possessing firearms, and for other purposes; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. INOUYE (for himself, Mr. D'AMATO, Mr. SIMPSON, Mr. SMITH, Mr. MACK, Mr. CONRAD, Mr. FORD, Mr. MCCONNELL, Mr. HELMS, Mr. HEFLIN, Mr. STEVENS, Mr. DOMENICI, Mr. WARNER, Mr. GRAHAM, and Mr. CRAIG):

S. Con. Res. 46. A concurrent resolution to express Congress' admiration of the late Israeli Prime Minister Yitzhak Rabin and his contribution to the special relationship between the United States and Israel, and to express the sense of the Congress that the American Promenade in Israel be named in his memory; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BOND (for himself, Mr. NICKLES, Mr. DOLE, Mr. D'AMATO, Mr. MURKOWSKI, Mr. INHOFE, Mr. LOTT, Mr. GRAMM, and Mr. FRIST):

S. 1610. A bill to amend the Internal Revenue Code of 1986 to clarify the standards used for determining whether individuals are not employees; to the Committee on Finance.

THE INDEPENDENT CONTRACTOR TAX SIMPLIFICATION ACT OF 1996

Mr. BOND. Mr. President, determining worker classification is one of the most important tax issues facing small business today. Indeed, and in fact, it was rated No. 1 by the delegates to the White House Conference on Small Business. They said this is something that must be dealt with because the ambiguity in the current law makes it extremely difficult for business owners to determine whether a worker is an independent contractor or an employee. Today I will be introducing the Independent Contractor Tax Simplification Act on behalf of myself, Senator NICKLES, Senator DOLE, Senator D'AMATO, Senator MURKOWSKI and Senator LOTT.

For years, now, the Internal Revenue Service has used a 20-factor common law test to determine worker status. Frankly, the test is a nightmare of subjectivity and unpredictability for small business owners who often get their tutorial on the subtleties of the issue during an IRS audit—certainly an unfortunate time to be learning how tricky the law is.

IRS agents are required to consider 20 different factors to determine whether an employer/employee relationship exists. The problem is that the small business taxpayer is not able to predict which of the 20 factors is going to be more important to a particular IRS agent, and finding a certain number of these factors present in a case does not always determine the result.

Inevitably, what has been happening is that agents are resolving far too many cases in favor of the IRS and its tendency to find the existence of an employment relationship at the expense and disruption of bona fide independent contractor arrangements.

Let me make perfectly clear, the IRS has every right to obtain information on payments, whether they are made to an employee or to an independent contractor. It is our position that simplifying IRS collection does not warrant the IRS going beyond tax law to determine business organization, so long as the organizations are legitimate structures and the IRS has the information on payments so they may collect appropriate taxes.

This lack of a clear standard in existing law has made some small business owners reluctant to hire independent contractors and put others in great concern and risk of being pursued for back taxes.

In some cases, the concern is so great that it stifles business expansion. As I indicated earlier, the depth of the problem was made clear last summer when the White Conference on Small Business, a nationwide group of almost 2,000 small business delegates, voted the independent contractor issue first on its list for recommended changes.

Today, together with Senator NICKLES and the other Senators whom I mentioned, Senator NICKLES having been a long and consistent supporter of small business legislation, we introduce a bill that solves this problem. Our bill provides a short list of simple, clear objective standards that will allow all taxpayers to understand what the law says about who is an employee and who is an independent contractor. When this law is enacted, IRS agents will have clear direction, small business will have clear direction, but the IRS will no longer have the upper hand in today's confusing independent contractor law, which gives the IRS agent, when they deal with our country's small business taxpayers, advantage in determining their business organization.

I especially thank Senator NICKLES for his willingness to allow us to work on this bill together. Last September at a hearing, I held in the Small Business Committee, Senator NICKLES testified about his personal experience with this issue dating back to the small business that he began while he was a college student. For Senator NICKLES' company, like many startup companies and small businesses, it seemed to make perfect sense to hire independent contractors in certain situations. More established, larger businesses also need to hire independent contractors to accomplish specific tasks that may require specialized skill. In fact, many of America's entrepreneurs are in business as independent contractors whose livelihood is dependent upon the fact that other companies need their service and expertise. These entrepreneurs have no desire, nor do they have any need, to become employees of the businesses who purchase their services.

Others in our Small Business Committee hearing testified about their experiences with IRS agents regarding worker status, telling us about receiving IRS penalties as high as a quarter of a million dollars. Between these outrageously high penalties and the complexity of the 20-factor test, this issue, understandably, infuriates many small business taxpayers.

Mr. President, the Commissioner of Internal Revenue, the Honorable Margaret Richardson, in a speech to last summer's small business conference delegates, told them the IRS does not care whether someone is an employee or independent contractor, as long as they properly report their income, and that is as it should be. Yet, the IRS continues to pursue this issue fiercely during its audits. It has been reported that in a recent 4-year span, the IRS reclassified 338,000 workers as employees. The same report indicates the IRS prevails in 9 out of 10 worker classification audits. Little wonder when they have the upper hand with a very confusing, very complex 20-factor test.

Just last week, I received a copy of the ''Revised Internal Revenue Service Worker Classification Training Materials.'' This was distributed by Commissioner Richardson. In her memo accompanying the document, she describes the purchase of the document as an attempt to identify, simplify and clarify the factors that should be applied in order to accurately determine worker classification.

There could be no more compelling justification for the importance of our immediate passage of the legislation than this document. We commend Commissioner Richardson for seeking to simplify, but this document is over 100 pages long. If it takes that much paper and that much ink to instruct IRS agents on how to simplify and clarify a small business tax issue, I think we can be pretty sure how simple and clear it is going to seem to the taxpayer sitting across the desk from an IRS agent during an audit.

As those who follow this issue know, what makes this problem especially frustrating is that unlike most interpretive actions of the IRS where they must determine the proper amount of income or deductions so Treasury can collect the amount of tax legally due to it, the independent contractor issue is not about how much tax the Government receives. The classification decision does not alter aggregate tax liability to the Government at all. This problem exists because of IRS's apparent desire to recast economic relationships between private parties that these parties have already determined for themselves. The Independent Contractor Tax Simplification Act will help move the IRS out of its de facto role of setting employment policy and back into its role of revenue collection.

Our bill sets out three simple questions to be asked in determining whether a person providing services is an employee or independent contractor.

First, is there a written agreement between the parties?

Second, does it appear the worker has made some investment, such as incurring substantial unreimbursed expenses or being paid primarily on a commission basis?

Third, does the worker appear to have some independence, such as having his or her own place of business?

In other words, under this bill, if there is a written contract between the parties and if basic investment and independence criteria are met, then the worker is an independent contractor. Plain, simple, predictable. Fine. To take advantage of this simple rule, the party must properly report payments above $600 to the IRS just like under current law. This ensures all taxes properly due to the Treasury can be collected.

The legislation is written to provide immediate clarification and relief to taxpayers undergoing IRS examinations currently. The change, no doubt, would save many businesses from a protracted and expensive battle with IRS. For some, it may even save the business.

When we in Congress find an opportunity to take action in a tax area so strongly supported by many small businesses, and when it is one that does not involve any loss to the Federal Treasury, we should act without delay. I am confident the Finance Committee can find an acceptable revenue offset for this worthy purpose to the extent that any revenue is lost. The revenue estimate for the bill should be fairly simple, reflecting the bill's provisions that assure continued collection of all taxes due the Federal Government.

Small businesses cannot afford to wait any longer for resolution of this problem, and they should not be expected to do so. They have waited for decades. We now have a bill that will solve the problem.

The companion bill has been introduced in the other body. I am told it has over 200 cosponsors. It is time Congress steps up to the plate and delivers for small business. I urge members of the Finance Committee to work with Senator NICKLES and others to report out a bill that provides this much-needed change.

Mr. President, I ask unanimous consent to have printed in the RECORD a copy of the bill, a section-by-section analysis and copies of some letters of support for the bill we have received.

I also ask unanimous consent that Senators DOLE, D'AMATO, LOTT, MURKOWSKI, and INHOFE be shown as original cosponsors.

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

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

S. 1610

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Independent Contractor Tax Simplification Act of 1996''.

SEC. 2. FINDINGS.

The Congress finds that:

(1) Simplifying the tax rules with respect to independent contractors was the top vote-getter at the 1995 White House Conference on Small Business. Conference delegates recommended that Congress ''should recognize the legitimacy of an independent contractor''. The Conference found that the current common law is ''too subjective'' and called upon the Congress to establish ''realistic and consistent guidelines''.

(2) It is in the best interests of taxpayers and the Federal Government to have fair and objective rules for determining who is an employee and who is an independent contractor.

SEC. 3. STANDARDS FOR DETERMINING WHETHER INDIVIDUALS ARE NOT EMPLOYEES.

(a) IN GENERAL.—Chapter 25 of the Internal Revenue Code of 1986 (general provisions relating to employment taxes) is amended by adding after section 3510 the following new section:

''SEC. 3511. STANDARDS FOR DETERMINING WHETHER INDIVIDUALS ARE NOT EMPLOYEES.

''(a) GENERAL RULE.—For purposes of this title, and notwithstanding any provision of this title to the contrary, if the requirements of subsections (b), (c), and (d) are met with respect to any service performed by any individual, then with respect to such service—

''(1) the service provider shall not be treated as an employee,

''(2) the service recipient shall not be treated as an employer,

''(3) the payor shall not be treated as an employer, and

''(4) compensation paid or received for such service shall not be treated as paid or received with respect to employment.

''(b) SERVICE PROVIDER REQUIREMENTS WITH REGARD TO SERVICE RECIPIENT.—For the purposes of subsection (a), the requirements of this subsection are met if the service provider, in connection with performing the service—

''(1) has a significant investment in assets, training, or both,

''(2) incurs significant unreimbursed expenses,

''(3) agrees to perform the service for a particular amount of time or to complete a specific result and is liable for damages for early termination without cause,

''(4) is paid primarily on a commissioned basis or per unit basis, or

''(5) purchases products for resale.

''(c) ADDITIONAL SERVICE PROVIDER REQUIREMENTS WITH REGARD TO OTHERS.—For the purposes of subsection (a), the requirements of this subsection are met if—

''(1) the service provider—

''(A) has a principal place of business,

''(B) does not primarily provide the service at the service recipient's facilities,

''(C) pays a fair market rent for use of the service recipient's facilities, or

''(D) operates primarily from equipment not supplied by the service recipient; or

''(2) the service provider—

''(A) is not required to perform service exclusively for the service recipient, and

''(B) in the year involved, or in the preceding or subsequent year—

''(i) has performed a significant amount of service for other persons,

''(ii) has offered to perform service for other persons through—

''(I) advertising,

''(II) individual written or oral solicitations,

''(III) listing with registries, agencies, brokers, and other persons in the business of providing referrals to other service recipients, or

''(IV) other similar activities, or

''(iii) provides service under a business name which is registered with (or for which a license has been obtained from) a State, a political subdivision of a State, or any agency or instrumentality of 1 or more States or political subdivisions.

''(d) WRITTEN DOCUMENT REQUIREMENTS.—For purposes of subsection (a), the requirements of this subsection are met if the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed, or the payor, and such contract provides that the individual will not be treated as an employee with respect to such services for purposes of this subtitle.

''(e) SPECIAL RULES.—For purposes of this section—

''(1) FAILURE TO MEET REPORTING REQUIREMENTS.—If for any taxable year any service recipient or payor fails to meet the applicable reporting requirements of section 6041(a), 6041A(a), or 6051 with respect to a service provider, then, unless such failure is due to reasonable cause and not willful neglect, this section shall not apply in determining whether such service provider shall not be treated as an employee of such serviced recipient or payor for such year.

''(2) RELATED ENTITIES.—If the service provider is performing services through an entity owned in whole or in part by such service provider, then the references to 'service provider' in subsections (b) through (d) may include such entity, provided that the written contract referred to in paragraph (1) of subsection (d) may be with either the service provider or such entity and need not be with both.

''(f) DEFINITIONS.—For the purposes of this section—

''(1) SERVICE PROVIDER.—The term 'service provider' means any individual who performs service for another person.

''(2) SERVICE RECIPIENT.—Except as provided in paragraph (5), the term 'service recipient' means the person for whom the service provider performs such service.

''(3) PAYOR.—Except as provided in paragraph (5), the term 'payor' means the person who pays the service provider for the performance of such service in the event that the service recipients do not pay the service provider.

''(4) IN CONNECTION WITH PERFORMING THE SERVICE.—The term 'in connection with performing the service' means in connection or related to—

''(A) the actual service performed by the service provider for the service recipients or for other persons for whom the service provider has performed similar service, or

''(B) the operation of the service provider's trade or business.

''(5) EXCEPTIONS.—The terms 'service recipient' and 'payor' do not include any entity which is owned in whole or in part by the service provider.''

(b) CLERICAL AMENDMENT.—The table of sections for chapter 25 of such Code is amended by adding at the end the following new item:

''Sec. 3511. Standards for determining whether individuals are not employees.''

(c) EFFECTIVE DATE.—The amendments made by this Act shall apply to services performed before, on, or after the date of the enactment of this Act.

SUMMARY OF THE INDEPENDENT CONTRACTOR TAX SIMPLIFICATION ACT

For too long now, businesses have been forced to rely upon complicated and ambiguous IRS guidelines for classifying individual

workers as employees or independent contractors. IRS audit determinations of misclassification often result in heavy tax penalties. Clarifying independent contractor rules was considered the top small business priority by conference delegates at the 1995 White House Conference on Small Business.

Instead of trying to define who is an employee (the common law 20-point test), this legislation creates a simple definition of who is not an employee.

GENERAL RULE

If this legislation's requirements are met with respect to any service performed by any individual, then the service provider shall not be treated as an employee, the service recipient shall not be treated as an employer, the payor shall not be treated as an employer, and the compensation paid shall not be treated as paid with respect to employment.

INVESTMENT/TRAINING/RISK

With regard to the service being performed, the service provider must—

(1) have a significant investment in assets and/or training, or

(2) incur significant unreimbursed expenses, or

(3) agree to perform the service for a particular amount of time or to complete a specific result and is liable for damages for early termination without cause, or

(4) be paid primarily on a commissioned or per-unit basis, or

(5) purchase products for resale.

PRINCIPAL PLACE OF BUSINESS/ADVERTISING

With regard to other parties, the service provider must—

(1) have a principal place of business, or

(2) not primarily provide the service in the recipient's facilities unless the provider is paying a fair market rent for this use, or

(3) operate primarily from equipment not supplied by the service recipient, or

(4) not be required to perform service exclusively for the service recipient, and

(a) have recently performed a significant amount of service for other persons, or

(b) have offered to perform service for persons through advertising, individual solicitations, listing with registries, etc, or other similar activities, or

(c) have provided service under a registered or licensed business name.

WRITTEN DOCUMENT REQUIREMENTS

The services of a provider must be performed pursuant to a written contract between such individual and the service recipient stating that the provider will not be treated as an employee.

SPECIAL RULES

If any service recipient fails to meet the applicable IRS reporting requirements with respect to a service provider, then they may not rely upon these simplified independent contractor guidelines and are subject to the existing 20-point common law test.

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,
Washington, DC, March 12, 1996.

Hon. KIT BOND,
U.S. Senate,
Washington, DC.

DEAR SENATOR BOND: On behalf of the more than 600,000 members of the National Federation of Independent Business (NFIB), I am writing to offer our strong support of the Independent Contractor Simplification Act. The independent contractor issue has been confusing and burdensome for small business owners for decades. As you know, the independent contractor issue was the top recommendation of the 1995 White House Conference on Small Business.

Small businesses are put in a lose-lose situation with the Internal Revenue Service. Under the current law, they are required to classify individuals as independent contractors or employees based on extremely vague and ambiguous IRS guidelines. When a small business owner mistakenly misclassifies a worker based on these vague criteria, the IRS audits the business and levies back tax penalties. Even if the employer fully reported all payments to the independent contractor and the mistake was unintentional, these penalties are still levied. This misunderstanding can put the employer out of business. For small businesses, misinterpreting these nebulous IRS guidelines can be financially devastating.

The Independent Contractor Simplification Act sets forth an alternate set of clear and distinct criteria for businesses to follow when classifying their workers. It solves the independent contractor problem by defining who is not an employee. Most importantly, the legislation puts forth safeguards against abusing this classification by prohibiting both independent contractor and employer from relying on these new rules if all payments for service are not properly reported to the IRS.

We commend you on your legislation which sends much needed relief to our nation's small business owners and the million of budding entrepreneurs who have an interest in being an independent contractor. We look forward to working with you to move the Independent Contractor Simplification Act through the Senate.

Sincerely,

DONALD A. DANNER,
Vice President,
Federal Governmental Relations.

THE INDEPENDENT CONTRACTOR COALITION,
Washington, DC.

Hon. KIT BOND,
U.S. Senate,
Washington, DC.

DEAR SENATOR BOND: We the undersigned, representing a cross-section of close to one million businesses and individuals, are writing to offer our strong support for the Independent Contractor Tax Simplification Act.

This legislation will bring much needed relief to millions of businesses and budding entrepreneurs in addressing ambiguities in the IRS guidelines for determining independent contractor status.

At a minimum, the current system by which the IRS enforces laws and regulations governing an individual's employment tax status promotes uncertainty and inhibits entry of aspiring entrepreneurs into the free market system as independent contractors. At its worst, the current system is unfairly biased against the use of independent contractors and constrains economic expansion of our nation's free market system.

The Bond/Nickles bill will settle many of the problems associated with the current system. By setting forth a clear set of alternate criteria, this legislation will resolve many of the long standing complaints businesses and individuals have had with the vague and often subjective guidelines the IRS uses to classify workers as employees or independent contractors.

As the leading coalition of businesses and individuals working to clarify independent contractor status, we commend you on your effort and look forward to working with you to move this legislation through the Senate.

Allow the free enterprise system to work for the benefit of our economy.

Sincerely,

NELSON LITTERST,
NFIB, Co-Chair.
JOHN SATAGAJ,
SBLC, Co-Chair.

THE BOND/NICKLES INDEPENDENT CONTRACTOR LEGISLATION—ENDORSEMENT LIST

Agricultural & Industrial Manuf. (AIMRA).
Air Courier Conference of America.
Alliance of Independent Store Owners & Professionals.
American Animal Hospital Association.
American Association of Equine Practitioners.
American Association of Meat Processors.
American Association for Medical Transcription.
American Association of Nurserymen.
American Consulting Engineers Councils.
American Council of Independent Laboratories.
American Rental Association.
American Society of Interior Designers.
Associated Builders & Contractors.
Associated Landscape Contractors of America.
American Society of Travel Agents.
American Warehouse Association.
Bureau of Wholesale Sales Representatives.
Business Advertising Council, Inc.
Computer Software Industry Association.
Council of Growing Companies.
Direct Selling Association.
Electronics Representatives Association.
Expedited Package Independent Contractor Council.
FTD Association.
Health Industry Representatives Association.
Helicopter Association International.
Home Food Service of Colorado.
Independent Computer Consultants Association.
Independent Distributors Association.
Independent Medical Distributors Association.
Institute of Electrical and Electronics Engineers-U.S. Activities.
International Association for Financial Planning.
International Taxi Cab and Livery Association.
International Television Association Inc.
Marine Retailers Association of America.
McNair Law Firm.
Messenger Courier Association of the Americas.
Metal Treating Institute.
National Association of Computer Consultant Businesses.
National Association of Orchestra Leaders.
National Association of the Remodeling Industry.
National Association for the Self-Employed.
National Electrical Manufacturers Representative Association.
National Federation of Independent Business.
National Fire Sprinkler Association.
National Home Furnishings Association.
National Moving & Storage Association.
National Restaurant Association.
National Tooling & Machining Association.
National Tour Association.
Nurse Brokers and Contractors of America.
Power-Motion Technology Representative Association.
Promotional Products Association International.
Rich Plan Corporation.
Securities Industry Association.
Small Business Legislative Council.
SMC Business Councils.
Society of American Florists.
The Management Association of Illinois.
World Floor Covering Association.

SMALL BUSINESS LEGISLATIVE COUNCIL,
Washington, DC, March 4, 1996.

Hon. CHRISTOPHER BOND,
Hon. DON NICKLES,
U.S. Senate,
Washington, DC.

DEAR SENATORS BOND AND NICKLES: On behalf of the Small Business Legislative Council (SBLC), I wish to express our strong support for your legislation to establish clear and objective rules for the purposes of determining whether an individual is an independent contractor or employee.

This is a long-time concern of the SBLC. Indeed, one of the founding principles of the organization, when it was established in the mid-1970s, was to work to encourage individuals to pursue the American Dream—owning and managing their own business. Becoming an independent contractor is both the means and the end to that goal.

As you know, the delegates to the 1995 White House Conference on Small Business made this one of their priority recommendations. Indeed, while there was no official ranking, this was the top vote-getter in the final balloting.

Congratulations on this initiative! We look forward to working with you towards the passage and enactment.

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

Sincerely,

GARY F. PETTY,
Chairman of the Board.

MEMBERS OF THE SMALL BUSINESS LEGISLATIVE COUNCIL

Air Conditioning Contractors of America.
Alliance for Affordable Health Care.
Alliance for American Innovation.
Alliance of Independent Store Owners and Professionals.
American Animal Hospital Association.
American Association of Equine Practitioners.
American Association of Nurserymen.
American Bus Association.
American Consulting Engineers Council.
American Council of Independent Laboratories.
American Gear Manufacturers Association.
American Machine Tool Distributors Association.
American Road & Transportation Builders Association.
American Society of Interior Designers.
American Society of Travel Agents, Inc.
American Subcontractors Association.
American Textile Machinery Association.
American Trucking Associations, Inc.
American Warehouse Association.
AMT–The Association for Manufacturing Technology.
Architectural Precast Association.
Associated Builders & Contractors.
Associated Equipment Distributors.
Associated Landscape Contractors of America.
Association of Small Business Development Centers.
Automotive Service Association.
Automotive Recyclers Association.
Bowling Proprietors Association of America.
Building Service Contractors Association International.
Business Advertising Council.
Christian Booksellers Association.
Council of Fleet Specialists.
Council of Growing Companies.
Direct Selling Association.
Electronics Representatives Association.
Florists' Transworld Delivery Association.
Health Industry Representatives Association.
Helicopter Association International.
Independent Bankers Association of America.
Independent Medical Distributors Association.
International Association of Refrigerated Warehouses.
International Communications Industries Association.
International Formalwear Association.
International Franchise Association.
International Television Association.
Machinery Dealers National Association.
Mail Advertising Service Association.
Manufacturers Agents National Association.
Manufacturers Representatives of America, Inc.
Mechanical Contractors Association of America, Inc.
National Association for the Self-Employed.
National Association of Catalog Showroom Merchandisers.
National Association of Home Builders.
National Association of Investment Companies.
National Association of Plumbing-Heating-Cooling Contractors.
National Association of Private Enterprise.
National Association of Realtors.
National Association of RV Parks and Campgrounds.
National Association of Small Business Investment Companies.
National Association of the Remodeling Industry.
National Chimney Sweep Guild.
National Electrical Contractors Association.
National Electrical Manufacturers Representatives Association.
National Food Brokers Association.
National Independent Flag Dealers Association.
National Knitwear & Sportswear Association.
National Lumber & Building Material Dealers Association.
National Moving and Storage Association.
National Ornamental & Miscellaneous Metals Association.
National Paperbox Association.
National Shoe Retailers Association.
National Society of Public Accountants.
National Tire Dealers & Retreaders Association.
National Tooling and Machining Association.
National Tour Association.
National Wood Flooring Association.
NATSO, Inc.
Opticians Association of America.
Organization for the Protection and Advancement of Small Telephone Companies.
Petroleum Marketers Association of America.
Power Transmission Representatives Association.
Printing Industries of America, Inc.
Professional Lawn Care Association of America.
Promotional Products Association International.
The Retailer's Bakery Association.
Small Business Council of America, Inc.
Small Business Exporters Association.
SMC Business Councils.
Society of American Florists.
Turfgrass Producers International.

NATIONAL HOME FURNISHINGS ASSOCIATION,
Washington, DC, March 4, 1996.

Hon. CHRISTOPHER BOND,
Hon. DON NICKLES,
U.S. Senate,
Washington, DC.

DEAR SENATORS BOND AND NICKLES: On behalf of the National Home Furnishings Association (NHFA), I would like to offer our endorsement of your bill to establish criteria for the determination of individuals as independent contractors or employees for federal employment tax purposes.

Our retailers engage independent contractors to provide a variety of services including design, installation, and delivery. This has been a long-standing practice in our industry.

The unsettled nature of the law in this area has been the cause for concern in our industry and, therefore, we support your efforts.

The NHFA represents approximately 2,800 retailers of home furnishings throughout the United States.

We look forward to working with you towards passage of this important legislation.

Sincerely,

PATRICIA BOWLING,
Executive Vice President.

WORLD FLOOR COVERING ASSOCIATION,
Washington, DC, March 4, 1996.

Hon. CHRISTOPHER BOND,
Hon. DON NICKLES,
U.S. Senate,
Washington, DC.

DEAR SENATORS BOND AND NICKLES: On behalf of the World Floor Covering Association (WFCA), and our member floorcovering retailers, I would like to express our strong support for your bill to establish realistic criteria for the classification of individuals as independent contractors or employees for federal employment tax purposes.

Our retailers engage independent contractors to provide installation services. This has been a long-standing practice in our industry and is fundamental to the way we do and have done business for many years.

Over the years, we and our members have discussed this matter with the IRS on numerous occasions. The only thing we can say about the discussions is it is apparent to us that Congress must step in and establish a clear and objective set of rules. That is why we support your bill. We also believe Congress should establish once and for all, that encouraging individuals to become independent contractors is a good thing for the nation and the economy.

We look forward to working with you towards passage of this important legislation.

Sincerely,

D. CHRISTOPHER DAVIS,
Chief Executive Officer.

PROMOTIONAL PRODUCTS ASSOCIATION INTERNATIONAL,
Irving, TX, March 4, 1996.

Hon. CHRISTOPHER BOND,
Hon. DON NICKLES,
U.S. Senate,
Washington, DC.

DEAR SENATORS BOND AND NICKLES: On behalf of the Promotional Product Association International (PPA), I would like to offer our support for your bill to establish rules for the classification of individuals as independent contractors or employees.

Historically, our industry has engaged independent contractors to sell its products

and services. We feel our industry practice is the epitome of the American tradition of selling products and services through independent sales representatives.

We strongly believe clear and objective rules that will put the ongoing battle between the IRS and small business over this issue behind us are needed and welcomed. Therefore, we support your efforts.

The promotional products industry is the advertising, sales promotion, and motivational medium employing useful articles of merchandise imprinted with an advertiser's name, logo, or message. Our industry sales are over $6 billion and PPA members are manufacturers and distributors of such goods and services.

We look forward to working with you towards passage of this important legislation.

Sincerely,

G. STEPHEN SLAGLE,
President.

Mr. NICKLES. Mr. President, one of the most fundamental concepts in our free enterprise economy is the ability of any American to use talent, intelligence, and hard work to start a business. The small, independent business is the engine which drives innovation, job creation, and increased economic activity in this country.

For many small, start-up companies, independent contractor status is the best way, and sometimes the only way, they can do business. Similarly, many larger, established businesses find that using independent contractors is the most effective way of handling projects that require special talents. There are five million independent contractors in America according to the Small Business Administration, and almost one-third of all companies use independent contractors to some degree. Independent contractor status gives both the service provider and the service recipient the flexibility needed to be competitive in today's economic environment.

Before coming to the U.S. Senate, I had first hand experience with these issues; both working as and employing independent contractors. The janitorial service I began as a student at Oklahoma State University could not have existed if I had been required to work as an employee, and it never would have expanded if I could not have hired other students as independent contractors to handle specific jobs.

Despite the obvious importance of independent contractors to our economy, Congress has amazingly failed to give workers or businesses adequate guidance as to who is an employee and who is an independent contractor. Unfortunately, this lack of decisive congressional action combined with aggressive dislike of independent contractors by the Internal Revenue Service has subjected many businesses to abusive audits and unfair penalties. In effect, our Government is killing the independent contractor.

Mr. President, I rise today with my colleague from Missouri, Senator BOND, to introduce the Independent Contractor Tax Simplification Act. This legislation is the Senate companion of a H.R. 1972, a bill introduced last year by Congressman Jon Christensen which now has 215 cosponsors. Our bill, which is supported by over 50 trade and industry associations, cuts through the horrendously complicated and ambiguous current law rules and provides relief and confidence to independent contractors and service recipients alike.

Why is congressional action needed, Mr. President? In the mid-1970's, the IRS undertook a major initiative to reclassify workers as employees. In response to the tremendous outcry from business owners, Congress in 1978 enacted what was intended to be a temporary solution, the section 530 safe harbor provisions. Section 530 prohibited the IRS from reclassifying workers as employees if the employer had a reasonable basis for treatment of the workers as independent contractors, or if a past IRS audit did not dispute the workers' classification.

So for two decades, independent contractor status has been controlled by this temporary solution, related IRS rulings, judicial precedent, and legislation targeted at specific industries. Those contractors and businesses who are unable to rely upon section 530 are subjected to a 20-point command law test which attempts to define an employer's control over workers. This common law test is the bane of employers and workers across the country, and is at the heart of the problems my legislation intends to address. The General Accounting Office calls the common law test ''unclear and subject to conflicting interpretations''. Even the Treasury Department has testified that ''applying the common law test in employment tax issues does not yield clear, consistent, or even satisfactory answers, and reasonable persons may differ as to the correct classification''.

The horror stories surrounding this issue are numerous and disturbing, Mr. President. Last year, ''NBC Nightly News'' ran a story on two business owners who are facing hundreds of thousands of dollars in back taxes and penalties because the IRS decided to reclassify their independent contractors as employees. One of these citizens, who owns a travel agency, received a bill for almost $200,000 in back taxes, penalties, and interest, despite the fact that his independent contractors had already paid their taxes! Mr. President, a $200,000 tax bill will close the doors of most small businesses.

According to the NBC report, the IRS has used these worker classification audits to collect more than three-quarters of a billion dollars from business owners over the last 7 years in disputed employment taxes, even though many of the independent contractors had already paid these taxes.

The Independent Contractor Tax Simplification Act replaces the complicated and arbitrary common law test with a simple definition of who is not an employee.

To qualify for independent contractor status, my legislation requires the service provider to have a significant investment in assets and/or training, or incur significant unreimbursed expenses, or agree to perform the service for a particular amount of time or to, complete a specific result and is liable for damages for early termination without cause, or be paid primarily on a commissioned or per-unit basis, or purchase products for resale.

Further, under my legislation the service provider must have a principal place of business, or not primarily provide the service in the recipient's facilities unless the provider is paying a fair market rent for their use, or operate primarily from equipment not supplied by the service recipient or not be required to perform service exclusively for the service recipient, and have recently performed a significant amount of service for other persons, or have offered to perform service for other persons through advertising, individual solicitations, listing with registries, et cetera or other similar activities, or have provided service under a registered or licensed business name.

Finally, Mr. President, my legislation requires businesses and independent contractors to enter into a written contract and comply with all applicable IRS reporting requirements to ensure that payments to independent contractors are properly reported in order to prevent taxpayer arbitrage.

I would like to stress, Mr. President, that this legislation is not a comprehensive rewrite of all independent contractor law. It is very difficult to address all worker classification issues in one bill, because there is an unlimited number of employment situations and each one presents different challenges. Further, many individuals, businesses, and trade associations have resolved their problems with the IRS, and they fear that a comprehensive change in the law will force them to renew old arguments with the Government or impose unwanted conditions on their employment practices, such as tax withholding. The Independent Contractor Tax Simplification Act will benefit those businesses and contractors who have not resolved their status with the IRS, while preserving current law for those who are satisfied with it.

Mr. President, it is not fair to business, nor is it conducive to the entrepreneurial spirit of this country, to leave the question of worker classification up to the whim of the IRS. The importance and timeliness of this issue was made clear last summer when delegates to the White House Conference on Small Business made clarifying independent contractor rules their No. 1 small business priority. I believe Congress should act decisively to recognize the importance of independent contractors, and I invite my colleagues to join me in this initiative.

By Mr. MCCONNELL:

S. 1611. A bill to establish the Kentucky National Wildlife Refuge, and for other purposes; to the Committee on Environment and Public Works.

THE KENTUCKY NATIONAL WILDLIFE REFUGE AUTHORIZATION ACT

● Mr. MCCONNELL. Mr. President, I introduce a bill to establish the Kentucky National Wildlife Refuge. The designation will give Kentucky something that 49 other States have enjoyed for a long time: its own national wildlife refuge. What this means to my State is new tourism opportunities and a pristine environmental preserve that will be part of our legacy to future generations.

Nearly 100 years ago, President Theodore Roosevelt established the National Wildlife Refuge System to protect our Nation's open lands, water, and wildlife for the future. It was one of the first Federal environmental programs in our history.

Today, the National Wildlife Refuge System is made up of 571 refuges in 49 States and U.S. Territories, totaling nearly 92 million acres of the Nation's best wildlife habitat. Until now, Kentucky has been the only State without its own independently managed refuge.

The legislation I am proposing will authorize the U.S. Fish and Wildlife Service to purchase up to 20,000 acres in western Kentucky located in the east fork of the Clarks River. This site, located near Benton, is the only major bottomland hardwood area remaining in western Kentucky.

Once established, the Kentucky National Wildlife Refuge will showcase a unique ecosystem, protecting wildlife and offering a variety of educational opportunities for the public. This refuge will also provide recreational activities, including bird-watching, hiking, hunting, and the fishing.

The refuge area is situated on an important migratory fly-way and breeding area for a variety of waterfowl. A large number of migratory birds including wood ducks, song birds, and the threatened bald eagle make their home here. The hardwood forests make an ideal habitat for numerous woodpeckers, hawks, and the eastern wild turkey. Other wildlife which would thrive in this area include deer, beavers, otters, and bobcats.

For visitors, the refuge is conveniently located near Paducah, Mayfield, Murray, and Benton, and is just 15 miles from Land Between the Lakes, which draws nearly 2 million visitors a year. This refuge is ideally suited to serve surrounding schools, recreational hikers, and hunters. The Clarks River will also appeal to those who enjoy canoeing and fishing as well.

In addition to the environmental and educational benefits, the designation of the Kentucky Wildlife Refuge will also provide a significant economic boost to the area. The creation of Kentucky's first refuge will help keep tourist dollars in the State. A perfect example of this is a trip, planned by the Louisville Zoo, to a National Wildlife Refuge in Tennessee. This trip is for Kentuckians who are interested in eagle-watching. By creating a Kentucky wildlife refuge, people who are interested in outdoor activities would have an opportunity here in Kentucky—something that nature lovers and the State would benefit from.

I have worked hard to ensure that my proposal is fair in protecting the rights of individual landowners, while preserving this important habitat. Contained in my bill is language to ensure that the acquisition of refuge lands will be from willing sellers, donations, or exchanges only.

I am sensitive to the property rights and concerns of local landowners; and for this reason I will closely follow the project to ensure that their rights are protected.

I have also worked closely with the Kentucky Farm Bureau to guarantee that the management of the refuge will not impact surrounding farmers or unduly restrict agricultural activities. I am confident that both agricultural interests and conservation interests can exist side-by-side in this region.

Finally, it is deeply gratifying to have such a broad array of support for my proposal, including State and local public officials, conservation groups, and sportsmen. I would like to commend Tom Bennett, commissioner of the Kentucky Department of Fish and Wildlife Resources, and his staff, for their efforts to establish consensus among the various groups. This refuge could never have been established without the strong support of people like Tom, as well as the cooperation we have received from the surrounding communities.

It has been 92 years since Teddy Roosevelt created the National Wildlife Refuge System. The time is long overdue for Kentucky to join that system at last.

Mr. President, I ask unanimous consent that a text of the bill be printed in the RECORD and a list of organizations and individuals who have endorsed the creation of the wildlife refuge also be printed in the RECORD.

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

S. 1611

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Kentucky National Wildlife Refuge Authorization Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the area known as the Clarks River Basin, consisting of 20,000 acres of bottomland hardwood and associated wetlands along the Clarks River and the East Fork of the Clarks River in Graves, Marshall, and McCracken Counties, Kentucky, is of critical importance to a variety of migratory and resident waterfowl, neotropical migratory birds, forest wildlife, and riverine species, and a wide array of other species associated with bottomland communities;

(2) the area is the only major, natural (unchannelized) bottomland hardwood wetland ecosystem remaining in western Kentucky and attracts wintering migratory waterfowl, neotropical migratory birds, and an array of raptors;

(3) the area provides extraordinary recreational, research, and educational opportunities for students, scientists, birdwatchers, wildlife observers, hunters, anglers, hikers, and nature photographers;

(4) the area is an internationally significant environmental resource that is unprotected and requires active management to prevent vegetative encroachment and to otherwise protect and enhance the value of the area as fish and wildlife habitat;

(5) the Clarks River Basin has been identified in the preliminary project proposal plan for the establishment of the Kentucky National Wildlife Refuge, prepared by the United States Fish and Wildlife Service (Southeast Region), as an area deserving permanent protection; and

(6) since agriculture and silviculture are essential to the economies of Graves, Marshall, and McCracken Counties and can contribute to healthy ecosystems for wildlife, the refuge should not restrict agricultural and silvicultural activities on private lands.

SEC. 3. PURPOSE.

The purpose of this Act is to establish the Kentucky National Wildlife Refuge to be managed—

(1) to conserve fish and wildlife populations and the habitats of the populations, including habitats of bald eagles, golden eagles, Indiana bats, wood ducks, neotropical migratory birds, shorebirds, and other migratory birds;

(2) to preserve and showcase the concepts of biodiversity and ecosystem management;

(3) to enhance and provide a vital link to public areas containing habitat managed for waterfowl and other migratory birds;

(4) to fulfill international treaty obligations of the United States with regard to fish and wildlife and the habitats of the fish and wildlife;

(5) to restore and maintain the physical and biological integrity of wetlands and other waters within the refuge;

(6) to conserve species known to be threatened with extinction; and

(7) to provide opportunities for scientific research, environmental education, and fish- and wildlife-associated recreation (including hunting, trapping, and fishing) and access to the extent compatible with the management purposes specified in paragraphs (1) through (6).

SEC. 4. DEFINITIONS.

In this Act:

(1) LAND.—The term ''land'' includes an interest in land.

(2) REFUGE.—The term ''refuge'' means the Kentucky National Wildlife Refuge established under section 5.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service.

(4) WATER.—The term ''water'' includes an interest in water.

SEC. 5. ESTABLISHMENT OF REFUGE.

(a) ESTABLISHMENT.—In accordance with this Act, the Secretary shall establish a staffed and fully functional national wildlife refuge to be known as the ''Kentucky National Wildlife Refuge''.

(b) BOUNDARY DESIGNATION.—The Secretary shall—

(1) consult with appropriate State and local officials, private conservation organizations, and other interested parties in designating the boundaries of the refuge, which shall comprise approximately 20,000 acres;

(2) prepare a detailed map depicting the boundaries designated under paragraph (1), which shall be on file and available for public inspection at offices of the United States Fish and Wildlife Service; and

(3) include in the boundaries of the refuge the lands, aquatic systems, wetlands, and

waters depicted on the maps prepared under paragraph (2).

(c) BOUNDARY REVISIONS.—The Secretary may make such minor revisions in the boundaries designated under subsection (b) as are necessary to carry out the purpose of the refuge and to facilitate the acquisition of property within the refuge.

(d) ACQUISITION.—To the extent authorized under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–4 et seq.), the Migratory Bird Conservation Act (16 U.S.C. 715 et seq.), the Fish and Wildlife Act of 1956 (16 U.S.C. 742a et seq.), the Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3901 et seq.), and other laws, the Secretary may acquire for inclusion in the refuge, by purchase from willing sellers, donation, or exchange, lands and waters (including permanent conservation easements) within the boundaries designated under subsection (b). All lands and waters so acquired shall become part of the refuge.

(e) OPERATION AND MAINTENANCE.—The Secretary shall construct such office, maintenance, and support facilities as are necessary for the operation and maintenance of the refuge.

SEC. 6. ADMINISTRATION.

(a) GENERAL ADMINISTRATIVE AUTHORITY.—The Secretary shall administer all lands and waters acquired under section 5 in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.).

(b) OTHER ADMINISTRATIVE AUTHORITY.—Consistent with subsection (a) and to carry out the purpose of the refuge, the Secretary may use such additional authority as is available to the Secretary for the conservation and development of fish, wildlife, and natural resources, the development of outdoor recreational opportunities (including hunting, trapping, and fishing), and interpretative education.

(c) MANAGEMENT PLAN.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Secretary shall prepare a comprehensive management plan for the development and operation of the refuge that shall include—

(A) refuge management priorities and strategies;

(B) the planning and design of observation points, trails, and access points, including parking and other necessary facilities; and

(C) such provisions as are necessary to ensure that—

(i) no activity carried out in the refuge will result in the obstruction of the flow of water so as to affect any private land adjacent to the refuge; and

(ii) no buffer zone regulating any land use (other than hunting and fishing) is established.

(2) PUBLIC PARTICIPATION.—

(A) IN GENERAL.—The Secretary shall provide opportunity for public participation in developing the management plan.

(B) LOCAL ENTITIES.—The Secretary shall give special consideration to means by which the participation and contributions of local public and private entities in developing and implementing the management plan can be encouraged.

(d) OUTREACH AND EDUCATION.—The Secretary shall work with, provide technical assistance to, provide community outreach and education programs for or with, or enter into cooperative agreements with private landowners, State and local governments or agencies, and conservation organizations to further the purpose for which the refuge is established.

SEC. 7. GIFTS.

As soon as practicable after the date of enactment of this Act, the Director of the United States Fish and Wildlife Service shall request that the National Fish and Wildlife Foundation established under the National Fish and Wildlife Foundation Establishment Act (16 U.S.C. 3701 et seq.) take such measures as the Foundation considers appropriate to encourage, accept, and administer private gifts of property or funds to further the purpose of this Act.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

ORGANIZATIONS THAT HAVE ENDORSED THE CREATION OF THE KENTUCKY NATIONAL WILDLIFE REFUGE

Appalachia Science in the Public Interest.
Association of Chenoweth Run Environmentalists.
Audubon Society of Kentucky.
Bell County Beautification Association.
Berea College Biology Club.
Brushy Fork Water Watch.
Community Farm Alliance.
Daviess County Audubon Society & Kentucky Ornithological Society.
Department of Parks
Eastern KY University Wildlife Society.
Elkhorn Land & Historic Trust Inc.
Floyds Fork Environmental Association.
Friends of Mill Creek.
Gun Powder Creek Water Watch.
Harlan County Clean Community Association.
Hart County Environmental Group.
Highlands Group Cumberland Chapter Sierra Club.
Ky Academy of Science.
Ky Association for Environmental Education.
Ky Audubon Council.
Ky Citizens Accountability Project.
Ky Conservation Committee.
Ky Fish & Wildlife Education & Resource Foundation.
Ky Houndsmen Association.
Ky Native Plant Society.
Ky Society of Natural History.
Ky State Nature Preserve Commission.
Lake Cumberland Water Watch.
Land & Nature Trust of the Bluegrass.
League of Ky Sportsman.
League of Women Voters of Kentucky.
Leslie County KAB System.
Litter River Audubon Society.
Louisville Audubon Society.
Louisville Chapter 476 of Trout Unlimited.
Louisville Nature Center.
Madison County Clean Community Committee.
Madison Environment.
Mall Interiors.
Midway Area Environmental Committee.
National Wild Turkey Federation.
Oldham Community Center & Nature Preserve, Inc.
Petersen's Fault Farm.
Pleasant Hill Recreation Association.
Pride Inc.
Quail Unlimited
Rockcastle River Rebirth.
Rocky Mountain Elk Foundation.
Ruddles Mill Conservation Project.
Scenic Kentucky.
Shelby Clean Community Program.
Shelby County Clean Community Council.
Sierra Club Cumberland Chapter.
Steve & Janet Kistler.
The Nature Conservancy/Kentucky Chapter.
The Wildlife Connection.
Trout Unlimited/KYOUA Chapter.
Mikeal E. Joseph.
Paul Garland.
Paul C. Garland.
Kathy Zajac.
William S. Bryant.
Frances Williams.
The Black Family.●

By Mr. HELMS (for himself, Mr. DOLE, Mr. HATCH, Mr. THURMOND, Mr. FAIRCLOTH, Mr. GRAMM, and Mrs. FEINSTEIN):

S. 1612. A bill to provide for increased mandatory minimum sentences for criminals possessing firearms, and for other purposes; to the Committee on the Judiciary.

MANDATORY MINIMUM SENTENCING LEGISLATION

Mr. HELMS. Mr. President, a drug trafficker who in 1992 was convicted in the U.S. District Court for the Eastern District of North Carolina was released from prison 2 days ago, Monday, March 11, as the tragic result of an unfortunate and unwise Supreme Court decision.

Although the drug trafficker had 5 more years to serve, the U.S. Supreme Court, using the flimsiest of reasoning, set this convicted drug trafficker free. So, Mr. President, the bill I am introducing today will prevent future criminals from being set free. I am advised that my bill is being numbered S. 1612.

Mr. President, S. 1612 provides that a 10-year minimum mandatory sentence shall be imposed upon any criminal possessing a gun during and in relation to the commission of a violent or drug trafficking crime. This, of course, does not apply to lawful possession of a gun.

This bill will obviously crack down on gun-toting thugs who commit violent felonies and drug trafficking offenses and other felonies. Moreover, it will ensure that criminals possessing a firearm while committing a violent or drug trafficking felony shall receive a stiff punishment.

This is just common sense, Mr. President; violent felons who possess firearms are more dangerous than those who do not.

Current Federal law provides that a person who, during a Federal crime of violence or drug trafficking crime, uses or carries a firearm shall be sentenced to 5 years in prison. That law has been used effectively by Federal prosecutors across the country to add 5 additional years to the prison sentences of criminals who use or carry firearms.

However, a recent U.S. Supreme Court decision threatens to undermine the efforts of prosecutors to use this statute effectively. The Supreme Court's decision, Bailey versus United States, interpreted the law to require that a violent felon actively employ a firearm as a precondition of receiving an additional 5 year sentence. The Court in Bailey held that the firearm must be brandished, fired or otherwise actively used before the additional 5 year sentence may be imposed. So if a criminal merely possesses a firearm, but does not fire or otherwise use it, he gets off without the additional 5 year penalty.

Mr. President, this Supreme Court decision poses serious problems for law enforcement. It weakens the Federal

criminal law; it is leading to the early release of hundreds of violent criminals. Before this Supreme Court's error of judgment, in the Bailey versus U.S. decision, armed criminals committing violent or drug trafficking felonies were jailed for an additional 5 years, regardless of whether they actively employed their weapons. Now, as a result of the Court's decision, the prison revolving door is in full swing. Yet another roadblock has been erected between a savage criminal act and swift, certain punishment.

Mr. President, now that the word is out, prisoners already are preparing and filing motions to get out of jail as fast as they can write. U.S. attorneys are receiving petitions from criminals every day—for example consider the case of Lancelot Martin, who ran a drug trafficking operation out of Raleigh, NC: In 1992, Martin had attempted to use the U.S. Postal Service to receive and sell drugs. Martin was arrested by a Raleigh crime task force. The authorities obtained a warrant, searched his apartment, seized his drugs and recovered a 9 mm. semi-automatic pistol that Martin used to protect his drug business.

Martin was convicted of drug trafficking charges and received a 5 year sentence for using the gun. But Monday, well before his sentence expired, Martin walked free, simply because his gun and a hefty supply of drugs were found—but the Court somehow held that the gun was not actively employed during his drug trafficking crime.

So, Mr. President, my bill will ensure that future criminals possessing guns, like Lancelot Martin, serve real time when they use a gun in furtherance of a violent or drug trafficking crime. There are many other examples similar to the episode involving Lancelot Martin.

As a result of the Court's decision, any thug who hides a gun under the back seat of his car, or who stashes a gun with his drugs, may now get off with a slap on the wrist. Or if a criminal stores a sub-machinegun in a crack-house where he runs a drug trafficking operation, he can now avoid the additional penalty. The fact is, Mr. President, that firearms are the tools of the trade of most drug traffickers. Weapons clearly facilitate the criminal transactions and embolden violent thugs to commit their crimes.

I believe that mere possession of a firearm, during the commission of a violent felony—even if the weapon is not actively used—should nonetheless be punished—because of the heightened risk of violence when firearms are present. In its opinion, the Supreme Court observed, ''Had Congress intended possession alone to trigger liability . . . it easily could have so provided.'' That, Mr. President, is precisely the intent of this legislation—to make clear that ''possession alone'' does indeed ''trigger liability.''

This legislation will increase the mandatory—repeat, mandatory—sentences for violent armed felons from 5 to 10 years—and if the firearm is discharged, the term of imprisonment is 20 years. This legislation also increases to 25 years the mandatory sentences for second and subsequent offenses.

Mr. President, this bill is a necessary and appropriate response to the Supreme Court's judicial limitation of the mandatory penalty for gun-toting criminals. According to Sentencing Commission statistics, more than 9,000 armed violent felons were convicted from April, 1991, through October, 1995. In North Carolina alone, this statute was used to help imprison over 800 violent criminals. We must strengthen law enforcement's ability to use this strong anticrime provision.

Fighting crime is, and should be, a top concern in America. It has been estimated that in the United States one violent crime is committed every 16 seconds. And with youth-related violent crime at an all-time high, we must fight back with the most severe punishment possible for those who terrorize law-abiding citizens.

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

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

S. 1612

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

SECTION 1. INCREASED MANDATORY MINIMUM SENTENCES FOR CRIMINALS POSSESSING FIREARMS.

Section 924(c)(1) of title 18, United States Code, is amended to read as follows:

''(c)(1)(A) Except to the extent a greater minimum sentence is otherwise provided by any other provision of this subsection or any other law, a person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which a person may be prosecuted in a court of the United States, possesses a firearm shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—

''(i) be punished by imprisonment for not less than 10 years;

''(ii) if the firearm is discharged, be punished by imprisonment for not less than 20 years; and

''(iii) if the death of a person results, be punished by the death penalty or by imprisonment for not less than life.

''(B) If the firearm possessed by a person convicted under this subsection is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, such person shall be sentenced to imprisonment for not less than 30 years.

''(C) In the case of a second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for not less than 25 years, and if the firearm is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, to life imprisonment without release.

''(D) Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the crime of violence or drug trafficking crime in which the firearm was possessed.''.

ADDITIONAL COSPONSORS

S. 581

At the request of Mr. FAIRCLOTH, the name of the Senator from Florida [Mr. MACK] was added as a cosponsor of S. 581, a bill to amend the National Labor Relations Act and the Railway Labor Act to repeal those provisions of Federal law that require employees to pay union dues or fees as a condition of employment, and for other purposes.

S. 942

At the request of Mr. BOND, the name of the Senator from Illinois [Ms. MOSELEY-BRAUN] was added as a cosponsor of S. 942, a bill to promote increased understanding of Federal regulations and increased voluntary compliance with such regulations by small entities, to provide for the designation of regional ombudsmen and oversight boards to monitor the enforcement practices of certain Federal agencies with respect to small business concerns, to provide relief from excessive and arbitrary regulatory enforcement actions against small entities, and for other purposes.

S. 948

At the request of Mr. DORGAN, the names of the Senator from Nebraska [Mr. KERREY] and the Senator from Illinois [Ms. MOSELEY-BRAUN] were added as cosponsors of S. 948, a bill to encourage organ donation through the inclusion of an organ donation card with individual income refund payments, and for other purposes.

S. 953

At the request of Mr. DOLE, the name of the Senator from Delaware [Mr. ROTH] was added as a cosponsor of S. 953, a bill to require the Secretary of the Treasury to mint coins in commemoration of black revolutionary war patriots.

At the request of Mr. CHAFEE, the names of the Senator from Georgia [Mr. COVERDELL], the Senator from Massachusetts [Mr. KENNEDY], and the Senator from Arkansas [Mr. PRYOR] were added as cosponsors of S. 953, supra.

S. 1483

At the request of Mr. KYL, the name of the Senator from Nebraska [Mr. EXON] was added as a cosponsor of S. 1483, a bill to control crime, and for other purposes.

SENATE CONCURRENT RESOLUTION 43

At the request of Mr. THOMAS, the name of the Senator from Virginia [Mr. WARNER] was added as a cosponsor of Senate Concurrent Resolution 43, a concurrent resolution expressing the sense of the Congress regarding proposed missile tests by the People's Republic of China.