell them or anyone else what they must pray. I believe this is their basic constitutionally guaranteed right.

This rule was 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 are often 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 or 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. We have tried bringing in the new—and many times, perhaps by a school board or bureaucracy with which we were 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 the record, 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 any further debate?
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 come to 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 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 that is going on a new department of Education.

The VICE PRESIDENT. The question is on agreeing to the motion to reconsider the vote on Mr. Helms' amendment.

Mr. ROBERT C. BYRD. Mr. President, the Senate is now about to reconsider 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.

Mr. President, will you recognize me?

Mr. RICHARD G. FORD. I yield 5 minutes from the bill.

Mr. ROBERT C. BYRD. I voted for the amendment earlier today. I voted for the amendment. It was the appropriate vehicle 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.

Mr. President, will you recognize me?

Mr. JOHN H. Chafee. I yield 5 minutes from the bill.

Mr. ROBERT C. BYRD. I will move to table the Helms amendment. Therefore, I hope that 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 this be recognized as an amendment 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 that he has been 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, he can do that. I move to explain it, that is fine. Each of us have to vote our conscience. I would not want any Senator to labor under the representation that he has done his duty on behalf of praying voluntary prayer in the schools of the country. I move 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 praying voluntary prayer in the schools of the country. I move 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 praying voluntary prayer in the schools of the country. I move 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 praying voluntary prayer in the schools of the country.
prayer in public schools, has told a news conference, "I think the government ought to stay out of business."

The president's remarks were made to a group of editors at the White House Friday. A transcript was released yesterday.

Mr. CARDER, who, I believe, has weighed in on such a way that the Senate 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, not so much over the amendments—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 are always who, 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 D'Vran, 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 did, but I have voted, 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 legislative business. 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 being always who, regardless of the color 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 Parliamentary inquiry shall not be renewed except if it has been renewed until after 3 days have intervened.

Mr. HELMS. When the time has expired, is a motion to lay on the table in order?

The VICE PRESIDENT. Under the precedents of the Senate, a motion to table cannot be renewed once it 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 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? 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 to their constituents 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 would be prepared to kill 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. 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 arguments to a point in all respect. He would not be persuaded.

Mr. HELMS. Yes, he would. The distinguished majority leader always persuade me.

Mr. ROBERT C. BYRD. Mr. President, the Senate has already adopted this amendment. I do not understand 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, it is a motion 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.

In my judgment 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 as respectfully different as it was in the Constitution 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 the Senate. There can be questions as to whether this amendment is constitutional or not. There can be questions as to whether we can frame an 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 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 particular amendment. The Senate from North Carolina has received the full endorsement 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 in the Senate what is happening in the lower courts. But beyond that, in a body comprised of members of the greatest lawmakers, we may be faced with this issue 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. Senate colleagues 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 an 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.
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 liberty, 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 from Massachusetts.

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 presenting an 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.

Mr. MOYNIHAN. I understand the 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.

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 to what the amendment of the distinguished Senator from Massachusetts and the Senator from Indiana is. It seems to me that the matter of prescribed prayer inevitably partsakes of the establishment of religion and cannot be avoided 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 our floor today.

It was precisely this problem that the Senator from Oregon 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 power of the Supreme Court, to the States and to the Courts of the United States. To me, that would be a desirable change.

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 governmental 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 Inter-
governmental Advisory Council on Edu-
cation, 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 Sena-
tor from North Carolina yield?

Mr. HELMS. Mr. President, let us un-

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 table a motion to table and thereby avoid an up-

and-down vote on this matter.

I do not care much about the amend-
ment. I do not think it does any good. But I

think Senators should know exactly what is going on.

The majority leader will have an up-

and-down vote this debate is over as far as the Senator from North Caro-

lina is concerned. But I want Senators

instead of an up-and-down vote.

I think Senators should know exactly

what is going on here.

Mr. MOYNIHAN. Mr. President, will

the Senator from North Carolina yield?

Mr. HELMS. I am delighted to yield to

my friend.

Mr. JEPSEN. The distinguished Sena-
tor from Massachusetts has been talk-

ing about separation of church and

state, the Constitution, and so on.

There is a bill numbered 4890 that

passed in the Commonwealth of Massa-

chusetts which was an act allowing for

the Teacher In charge of the

Schools, an act to adopt a moment of meditation for school pray-

er in all public schools.

At the commencement of the first class

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 it should bring this to the at-

tention 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 amend-

ment of the Senator from North Caro-

lina?

Mr. HELMS. If the Senator from Iowa

will yield—oh, I see that the able Sena-
tor has sat down. Therefore, he does not

have the floor.

Mr. President, I seek the floor in my

own right.

The PRESIDING OFFICER. The Sena-
tor 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.

We are 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. Mr. President, the Senator from North Carolina has the time.

If the majority leader will have an up-

and-down vote this debate is over as far as the Senator from North Caro-

lina is concerned. But I want Senators

instead of an up-and-down vote.

I think Senators should know exactly

what is going on here.

Mr. HELMS. Mr. President, the Senator

from West Virginia has stood with the Senator from Massachusetts 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 re-

peatedly have to vote on this question. We have already voted on it. So let us

be done with it.

Mr. MCLURE. Mr. President, will the

Senator from North Carolina yield for a question?

Mr. HELMS. I yield.

Mr. McClaule. I thank the Senator for yielding for a 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 as an amendment. It seems to me that it is not really an action to save the amend-

ment as it is to give it a convenient vehi-

cle upon which it can conveniently die.

Therefore, Congress can avoid having voted on it and can say yes, we voted for it; or no, we did not vote 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 proce-

dures 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 amend-

ment.

Mr. HELMS. Mr. President, that would

require on the part of the Senator from

North Carolina to read the mind of the

distinguished member of the House of

Judiciary Committee. I cannot do that.

I am hopeful that Congressman Rono

will hear from a considerable number of

American citizens about this matter and

that he will attach to it that the DeConcini bill with the Helms amend-

ment attached to it is reported to the House floor.

If Mr. Rono decides not to do that, the

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 in 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 Sena-
tor has 4 minutes and 30 seconds re-

maining.

Mr. MOYNIHAN. Mr. President, will the Senator from North Carolina yield briefly to me?
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, it over-whelmingly those young people would have voted against a school prayer amendment.

Therefore, I intend to vote for the amendment by my distinguished colleageh 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 this 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 Arizona (Mr. GOLDWATER), the Senator from Delaware (Mr. ROSE), and the Senator from Texas (Mr. TOWER) are necessarily absent.

THE PRESIDING OFFICER. Have all Senators heard my announcement?

The result was announced—yeas 53, nays 40, as follows:

[Rollcall Vote No. 44 Leg.]

YEAS—53
Baucus
Bentsen
Biden
Boschwitz
Borchers
Burdick
Byrd, Robert C.
Byrd, Robert C.
Cannon
Chafee
Chiles
Cohen
Colet
DeConcini
Domenici
Exon
Ford
Gann
Goldwater
Gravel

YEAS—58
Armstrong
Baker
Belmont
Byrd, Harry F., Jr.
Chiles
Coil
Dole
Donnentic
Exem
Ford
Gann
Goldwater
Gravel

NAYS—40
Armstrong
Baker
Bentsen
Bingham
Boren
Boschwitz
Budick
Byrd, Robert C.
Byrd, Harry F., Jr.
Chiles
Chafee
Colton
Dole
Domenici
Exem
Ford
Gann
Goldwater
Gravel

NAYS—57
Armstrong
Baker
Belmont
Byrd, Harry F., Jr.
Chiles
Coil
Dole
Donnentic
Exem
Ford
Gann
Goldwater
Gravel

So the motion to lay on the table UP amendment No. 72, as amended by UP amendment No. 52, 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 be no further rollcall votes tonight.

Bumpers
Chafee
Folsom
Foley
Percy
Roberts
Sarbanes
Williams

NOT VOTING—5
Bumpers
Chafee
Folsom
Foley
Percy

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The motion to lay on the table was agreed to.

Several Senators addressed the Chair. Mr. ROBERT C. BYRD, Mr. President, there will be no 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. SCHMITT. Mr. President, 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 half the time consumed 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. 136

(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. 136 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. SCHUDDER, 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 109, line 3, strike out "SEC. 307." and insert "SEC. 308."

On page 73, in the table of contents, remove items Sec. 304. through Sec. 307.

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.

The amendment stresses 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 confronting our nation 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 mind it will be a nonissuant 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 advancements. People 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 need for science education which all desire. This transfer will result in a communications gap between science education and scientific research. Coordination of education programs and research programs and hampers 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 Department 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 is and is clear that the basic mission is to increase trained personnel for the teaching 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 at all.

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 halls of power of foreign affairs, defense, and energy. There is a hopeful glimpse of new political power, built on a unified education constituency. Such is the spell which some have conjured. Whether a remodeled government archi-
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,**


Hon. [Name of Committee Member],

Committee on Commerce, Science, and Transportation, Dirksen Senate Office Building, Washington, D.C.

Dear [Name of Committee Member]:

At its meeting in Houston on January 7, 1070, 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 nearly 300 affiliated scientific organizations. The full Resolution adopted by the AAAS on January 7, 1979, 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 science and education, in which the nature of the National Science Foundation has contributed to the identification and resolution of issues in science education, and

Whereas the transfer of the education 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 resolution 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 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 argued that the growth in science education and the proposed Department of Education. I quote from his testimony:

As members of this Subcommittee know, there is a program called by the NSF Science Education Program to the new Department of Education. This would not be in the scope of my opinion as science and engineering education are concerned. Innovation has come from the NSF. In contrast to the HEW Department of Education, NSF has been able to mobilize the community to see that science and engineering are the backbone of math, physics, chemistry, and biology. These 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 these 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 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 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 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 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: the Senate is not 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 during 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 the Science Education Board be 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 my colleagues 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 transfer 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 training of our young people in 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.

**Mr. Kennedy.**

Mr. President, I send an amendment to the bill.

The PRESIDING OFFICER. There is an amendment pending. The Chair informs the Senate 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. The PRESIDING OFFICER. Does the Senator from Massachusetts 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 Senate from Massachusetts (Mr. Kennedy) for himself and Mr. Risch, Mr. Percy, Mr. Magnuson, Mr. Williams, Mr. Randolph, Mr. Pena, Mr. Bentsen, Mr.捷夫, and Mr. Quayle, 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 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 8(a)(1) of the National Science Foundation Act of 1950, except the functions or programs of the 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) 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 and the dissemination of results concerning such research and development;

(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 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 16, strike out "(e)" 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:

<table>
<thead>
<tr>
<th>NSF science education programs</th>
<th>Purpose</th>
<th>Audience</th>
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| Comprehensive assistance to undergraduate science education | Instructional improvement | Scientists and science educators | NSF...
| Minority institutions science improvement | do | do | NSF...
| Resource centers for science and engineering | do | do | NSF...
| Undergraduate instructional improvement and undergraduate instructional scientific equipment | Knowledge transfer | Scientists and science educators | NSF...
| Development in science education | do | do | NSF...
| Research in science education | 2-way communication on issues | Scientists and the public | NSF...
| Science for citizens | do | do | NSF...
| Ethics and values in science and technology | R & D to illuminate issues | do | NSF...
| Public understanding of science | Information to non-scientists | General public of all ages | NSF...
| Precollege teacher development | Information to practitioners | Elementary school teachers | NSF...
| Science faculty professional development (less elementary or secondary school programs) | do | do | NSF...
| Student-oriented programs | Talent identification | do | NSF...
| Minorities, women, and physically handicapped | Talent identification and counseling | do | NSF...
| Fellowships and traineeships | do | do | NSF...
| Total | do | do | NSF...

| NSF fiscal year 1979 request | Location after DOE legislation is enacted | NSF | DOE | NSF | DOE
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The 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 White 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:

...
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. It concerns the role you are expected to play in the last Congress about the Administration's proposal and also know that you are 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 the Administration, 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 a new form of the roles of the Foundation and the proposed department.

In the last few weeks, our office has worked closely with others in the Administration, in the House and the Senate to improve the proposal. It continues to have primary responsibility for the direction and initiation and support of basic scientific research and for programs of 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: Science and education directorate; 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 and listen to the views of scientists 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 science education programs 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 the 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 to transfer science education programs presented to the Congress by the administration.

Mr. President, I believe that my amendment meets many of the major concerns which must be 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 the 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 who are deeply interested 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 congressional action on amendments that are necessary to assure a firm basis for science education in the future.

I urge the Senate to accept this amendment.

Mr. COFF. 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 co-sponsor 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 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 co-sponsor in offering it to the Senate.

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 to transfer science education programs presented to the Congress by the administration.

Mr. President, 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 science education programs taken to facilitate the implementation of successful innovations.

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 in the Office of the Secretary of Education, 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 include environmental education, metric education, and other science and math programs.

It is extremely important for the Department to provide ongoing support of...
suring that science education is not underrepresented in scientific and technical education programs for scientists and engineers. The Department of Education 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.

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 whenever necessary. It will continue to support graduate-level research and training programs as well as inservice training programs for scientists and engineers. Encouraging women, minorities, and the handicapped—all of whom are underrepresented in science 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 come to be associated with our country'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 in the Department of Education and the National Science Foundation, we 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.

Mr. PERCY. Mr. President, I commend Senator Kennedy and Senator Schmitt for the addition they have made to the amendments in 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 that the Office of 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 this compromise position. 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 this amendment. Once again, I congratulate him and find this a useful compromise.

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

Mr. SCHMITT. The amendment was agreed to. Mr. RIBICOFF. 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 democracy, 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 that part of the world, 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 reformation and perpetuation of free institutions.

That is why the people of America care 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 compulsory is 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 American people that we are serious about the future of our children.

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 adequate 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. The Federal Government, 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 coordinate the Federal effort more effectively. 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 of Education would give to the various aspects of education: Offices for elementary and secondary education; postsecondary education; vocational, 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 cornerstone 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 of economically, socially, and academically disadvantaged. We moved to strengthen such involvement through the Elementary and Secondary Education Act amendments last year.

The bill strengthens our ability to ensure equal educational opportunities for all individuals. The Office of Civil Rights in the department is given more prominence, is insulated from programmatic concerns, 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 bey- ond the specific legislation administered by them. A major responsibility of the new Assistant Secretary should be to ensure the availability of Federal programs to all those who are eligible. Many eligible students are not being served through 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 more 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 has been supported by the Indian education program of the Bureau of Indian Affairs, as was suggested in the committee bill last year.

So, too, we have resolved our problems with the National Science Foundation programs.

We must assure that this Nation's science education programs continue to meet the standard of excellence which has been achieved so importantly in 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 example of the Elementary and Secondary Education Amendments, and 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.

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DEATH OF CARROLL ROSENBOOM

Mr. KENNEDY. Mr. President, the death of Carroll Rosenboom 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 team's remarkably 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 tragic 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 after 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 Rosenboom that appeared in the New York Times on April 5, entitled "He Loved To Swim in the Surf."

There being no objection, the column 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 Rosenboom had owned an oceanfront home amid the palm trees of the Golden Beach, Calif., and he used to go there to relax. When he took over the Los Angeles Rams in 1972 after trading the Baltimore Colts franchise, Carroll Rosenboom 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—something he could control. When everybody around him was there to greet them with a smile—a forced smile, but still a smile. That night a six-pack of beer, a few drinks and Carroll Rosenboom was out where they could see him. He did not hide.

Two years after the Colts won Super Bowl V and Carroll Rosenboom had another party, without forcing his smile.

In recent years, Carroll Rosenboom 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, personal satisfaction was there because of his success as the owner of the Colts and as a businessman, initially as the owner of the Minneapolis-Cincinnati Lakers, and later as owner of the Baltimore Colts franchise. He also became the Rams' majority owner in 1974 and then the Rams owner in 1975. As the owner of the Minnesota Twins of the American League, and the Minnesota North Stars of the International Hockey League, he also had an interest in the National Football League. He was a member of the board of directors of the Pro Football Hall of Fame.

A SIMILAR AND A SUFFICIENT BAND

Sen. Byrd. Senator Kennedy reminded the Colts owner that night, "There are worse things than losing a football game."

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SWIMMING IN THE BEACH

Mr. ROBERT C. BYRD. Mr. President, for the development of scientific and technical talent in this country.

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 example of the Elementary and Secondary Education Amendments, and 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.

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RUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine business, that Senators may be permitted to speak therein for not to exceed 10 minutes.

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SWIMMING IN THE SURF, one of his friends has said, "Carroll loved to swim in the surf.

One day he came up from 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 Los Angeles Rams, team to lose to an American Football League team, he felt disgraced. When he returned to his Ocean Beach home, a friend said to him: "Carroll," the Senator reminded the Colts owner that night, "there are worse things than losing a football game."
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 may have missed this inclusive 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 accuracy, and the ability of other speakers included.

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 say that in 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 bipartisanship, his sense of fairness, his sense of judicious manner, demeanor in his conduct of the committee, 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 Wall Street Journal article be printed at this point in the Record.

Mr. President, I believe that Senator Tsongas' concern is a major problem. It is not acceptable. But it is not acceptable to the Angolan people, or the Angolan Government, or the United States, or the Soviet Union, or 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. Modechail Ben-Ari, expert from the Jewish community in Tel Aviv, and the 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, Israeli 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 Sko-...
WASHINGTON—When the long-awaited Strategic Arms Limitation Treaty reaches the Senate, much attention will focus on a showdown between Sen. Sam Nunn and Sen. Henry M. Jackson of Washington, 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 knowledgeable and effective in his role as the Senate's leading critic of military spending.

At the start of his second term, the cautious and conservative Sam Nunn often finds himself in a minority in the Senate, where anyone is going to have to negotiate in order to cooperate 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 young Sen. in the Senate."

As such, he is a study in achieving power and influence in that competitive chamber. Talking friendly and seeking leadership leading to a powerful committee chairmanship, Sen. Nunn is the fifth-ranking Democrat on the Armed Services Committee. Sen. Nunn, younger than any senior member and thus a good bet to be chairman someday. Meantime he is making a major mark without the chairmanship.

With a prodigious appetite for work, he has mastered complicated military issues and shunned headline-grabbing stunts. "Many people involved," says a Democratic Senate aide, "think that Sam's just a great guy." 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 citizen's 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 supports Mr. Lance, who remained in the Senate. He is a member of the Senate "railroad" Mr. Lance out of the Senate. He is a member of the Senate "railroad" Mr. Lance out of office.

With libels and selective criticism, 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 the leg of Sam Nunn. "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.)

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 has 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 "not in favor of a broad blanket plan to take an active role in the Senate consideration. "I hope the debate will focus on the much broader question of American and military approach in the world," he declares. "We can use the debate to look down the road."
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 told the American people the environmental and human price which impacted communities are paying to keep their homes and to keep their businesses operating.

I now want to 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, Gillette, Gillette, and Craig, Colo., cannot be dismissed as passing flukes. Should we fail to address these problems now, they will be remembered not as historic disengers, 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 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 and Campbell.

They conclude that the total capital needs of the nine county area will be approximately $340 million from 1978-86 through 1984-85. Of that total, there is a projected 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 allowance of Federal mineral royalties to which the State is expected to be entitled over the next 10 years.

The unique nature of the impact problem by making funds available to those counties that 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.

There being no objection, the summary of the Stuart/Nichols study be printed in the Record.

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CONGRESSIONAL RECORD — SENATE

April 9, 1979

7667

Description

Health and Hospitals.................. $32
Sewer.................................. $2
Battery, (Admin., Polco, Fire)........ 16
Airports................................ 15
Parks and Recreation.................. 16
Other.................................. 9

County
Carbon.................................. 64
Campbell................................. 76
Garrett................................. 21
Sweetwater............................... 42
Converse................................. 43
Washoe.................................. 73
Johnson................................. 15
Lincoln................................. 77
Crook.................................... 6

Total.................................. 207

Some areas of the State will be better able
to finance these 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.

SUMMARY TABLE FOR 1978-79 THROUGH 1984-85

(in millions of dollars)

County
Carbon.................................. 64
Campbell................................. 76
Garrett................................. 21
Sweetwater............................... 42
Converse................................. 43
Washoe.................................. 73
Johnson................................. 15
Lincoln................................. 77
Crook.................................... 6

Total.................................. 207

* Does not include water facility projects, which are not
subject to legal debt limits. These projects total $15,000,000 in
Carbon County; $7,000,000 in Lincoln County; and less than
$500,000 in the other areas ($17,000,000 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 60% of the counties' needs can be
appropriately financed. This is particularly true
for requirements that are for equipment and
vehicle purchases and for ongoing development
projects. Debt financing will also be limited for
many municipalities, because the municipalities
that face the largest capital requirements will be
in Carbon County, and that substantial outside
issuance will be needed also in Campbell,
Sweetwater, and Converse Counties.

APPOMNTMENTS BY THE VICE
PRESIDENT

The PRESIDING OFFICER. The
Chair, on behalf of the Vice President,
pursuant to 10 U.S.C. 6099(a), appoints
the following members to the Board of
Visitors of the U.S. Navy Academy:
the Senator from Maryland (Mr. SARBANES)
in (large), the Senator from Tennessee
(Mr. STARKER) (Appointments), the
Senator from Texas (Mr. TOWER) (Armed
Services), and the Senator from Florida
(Mr. JACOBUS) (Appointments).

PORTRAITS OF GEORGE AND
MARTHA WASHINGTON

Mr. MORGAN. Mr. President, this
morning Washington Post gave a great
deal of attention to the fact that the
Smithsonian is in Boston for the
purchase of two 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 in 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 original residences of those for whom
they were painted, which hangs in room 312.

It is no wonder, then, that the people
of Boston and the entire State of Massa-
chusetts have come to believe that those
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 it not for the happenings in the
Natural Portrait Gallery, 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
discussion 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. Ken-
edy, 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. I would like to
explain the confusion that has arisen
among some of our colleagues.

I note the article attributed to Senator
KENNEDY implies that the leadership
of the Smithsonian on their own initia-
tive had decided the National Portrait
Gallery should have the Gil-
bert Stuarts and went to Boston with a
pothole of cash and made the Athe-
naeum 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 Stuarts if the prices which are hang-
ing in the Boston Museum. They first
offered to sell the portraits to the Bos-
ton Museum because for many reasons,
including some legal complications, they
decided that they would probably do
better in Boston and the State of Massa-
chasetts.

However, the Boston Museum could
not meet the asking price which origi-
nally was some $60 million; and, at that
point, officials of the Athenaeum con-
 tacted 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 Re-
gency on August 20, and we discussed the
matter at some length. Frankly, to a mem-
ber I think, we believed the asking price
was too high and we asked Smithsonian
officials to negotiate for a more reason-
able price. At the same time we decided the
fact that 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 a
few years in order to see that the portraits
had a local home, which was a major concern
of the Athenaeum and the reason Atha-
Athenaeum personnel stated they initiated the negotiations with the Smithsonian.

We started negotiations but, unfortunately, it was not long before we were confronted with a dilemma: 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 Smithsonian, the Athenaeum might have to accept an offer from another source unless 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 to a 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 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 here. If that were not practical, 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 Washington 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 trust funds and possibly private contributions, pointing up, I might add, the clear need to have some unrestricted trust moneys available 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 "The Athenaeum's portrait of George Washington," be printed 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 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, and that is a very real reason. In fact, I am convinced that these portraits are what they are because they belong in the nation's capital, the city of Washington.

Stuart never parted with these portraits, which he painted in 1796, although he made a considerable number of replicas of the Washington paintings which he has become the most familiar image of the Founding Father of our country. In 1831, three years after Stuart's death, the original portraits were acquired from his widow and daughter for the Athenaeum. The two pictures were bought for $1,500, of which $700 came from the Washington Monument Association for a statue of the nation's first president, dedicated in the Massachusetts Statehouse in 1827; and $800 came from a group of gentlemen, some of whom belonged to both the Athenaeum and the Washington Monument Association. The portraits have been on loan from the Athenaeum to the Boston Museum since 1970.

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 1969. The gallery has annually held major exhibitions of American historical topics, each accompanied by a full-scale publication; has built, through gifts (received from individuals and private funds) a permanent collection, which now consists of nearly 2,000 portraits; and has attracted an ever-increasing number of visitors, from 89,000 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 earlier 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 representative on the Board of Regents. That person, the board's chairman, currently is the mayor of the Boston Athenaeum, the reagents of the Smithsonian Institution and the members of the executive committee of the Board of Regents, 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. John Adams, chairman of the executive council of the Board of Regents.

In short, the Athenaeum are relinquished to the nation's capital, nothing that is uniquely the property of Boston will be surrendered. The Athenaeum portraits were not painted for the portrait lovers in the nation's capital, but rather for the patrons of the arts. The Athenaeum, founded in 1753, was the first American institution that began to collect art. The Athenaeum portraits have been displayed since 1876 in the Boston Museum. The portraits were given to the Athenaeum and the Washington Monument Association for a Federal painting to honor the nation's immortal. Here the portraits will be displayed for the first time, in the city designated for a Pantheon to honor the nation's immortals. Here the portraits will be displayed for the first time, in the city designated for a Pantheon to honor the nation's immortals.

And shouldn't Washington, the city designated for a Pantheon to honor the nation's immortals, have the portraits. After all, I have made no secret of the fact that these portraits are exactly that - they belong in the city designated for a Pantheon.

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, Yorktown, or the site of the Battle of the Washington Monument. It is precisely to encompass all such facts that the national repository-the establishment-should be inductively right that these precious icons should have at last reside in the National Portrait Gallery, which occupies the never 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 for the first time, in the city designated for a Pantheon to honor the nation's immortals. Here the portraits will be displayed for the first time, in the city designated for a Pantheon to honor the nation's immortals.

And shouldn't (Continued)
The CASE FOR A MASSIVE TAX CUT

Mr. JEPSEN. Mr. President, I am proud to be a cosponsor of the famous Roth-Kemp bill. The first significant effort to reduce 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. It would lower tax rates, put more people 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 modest $9500 a year. But with no family obligations she saw no reason why she should have to live on $183 a week, even in New York City. Her first year, the pay was only $9500 a year. 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, that remarkable event obscured the fact that another tax rebellion was already under way.

This other rebellion is known as "Kemp-Roth," as my colleagues have already pointed out. In 1977, re-introduced in 1978, and, in modified form, again last January by Rep. Jack Kemp (R., N.Y.). 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 brackets 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, it's more significant purpose is to cut 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 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 1979 to 18 percent in 1981.

Unlike Proposition 13, Kemp-Roth is not based on an outbreak of indignation at high taxes. It is based on an economic theory that says that high taxes discourage investment and that Kemp-Roth is intended to reverse that effect. It aims not merely to cut tax rates; it aims to cut tax rates on dollars that are invested in order to earn more income.

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 rates at 90 percent or more, and that the economic growth of the 18th and 19th centuries, when tax rates were less than 20 percent, was accompanied by a 90-percent increase in productivity.

I believe that Kemp-Roth is a bold and momentous experiment. I believe it will succeed. It aims to cut the rate of growth of federal spending-from 21 percent of the gross national product in 1979 to 18 percent in 1981. Unlike Proposition 13, Kemp-Roth is not based on an outburst of indignation at high taxes. It is based on an economic theory that says that high taxes discourage investment and that Kemp-Roth is intended to reverse that effect.

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slashes in government programs. And it would be left to Congress to decide the relative priority of the competing programs.

For the latter curve tells us that we need not attempt any massive cut in government spending—simply slowing down the growth of the tax rates will generate more jobs, greater economic activity and an expanded tax base which can be relied on for years' time, with 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 no question that a real problem in financing a deficit that is known to be temporary.

Indeed, in our own lifetimes we have seen this same phenomenon of the carryover basis 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 $6 billion over six years, presumably at the existing level of income. However, what emerged was an increase in tax revenues of $4 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 from 25% to 50%, the immediate reaction 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." Income taxes do not work, growth, investment, employment, savings and productivity while subsidies work, consumer and 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 the tax revenue goes up, liberal opponents dislike the idea of the government ending up with, in several years' time, the whole thing. And some conservative opponents think it is irresponsible to cut taxes when the budget is unbalanced. The last 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 the tax brackets. The American people will make their resentment known to their elected representatives, who will maneuver the cuts in the current budget, 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 revenue to balance government expenditures. That is the choice we must make.

WHY CARRYOVER BASIS SHOULD BE REPEALED

Mr. JPSEPN. 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 and unworkable, and ought to be repealed.

Among those testifying 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 raise Wilson's testimony to the attention of my colleagues and I ask unanimous consent that it be printed in the RECORD, as follows:

COMMENTS ON CARRYOVER BASIS

(As printed in the RECORD.)

First, may I express the appreciation of the Iowa State 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 of the blessing of moratorium became a reality. During that 22-month period we have found the result unpredictable in its present framework but is totally uncorrectable in its present concept and will remain uncorrectable until the proponent recognizes that the results are only part of the reality of the end result which will be reached ten years from now.

The result of the carryover basis income taxes 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 be 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.

2. Mostly Mortgages

   I have seen no example by any proponent which has even recognized the existence of such type of income. The prime examples of the proponent are all addressed to stocks and bonds which receive a fresh start as of a fixed date, and it is fixed. That 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 his property, the less the basis, until eventually it becomes minimal.

3. Probate, and for the estate;

   (a) Loss of exemptions;
   (b) Loss of non-recourse;.
   (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 in which to recognize gain and the property to be used to pay;

4. Federal estate tax;

   (a) Federal estate tax;

5. State death taxes:

   (a) State estate tax;
   (b) State income taxes for the decedent and the estate;

6. Income tax for the decedent and the estate.

   (a) Federal estate tax;
   (b) State income tax for the decedent and the estate;
   (c) Federal income tax for the decedent and the estate;
   (d) State income taxes for the decedent and the estate;
   (e) Federal income tax on the probate estate;
   (f) State income tax on the probate estate;
   (g) Loss of joint return rate schedule.

   It is the death knell to taxes on the probate estate.

7. COB does not recognize the reality of the tax liability.

   a. The owner of a 30-acre farm and small business could not sell the farm and small business until eventually it becomes minimal.
   b. The owner of a $650,000 pasing from son to father to a collective tax of 124%.

   It is the death knell to taxes on the probate estate.

8. COB is the death knell to taxes on the probate estate.

   a. Federal estate tax;
   b. State income tax for the decedent and the estate;
   c. Federal income tax for the decedent and the estate;
   d. State income tax for the decedent and the estate;
   e. Federal income tax on the probate estate;
   f. State income tax on the probate estate;
   g. Loss of joint return rate schedule.

   It is the death knell to taxes on the probate estate.

9. COB is the death knell to taxes on the probate estate.

   a. Federal estate tax;
   b. State income tax for the decedent and the estate;
   c. Federal income tax for the decedent and the estate;
   d. State income tax for the decedent and the estate;
   e. Federal income tax on the probate estate;
   f. State income tax on the probate estate;
   g. Loss of joint return rate schedule.

   It is the death knell to taxes on the probate estate.

10. COB is the death knell to taxes on the probate estate.

   a. Federal estate tax;
   b. State income tax for the decedent and the estate;
   c. Federal income tax for the decedent and the estate;
   d. State income tax for the decedent and the estate;
   e. Federal income tax on the probate estate;
   f. State income tax on the probate estate;
   g. Loss of joint return rate schedule.

   It is the death knell to taxes on the probate estate.

11. COB is the death knell to taxes on the probate estate.

   a. Federal estate tax;
   b. State income tax for the decedent and the estate;
   c. Federal income tax for the decedent and the estate;
   d. State income tax for the decedent and the estate;
   e. Federal income tax on the probate estate;
   f. State income tax on the probate estate;
   g. Loss of joint return rate schedule.

   It is the death knell to taxes on the probate estate.

12. COB is the death knell to taxes on the probate estate.

   a. Federal estate tax;
   b. State income tax for the decedent and the estate;
   c. Federal income tax for the decedent and the estate;
   d. State income tax for the decedent and the estate;
   e. Federal income tax on the probate estate;
   f. State income tax on the probate estate;
   g. Loss of joint return rate schedule.

   It is the death knell to taxes on the probate estate.

13. COB is the death knell to taxes on the probate estate.

   a. Federal estate tax;
   b. State income tax for the decedent and the estate;
   c. Federal income tax for the decedent and the estate;
   d. State income tax for the decedent and the estate;
   e. Federal income tax on the probate estate;
   f. State income tax on the probate estate;
   g. Loss of joint return rate schedule.

   It is the death knell to taxes on the probate estate.

14. COB is the death knell to taxes on the probate estate.

   a. Federal estate tax;
   b. State income tax for the decedent and the estate;
   c. Federal income tax for the decedent and the estate;
   d. State income tax for the decedent and the estate;
   e. Federal income tax on the probate estate;
   f. State income tax on the probate estate;
   g. Loss of joint return rate schedule.

   It is the death knell to taxes on the probate estate.

15. COB is the death knell to taxes on the probate estate.

   a. Federal estate tax;
   b. State income tax for the decedent and the estate;
   c. Federal income tax for the decedent and the estate;
   d. State income tax for the decedent and the estate;
   e. Federal income tax on the probate estate;
   f. State income tax on the probate estate;
   g. Loss of joint return rate schedule.

   It is the death knell to taxes on the probate estate.

16. COB is the death knell to taxes on the probate estate.

   a. Federal estate tax;
   b. State income tax for the decedent and the estate;
   c. Federal income tax for the decedent and the estate;
   d. State income tax for the decedent and the estate;
   e. Federal income tax on the probate estate;
   f. State income tax on the probate estate;
   g. Loss of joint return rate schedule.

   It is the death knell to taxes on the probate estate.
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 using 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 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 dependent relative to its admirers and competitors. The Soviet threat is understood by the public, though the Executive and Congress have failed to secure the capital needed to meet the necessity of the day. Other threats are less clearly perceived.

Neither the Government nor people seem to grasp the extent to which the United States is menaced by hostile political forces in the Third World. These forces threaten 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 again making the wealth transfers demanded by the leaders of the Third World nations. Our government doesn't reject the pretense and arrogance of such demands.

As a practical matter the assets have been raised in the defense of COB. Nothing can be modified or patched up by any device yet suggested. It is in fact a leaky boat with bad plank.-which four-bottom plow?--which windmill and waterwheel. We have enthusiasm for machinery-one class for machinery, one class for breeding livestock? The administration and organization of such a vehicle would be problematic.

Throughout this talk we have related our discussion to the small and medium-sized estate affecting the family farm and the tenant-farmer in any area. We have not had too much experience with the multimillion dollar estate in our office. We as country lawyers have the courage to say 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 voice in the House of Delegates nor one voice raised in opposition to the resolution. The purpose was to be more clear than the fact that the COB law as written in 1976 cannot be implemented-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 plumbing and each hole is patched; one leak is stopped, two more leaks appear. I have not yet met one practicing attorney in the United States 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 modified or patched up by any device yet suggested. As a result of these various forces, we are faced with a China card by helping Peking industrial-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 ene-
mies. For example:

Our nation's strength is threatened be-
cause we have an anti-industrial iden-
tity in-our domestic markets that will be prohibitively expensive for years to come. We have anti-nuclear storm-troop-
ers, who seek to shut down the nation's nu-
clear plants that were our salvation in re-
cent winters.

These are a few of the problems we face in the United States, a few of the reasons why we are passing through a period of de-
flation of the threats we face and of the inade-
quacy of our response to those threats, whether the Soviet arms race and campaign for de-industrialization of the United States. If we fail to appreciate these threats and fail to respond to them—we commit suicide by alienating ourselves and the freedom of other countries in our civil-
ization.

As a result of these various forces, we are under siege from the Soviets. We are under siege from the countries of the Third World, from the anti-growth, anti-industrial ideologies which even infect our own Nation.
become inevitable... Resist as it might, the American system is gradually compelled to accommodate itself to this emerging international count.

That conclusion runs against the American grain. The American people didn't yield their principles and modes of living when the force of the world was challenged, when, for instance, the Axis powers appeared to represent the emerging international context. Nevertheless, Dr. Brzezinski and other senior administration officials urge that the U.S. turn away from nuclear power plants, steel mills and all the apparatus of industrialization and embrace a life-style of meditation retreats, personal growth centers, consciousness expansion, and hopes for the future. The administration officials clearly view the hostile nations of Afro-Asia and Latin America as representatives of the forces of the future and warn America of the dangers that lie ahead. It is a serious mistake, however, to imagine that sheer numbers are decisive in history.

North America is an island on this planet. Its geographic distance from 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 power and understanding. Americans must grasp the variety of threats that they face. The greatest threat is posed by the Soviet Union, a country that is dedicated to the overthrow of the West. It also is capable of employing subversive warfare, and it is supported by a number of terrorist groups to global political agitation on such issues as the neutron bomb.

Then there is the threat from the Third World, a continent in part, however, where 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 John F. Kennedy in his Address to the United Nations:

"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 today, "...the survival crisis in the world where there is a direct land confrontation between the so-called 'First' world (affluent industrial nations) and the 'Third' world (high population, 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 Baghdad, a new Suez. The Mexican population crisis isn't solved. However, the discovery of immense oil reserves in Mexico may provide a solution to the economic problems and also prove a great boon to the United States.

These are few of the external threats. The problems that we must face 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 un-American, however, to be away from our own possessions over the Third today, but the collapse of the Roman order—its communications, structures and policy, including its military power—didn't produce a truly Dark Age.

The type of thinking described here—a combination of Luddite machine-weening 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 industrial types who are influential in making policy in the United States today indicates the true extent of our every-day power. It 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 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 and international society, possessed of organizational and military power, has psychological limitations imposed on it by the weight of numbers. Our policy planners clearly view the hostile nations of the Third World asammened not unmindful of the power of numbers.

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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 indicates that the Department of Transportation has opted for a wise and prudent course between the demands of our handicapped citizens for complete accessibility to public 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, I have reviewed the 504 requirements. The regulations 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 always 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 for completion of the requirements.

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 Army.

Conscription is a tax, as Mr. 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 power of a large portion 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 who will then be subjected to the 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 shortages in manpower are not generalized throughout the military system. They are concentrated for big 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 market place. 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 trying to fix 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.

There being no objection, the articles are ordered to be printed in the Record, as follows:

(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 is not working and will not withstand careful scrutiny. No one would take seriously the proposal that we undertake a national emergency program and the administration to see that compensation and conditions of employment produce the number and quality of civilian service employees desired. Congress and the administration can attract whatever number and quality of volunteers that the city wants—at some level of compensation.

Proponents of conscription interpret the proposition that voluntarism will always work at some level of compensation as extemism. They are saying that we must pay 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: That reaction reflects a pervasive and fundamental fallacy about conscription. If we have to pay very high wages to attract volunteers, we tell us that defense manpower is very costly, but conscription does not enable us to avoid those costs. All conscription does is to pay the same costs. We cannot avoid the manpower costs of defense by substituting conscription for voluntarism. Conscription is a form of taxation. Congress, at some level of taxation, 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 decision 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 soldier who is pressed and obliged to serve for the defence of this trade at the rate of 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 your trade."

Once we understand that conscription is a tax, it is easy to see why Congressmen have found no disposition to lower them 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 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 1977 the cost of the Selective Service was close to that now, then we should concentrate on improving the mechanisms of the system rather than trying to fix 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.

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 and performance in the arms race, our $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 demonstrating the virtue of proof that the United States 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. 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.

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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 continued to fight. This has been done against, being denied the right to vote until early this century.

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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 United States were communicated to the Senate by Mr. Chidson, 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 for consideration.

(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, 270a-1, as amended by Public Law 95-95, the Speaker has appointed Mr. Preyer, Mr. Pickle, Mr. Bowen, Mr. Fountain, Mr. Mazo, Mr. Long of Louisiana, Mr. Levine, Mr. Mccloy, Mr. Brown of Ohio, and Mr. Butler as additional members of the delegation to attend the conference of the Intergovernmental Union, to be held in Prague, Czechoslovakia, on April 23, 1979, to April 28, 1979.

The message also announced that, pursuant to the provisions of section 1, Public Law 698, 84th Congress, as amended, the Speaker has appointed Mr. Philip Burton, Chairman, Mr. Hamilton, Vice Chairman, Mr. Brooks, Mr. Annunziato, Mr. Rose, Mr. Ireland, Mr. Abad, Mr. Russo, Mr. Bob Wilson, Mr. Brownfield, Mr. Finley, 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:


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:


REPORTS OF COMMITTEES SUBMITTED DURING THE RECESS

Under authority of the order of the Senate of April 4, 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. 99-90).
By Mr. McGovern, from the Committee on Agriculture, Nutrition, and Forestry, without amendment:
S. 292. A bill to reduce the fiscal year 1980 authorizations for the special supplemental food program (Rept. No. 99-6). 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 appropriated, for procurement of aircraft, missiles, naval vessels, and other weapons, and for research, development, test, and evaluation activities (Rept. No. 98-60).
By Mr. Mirkie, from the Committee on the Budget, without amendment:
S. Res. 126. 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. 98-6). By Mr. Chastenot, 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. 99-9).
By Mr. Mirkie, from the Committee on Agriculture, Nutrition, and Forestry:
Special report entitled "Legislative Review Activities During the 95th Congress" (Rept. No. 99-6).
By Mr. Talmadge, Mr. President, pursuant to section 130(h) 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 amendment to the title: S. Res. 114. A resolution authorizing the printing of an additional copy of the Congressional Globe of the United States (Rept. No. 99-6).

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.)

By 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, I move, in the absence 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 Congressional Record on March 28, 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 Medical Officer, 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):
By Mr. Nelson (for himself, Mr. Nunn, Mr. Culver, Mr. Housley, Mr. Saban, and Mr. Warkens):
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, technical, and financial services and assistance in 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 Perrone: 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 lessee 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 to 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. Bennett, and Mr. Tower):
S. 922. A bill to recognize the joint development by the States of Louisiana of a recurring and environmentally sound source of energy represented by the Toledo Bend Dam and Reservoir, the Sabine River Authority, the State of Louisiana, and Sabine River Authority, State of Texas, from charges for use, occupancy, and enjoyment of certain lands of the United States by the American Indian tribes for the development of sustenance by the tribes from the use thereof: to the Committee on Indian Affairs. 7674