Mr. MURKOWSKI. Mr. President, let me thank my friend from Arkansas for his input and his consistent effort to bring this issue before this Congress, and certainly the U.S. Senate.

I must differ with him on his interpretation. It is not unmitigated disaster. I think every Member of the Western States, and those States that have mining, recognize that there are certainly ills. But there is also an obligation and a pride to correct them, and those corrections are underway. But the suggestion that the Department of the Interior should have the broad authority to come in with sweeping new regulations that would in many cases have an adverse effect on the industry's ability to be internationally competitive is the threat proposed by the Department of the Interior. As a consequence, I would again expect to offer a motion to strike the amendment, and a tabling motion.

I yield the remainder of my time. I thank my good friend for the spirited debate. We will keep him informed of the progress and the eventual resolve of this issue, if we don't get it done today.

Mr. BUMPERS. Mr. President, parliamentary inquiry. Is there 10 minutes equally divided beginning at 2:15 on this amendment?

The PRESIDING OFFICER. The Senator is correct.

Mr. BUMPERS. I thank the Chair.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 having arrived, the Senate will now stand in recess until the hour of 2:15.

Thereupon, the Senate, at 12:29 p.m. recessed until 2:16 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. COATS).

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 1999

The Senate continued with the consideration of the bill.

AMENDMENT NO. 3591

The PRESIDING OFFICER. Under the previous order, there is now 10 minutes equally divided with respect to the Bumpers amendment.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, both caucuses are still in session. I ask unanimous consent that the beginning of the debate, 10 minutes equally divided, begin at 2:20 p.m.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Under the previous order, there is now 10 minutes to be equally divided with respect to the Bumpers amendment.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the time for the start of the debate be extended to the hour of 2:25.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BUMPERS. 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. BUMPERS. Mr. President, I ask unanimous consent that the time for the 10-minute debate previously ordered commence as of now, and I yield 2 minutes to the Senator from Louisiana, Senator LANDRIEU.

The PRESIDING OFFICER. The Senator from Louisiana is recognized for 2 minutes.

Ms. LANDRIEU. Mr. President, I join my distinguished colleague from Arkansas to add just a moment of my thoughts to the tremendous argument he has made to strike this language from the Interior appropriations bill and to try to move us on in a path of real reform on this issue, reform that is so long overdue. Since 1971, attempt after attempt after attempt has been made, either to pass laws to reform the 1872 statute—attempts that have failed because there is not enough support—or we have tried to take some steps through regulations. Yet delay after delay after delay has taken place.

I want to submit for the RECORD, to date $71 billion in damages have occurred at taxpayer expense from hard rock mining—$71 billion. Mr. President, we have 557,000 abandoned hard rock mining sites in the United States alone that have to be dealt with, 300,000 acres of Federal land left unreclaimed, 2,000 sites in national parks in need of reclamation, as well as 59 Superfund mining sites on the National Priorities List and 12,000 miles of polluted rivers.

When will the taxpayers get some relief from this law that is so far outdated and has long since met its original intent? Besides the giving away of the land for pennies, the taxpayers are then held to pick up the tab for the damage that is caused. There are some reasonable solutions that do not devastate the industry but they do begin to clean up our environment.

I support the Honorable Senator from Arkansas and ask all of our colleagues to join with him in this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. BUMPERS. Mr. President, parliamentary inquiry: Is time to be charged against both parties when there is nobody speaking?

The PRESIDING OFFICER. The Senator is correct.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, let me just say to what few colleagues may be listening, in 1976, the Secretary of the Interior was charged with the responsibility of making sure that people who mine on Federal lands belonging to the taxpayers of America, not cause undue degradation of the land.

In 1981, the Secretary promulgated regulations to determine how mining would take place. It was obvious after that that the gold mining companies were using cyanide—cyanide—to mine gold. We have had three unmitigated disasters since 1981. We have cyanide running in the rivers and streams and our underground water supplies of this country.

In 1991, Secretary Lujan tried to change the rules so we could take care of that, as well as other things that needed to be taken care of.

In 1993, everybody said, ''No, let's wait; we're going to get a new bill.'' Nothing happened.

In 1997, Secretary Babbitt started to promulgate rules to try to take care of underground leeching of cyanide poisoning, as well as a whole host of other things. Senator REID got an amendment put on last year that said every Governor in the West would have to sign off on that. We finally compromised by saying the Secretary would have to consult with Governors of the West, which he did and which they certified that he did.

This year, they come in and say, ''No, let's don't do it yet; let's have the National Academy of Sciences study it.''

It takes 27 months, 27 more months under this amendment to get these rules promulgated, carefully orchestrated to go past the year 2000 and, hopefully, to get a Secretary of the Interior to their liking so we can continue to pollute the rivers and streams of underground aquifers of this country with cyanide poisoning.

People of this country have a right to expect something better than that, and all I am doing is striking this so that the Secretary can go ahead and issue the rules on November 17. If the Congress doesn't like them, let them change them. But for God's sake, let's keep faith with the American people and say we are going to do something about Summitville, CO, 1992. The bond was insufficient. They took bankruptcy. Zortman-Landusky, MT, 1998; Gilt Edge, SD, 1998.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BUMPERS. I plead with my colleagues and simply say let the Secretary do the job we hired him to do and promulgate the rules we told him in 1976 he ought to promulgate.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I use the time delegated to the Senator from Alaska.

Mr. President, my friend from Arkansas and my friend from Louisiana are in some kind of a dream world. The fact of the matter is that the statistics they talk about, for example, 300,000 acres damaged—the State of Nevada alone has 75 million acres. The Western United States is a vast area that still has areas in need of development. The mining industry has the best blue-collar jobs in America. The price of gold is at a 19-year low. Companies are filing bankruptcy. People are being laid off.

The mining industry creates a favorable balance of trade for gold. The problems that they talk about are all problems that went on decades and decades ago. What we are talking about here is there are some regulations that the Secretary of the Interior who can't legislate—they have tried, they can't legislate anything—so he said, ''We're going to get to you anyway, Mr. and Mrs. Mining Company; we're going to do this through regulations. We're going to show you if we can't legislate, we will regulate.''

What we are saying is, Mr. Secretary of the Interior, if you want to regulate, let's have the National Academy of Sciences, an impartial, unbiased, very recognized, sound scientific body look at these regulations to see if they need to be changed. We are willing to abide by what they come up with. This is not some antienvironmental rider that is going to turn present regulations upside down. This is simply saying let's take the regulations and have the scientists look at them, not Secretary Babbitt who has been so unfair to mining.

Mr. President, they are looking for a solution to a problem that doesn't exist. The Western Governors' Association said:

> States already have effective environmental and reclamation programs in place and operating. These programs ensure that national criteria, where they exist in current law, are met and allow state and site-specific flexibility for the remaining issues.

That is all we want, is fairness. The Interior bill is a good bill. This provision which calls for a study by the National Academy of Sciences is the right way to go. This amendment should be defeated overwhelmingly.

The PRESIDING OFFICER. The time under the control of the opposition to the Bumpers amendment remains at 2 minutes even.

Mr. REID. How much time is remaining?

The PRESIDING OFFICER. Two minutes.

Mr. REID. On this side?

The PRESIDING OFFICER. That is correct.

Mr. REID. Thank you. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MURKOWSKI. 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. MURKOWSKI. Mr. President, I stand in strong opposition to Senator BUMPERS' amendment to strike the National Academy of Sciences study.

Before they cast their vote, I want my colleagues to consider these points:

We put the National Academy of Sciences study language into the appropriations bill because the Interior Department has decided that they can no longer wait for Congress to act on mining law. Apparently these unelected officials know what's better for this country than the United States Congress.

We are doing it because the Department of the Interior has decided that they are not interested in the opinions or concerns of the public land Governors and the constituents they represent.

Let me quote the Western Governors Association letter from February of this year:

> States already have effective environmental and reclamation programs in place and operating. These programs ensure that national criteria, where they exist in current law, are met and allow state and site-specific flexibility for the remaining issues.

We put the Academy study into the appropriations bill at the specific request of the Governors of Nevada, Arizona, New Mexico, Idaho, Wyoming, and Utah.

They all echo Nevada Governor Miller's concerns when he said:

> Interior is moving the responsibility for environmental oversight of mining operations in my State and other States to here in Washington, DC. This attempt at seizure and control by Interior is particularly perplexing in view of the fact that many States, expecially Nevada [and my state—Alaska] have moved aggressively to address the environmental concerns of mining operations. To date, there has been no real justification offered by the department regarding the need to make changes. * * *

He goes on to say that in his opinion the Department of the Interior has a solution looking for a problem.

A solution looking for a problem.

It is simply unacceptable for an agency to launch off on a major rulemaking effort that affects the effectiveness and efficiency of the entire environmental foundation of mining in the United States.

Let me close by quoting one of the modern environmental leaders, former Secretary of the Interior Andrus:

> In 20 years, I admit, the 3809 regulations have stood the test of time * * * those regulations revolutionized mining on the public lands. Bruce Babbitt—who should know better—is trying to fix things that are not broken, and I suspect accomplish some mining law reform through the back door.

Secretary Babbitt is trying to fix things that are not broken.

I couldn't have said it better if I tried.

The amendment that Senator BUMPERS proposes to strike is as simple—it does ''nothing'' more than direct the National Academy of Sciences to review existing State and Federal environmental regulations dealing with hardrock mining to determine the adequacy of these laws and regulations to prevent unnecessary and undue degradation and how to better coordinate Federal and State regulatory programs to ensure environmental protection.

The Department of the Interior has so completely lost its objectivity and has become so biased against this industry that they appear completely incapable of making sound decisions in this arena.

The citizens of this country are entitled to a Department of the Interior that determines need before it acts, that doesn't waste money that is sorely needed in other places; a Department that doesn't ''unnecessarily'' disrupt a system of State and Federal regulations laboriously constructed over decades to complement and enhance environmental protection at the lowest cost possible.

I urge my colleagues to join with me in a vote to table Senator BUMPERS' amendment, and in doing so, we will be sending a clear message to the administration that ''good'' Government is still important, that States play a critical role in environmental protection and that their partnerships and input are still important.

Mr. President, as you know, we have before us a vote, and I ask unanimous consent that the yeas and nays be requested—Mr. President, I am told that I should make that request after time has expired.

The PRESIDING OFFICER. The Chair informs the Senator from Alaska that the time has expired.

Mr. MURKOWSKI. It is my intent to table the proposed Bumpers amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table amendment No. 3591. The yeas and nays were ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from South Carolina (Mr. HOLLINGS) and the Senator from Maryland (Ms. MIKULSKI) are necessarily absent.

The result was announced—yeas 58, nays 40, as follows:

[Rollcall Vote No. 268 Leg.]

YEAS—58

Allard	Byrd	Domenici
Ashcroft	Campbell	Dorgan
Baucus	Cleland	Enzi
Bennett	Cochran	Faircloth
Bingaman	Conrad	Ford
Bond	Coverdell	Frist
Breaux	Craig	Gorton
Brownback	D'Amato	Gramm
Bryan	Daschle	Grams
Burns	DeWine	Grassley

Hagel	Lugar	Sessions
Hatch	Mack	Shelby
Helms	McCain	Smith (NH)
Hutchinson	McConnell	Smith (OR)
Hutchison	Moynihan	Stevens
Inhofe	Murkowski	Thomas
Inouye	Nickles	Thompson
Kempthorne	Reid	Thurmond
Kyl	Roberts	
Lott	Santorum	

NAYS—40

Abraham	Gregg	Murray
Akaka	Harkin	Reed
Biden	Jeffords	Robb
Boxer	Johnson	Rockefeller
Bumpers	Kennedy	Roth
Chafee	Kerrey	Sarbanes
Coats	Kerry	Snowe
Collins	Kohl	Specter
Dodd	Landrieu	Torricelli
Durbin	Lautenberg	Warner
Feingold	Leahy	Wellstone
Feinstein	Levin	Wyden
Glenn	Lieberman	
Graham	Moseley-Braun	

NOT VOTING—2

Hollings	Mikulski

The motion to lay on the table the amendment (No. 3591) was agreed to.

Mr. MURKOWSKI. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. GORTON. Mr. President, we now are on the Interior appropriations bill. I hope we will not have quorum calls. I hope we will be able to move through amendments briskly, with appropriate debate. I count about 10 or a dozen amendments on this bill which are likely to require rollcall votes.

As usual, we are having a difficult time this afternoon getting people to come to the floor with their amendments. I would like to go from Republican side to Democratic side and back to the Republican side.

I ask that the Senator from Wyoming, Mr. ENZI, be recognized next. If there are Democrats who will bring up their amendments this afternoon, I would like to hear from them. They would go next.

We will have more amendments this afternoon that will require rollcall votes.

AMENDMENT NO. 3592

(Purpose: To prohibit the Secretary of the Interior from promulgating certain regulations relating to Indian gaming and to prohibit the Secretary from approving class III gaming without State approval)

Mr. ENZI. I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The pending amendment is set aside. The clerk will report.

The legislative clerk read as follows:

The Senator from Wyoming [Mr. ENZI], for himself, Mr. SESSIONS, Mr. LUGAR, Mr. BROWNBACK, Mr. ASHCROFT, Mr. GRAMS, Mr. COATS, Mr. INHOFE, Mr. BRYAN and Mr. REID, proposes an amendment numbered 3592.

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

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

The amendment is as follows:

At the appropriate place, insert the following:

SEC. . PROHIBITION.

(a) Notwithstanding any other provision of law, prior to October 1, 1999, Secretary of the Interior shall not—

(1) promulgate as final regulations, or in any way implement, the proposed regulations published on January 22, 1998, at 63 Fed. Reg. 3289; or

(2) issue a notice of proposed rulemaking for, or promulgate, or in any way implement, any similar regulations to provide for procedures for gaming activities under the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.), in any case in which a State asserts a defense of sovereign immunity to a lawsuit brought by an Indian tribe in a Federal court under section 11(d)(7) of that Act (25 U.S.C. 2710(d)(7)) to compel the State to participate in compact negotiations for class III gaming (as that term is defined in section 4(8) of that Act (25 U.S.C. 2703(8))).

(b) CLASS III GAMING COMPACTS.—

(1) IN GENERAL.—

(A) PROHIBITION ON APPROVING COMPACTS.—Prior to October 1, 1999, the Secretary may not expend any funds made available under this Act, or any other Act hereinafter enacted, to prescribe procedures for class III gaming, or approve class III gaming on Indian lands by any means other than a Tribal-State compact entered into between a state and a tribe, on or after the enactment of this Act.

(B) RULE OF CONSTRUCTION.—Nothing in this paragraph may be construed to prohibit the review or approval by the Secretary of a renewal or revision of, or amendment to a Tribal-State compact that is not covered under subparagraph (A).

(2) NO AUTOMATIC APPROVAL.—Prior to October 1, 1999, notwithstanding any other provision of law, no Tribal-State compact for class III gaming, other than one entered into between a state and a tribe, shall be considered to have been approved by the Secretary by reason of the failure of the Secretary to approve or disapprove that compact.

(c) DEFINITIONS.—The terms ''class III gaming'', ''Secretary'', ''Indian lands'', and ''Tribal-State compact'' shall have the same meaning for the purposes of this section as those terms have under the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

PRIVILEGE OF THE FLOOR

Mr. ENZI. I ask unanimous consent two members of my staff, Andrew Emrich and Chad Calvert, be granted floor privileges during the duration of the debate on the Interior appropriations bill.

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

Mr. ENZI. I rise to introduce this amendment to the Interior appropriations bill with my colleague, the distinguished Senator from Alabama, Mr. SESSIONS. This amendment has one very important purpose: to ensure that the rights of this Congress and all 50 States are not trampled on by an unelected Cabinet official.

The amendment is simple and straightforward. It would prohibit the Secretary of the Interior from approving any tribal-State gambling agreement which has not first been approved by the tribe and the State in question. It would also prohibit the Secretary from finalizing the rules that were published this past January 22. If these rules are finalized, the Secretary of the Interior would have the ability to bypass all 50 State governments in approving casino gambling on Indian tribal lands.

Mr. President, this is the third time in 2 years the Senate has had to deal with this issue of Indian gambling. I regret that an amendment is, once again, necessary on this year's Interior appropriations bill. However, until we understand the need for legislative action and effect hearings by the Indian Affairs Committee to resolve differences and reach a reasonable compromise in the Indian gambling process, this amendment is essential.

Last year, I offered an amendment to the Interior appropriations bill that prohibited Secretary Babbitt from approving any new tribal-State gambling compacts which had not first been approved by the State in accordance with State law. Although that amendment provided for only a 1-year moratorium, the intent of that amendment was clear. Congress does not believe it is appropriate for the Secretary of the Interior to bypass Congress and the States on an issue as important as to whether or not casino gambling would be allowed within State borders.

Unfortunately, the Secretary did not think Congress was serious when we passed the amendment last year. On January 22 of this year, the Department of the Interior, Bureau of Indian Affairs, published proposed regulations which would allow the Secretary of the Interior to bypass the States in the compacting process. In effect, these proposed regulations would allow Secretary Babbitt to approve casino gambling agreements with the Indian tribes without the consent or approval of the States. This action by the Secretary is a very big stick that encourages the tribes enough that they are not interested in any compromise. That is precisely why Congress was willing to place the amendment in last year's appropriations bill. Evidently, Secretary Babbitt did not think Congress was serious.

We also debated the issue of blocking the Secretary's proposed rules in February, and we had an amendment accepted to the supplemental appropriations bill by a voice vote. When speaking with House conferees who attended the conference to the supplemental, several lobbyists painted our amendment as a Las Vegas protection bill. There are some lobbying groups that are trying that same tactic again this year. I want everyone to be perfectly clear on this point. This amendment is designed primarily for those States that do not allow gambling—particularly those that do not allow electronic gambling and especially those States that do not allow slot machines. The interest in this amendment from gambling States stems simply from their sincere desire to have the Indian Gaming Regulatory Act, or IGRA, enforced. This amendment does not in any way minimize the serious need for proper enforcement of existing law.

In February, in an attempt to kill our amendment, which was only a continuation of the status quo, the Indian Affairs Committee sent out a notice that the amendment should be defeated because hearings had been scheduled. What happened to those hearings? By passing this amendment, we will ensure that the promises about the future won't change the current law. We will make sure that the unelected Secretary of the Interior, Bruce Babbitt, won't single-handedly change current law. This amendment will ensure that any change in IGRA is done in the right way—legislatively.

Mr. President, this amendment will ensure that the proper procedures are followed in the tribal-State compacting process. Some people have argued that changes need to be made in the Indian Gaming Regulatory Act. I don't necessarily disagree with my colleagues on that point. In fact, I would welcome an opportunity to review a number of provisions in IGRA in the proper context. However, if any changes are to be made to IGRA, those changes must come from Congress, not from the administration. By even proposing these regulations, the Secretary of the Interior has shown an amazing disregard for the constitutional role of Congress and the statutory prerogatives of all 50 States.

Actually, Mr. President, the timing of Secretary Babbitt's actions is rather ironic. In March, just 6 months ago, Attorney General Janet Reno requested an independent counsel to investigate Secretary Babbitt's involvement in denying a tribal-State gambling license to an Indian tribe in Wisconsin. Although we will have to wait for independent counsel Carol Elder Bruce to complete her investigation before any final conclusions can be drawn, it is evident that serious questions have been raised about Secretary Babbitt's judgment and objectivity in approving Indian gambling compacts.

The very fact that Attorney General Janet Reno believed there was specific and credible evidence to warrant an investigation should be sufficient to make this Congress hesitant to allow Secretary Babbitt to grant himself new trust powers that are designed to bypass the States in the area of tribal-State gambling compacts. Moreover, this investigation should have taught us an important lesson: We in Congress should not allow Secretary Babbitt, or any other Secretary of the Interior, to usurp the rightful role of Congress and the States in addressing the difficult question of casino gambling on Indian tribal lands.

As this controversial issue has developed, we have been promised hearings in the Indian Affairs Committee. A year ago, I was given the offer to even invite some of the witnesses. From my perspective, if the promise of those proposed hearings had caused us to back off this amendment, the effect would have been that Secretary Babbitt would have had his way today. This sentiment has been confirmed by lobbyists from the various tribes which have made it abundantly clear that Secretary Babbitt fully intends to finalize his proposed rules. Our only way to stop this effort is to attach another amendment to this year's Interior appropriations bill. Let me assure you, if Secretary Babbitt has his way, there will be no need for the tribes to resolve problems at all involving gambling and IGRA in and with their States.

I do believe that this issue could be resolved with hearings and a bill—actual legislation from us, from Congress. But those hearings won't happen as long as the tribes anticipate the clout of the Secretary's rule that bypasses the process, bypasses the States. Yes, the courts have ruled that the current law—which was passed by Congress, not an appointed Secretary—gives an edge in the bargaining process to the States. But that process has worked. If there is a need to change that process, it should be changed only by a bill passed by Congress—not by rule and regulation.

I must stress that if we do not maintain the status quo, there will never be an essential involvement by the States in the final decision of whether to allow casino gambling on Indian tribal lands. There will be no compromise reached. The Secretary will be given the right to bypass us, the Congress of the United States, and to run roughshod over the States.

Again, I want to stress that this amendment does not amend the Indian Gaming Regulatory Act, but holds the status quo for another year so Congress can review the situation.

Two years ago, Congress voted to establish a national commission to study the social and economic impacts of legalized gambling in the United States. One of the aspects the commission is analyzing is the impact of gambling on tribal communities. As my colleagues know, this commission just began its work last year and most likely will not complete its study for another year.

It is significant that this commission—the very commission that was created by Congress for the purpose of studying gambling—has now sent a letter to Secretary Babbitt asking him not to go forward with his proposed rules. I would like to read this letter for the benefit of my colleagues.

DEAR SECRETARY BABBITT: As you are aware, the 104th Congress created the National Gambling Impact Study Commission to study the social and economic impacts of legalized gambling in the United States. Part of our study concerns the policies and practices of tribal governments and the social and economic impacts of gambling on tribal communities.

During our July 30 meeting in Tempe, Arizona the Commission discussed the Department's ''by-pass'' provision for tribes who allege that a state had not negotiated for a gaming compact in good faith. The Commission voted to formally request the Secretary of the Interior to stay the issuance of a final rule on Indian compacting pending completion of our final report. On behalf of the Commission, I formally request such a stay, and trust you will honor this request until you have had an opportunity to review the report which we intend to release on June 20, 1999. Thank you for your consideration.

Sincerely,

KAY C. JAMES,
Chair.

Mr. President, I think it would be wise for this body to follow the advice of the very commission that we created to study the issue of legalized gambling.

I want to emphasize again that we are the body that asked for this commission. We created the commission to look at *all* gambling. The American taxpayers are already paying for the study. The commission is already doing its work. We need to let them finish. They have asked that neither we, nor Secretary Babbitt, make any changes while they do their work. My amendment would give them that time.

The judicial branch has already preserved the integrity of current law. This amendment supports that. The President approved my amendment last year by signing the 1998 Interior appropriations bill. I'm asking my colleagues to take the same ''non-action'' once again. The Committee on Indian Affairs must play a very important role here. They need to hold hearings and write legislation which specifically addresses this issue and then put it through the process. They will have time to do that if this amendment is agreed to. This amendment would support giving the Indian Affairs Committee and Congress, as a whole, time to develop an appropriate policy.

Mr. President, the Enzi-Sessions amendment is strongly endorsed by the National Governor's Association. I would like to read a letter written on behalf of the Governors and which is signed by the entire executive committee. Listen to this very bipartisan appeal.

Here is the letter:

As members of the Executive Committee of the National Governors' Association, we urge you on behalf of all governors to adopt the Indian gaming-relating amendment to the Interior Department Appropriations bill sponsored by Sen. Michael B. Enzi (R–Wyo.) and Sen. Jeff Sessions (R–Ala.). This amendment would extend the current moratorium preventing the secretary of the U.S. Department of the Interior from using federal funds to approve tribal-state compacts that have not first been approved by the state, as required by law. The amendment would also prohibit the secretary from promulgating a regulation or implementing a procedure that could result in tribal Class III gaming in the absence of a tribal-state compact or from going forward with any proposed rule on this matter in fiscal 1999.

The U.S. Secretary of the Interior has published a proposed rule in which he asserts authority to establish such procedures, and he has indicated his intent to issue a final rule. The nation's Governors strongly believe that no statute or court decision provides the secretary of the U.S. Department of the Interior with authority to intervene in disputes over compacts between Indian tribes and states about casino gambling on Indian lands. Such action would constitute an attempt by the secretary to preempt states' authority under existing laws and recent court decisions and

would create an incentive for tribes to avoid negotiating gambling compacts with states. The secretary's inherent authority includes a responsibility to protect the interests of Indian tribes, making it impossible for the secretary to avoid a conflict of interest or exercise objective judgment in disputes between states and tribes. Governors have submitted comments to the department outlining these and other objections to the proposed rule.

The Governors have agreed to enter negotiations with Indian tribes and the U.S. Departments of Interior and Justice to achieve consensus regarding amendments to the Indian Gaming Regulatory Act of 1988. Preliminary staff discussions will take place in August or September in preparation for a meeting of principals in November.

To avoid protracted litigation, provide Congress with time to determine the proper scope of the secretary's authority in this area, and permit the negotiations among tribes, states, and the federal government to progress, the nation's Governors respectfully urge Congress to adopt the Enzi/Sessions amendment to extend the current moratorium through the end of fiscal 1999 and prohibit the secretary from issuing a final rule.

Thank you for your support of the Enzi/Sessions amendment. The nation's Governors look forward to working with you.

It is signed by Governor George Voinovich, the chairman; Tom Carper of Delaware, the vice chairman; Governor Romer of Colorado; Governor Lawton Chiles of Florida; Governor Bob Miller of Nevada; Governor David Beasley of South Carolina; Governor Howard Dean of Vermont; and Governor Tommy Thompson of Wisconsin. It is definitely a bipartisan list.

Mr. ENZI. Mr. President, this amendment is also supported by the National Association of Attorneys General. I would like to read from the attorneys general letter of support. This is an excerpt.

The Attorneys General believe that the Secretary lacks any statutory authority for the proposed procedures. Twenty-five state Attorneys General led by Attorney General Bob Butterworth filed a letter with the Secretary setting out our views at length. We believe the Secretary must seek statutory amendments to the Indian Gaming Regulatory Act to achieve the authority he asserts and have encouraged him to engage in a dialogue with states and tribes to work toward that goal.

Mr. President, I ask unanimous consent to have that letter printed in the RECORD.

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

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL,
Washington, DC, July 27, 1998.

Hon. MICHAEL B. ENZI,
U.S. Senate, Washington, DC.
Hon. JEFF SESSIONS,
U.S. Senate, Washington, DC.

DEAR SENATORS ENZI AND SESSIONS: We write in support and in appreciation of your proposed amendment to S. 2237, the Interior Appropriations legislation. Last year's Interior Appropriations bill contained a provision establishing a moratorium on implementation of procedures by the Secretary of the Interior to permit tribal gaming where a state and a tribe stall in negotiations and the state asserts sovereign immunity in court proceedings.

The Attorneys General believe that the Secretary lacks any statutory authority for the proposed procedures. Twenty-five state Attorneys General led by Attorney General Bob Butterworth filed a letter with the Secretary setting out our views at length. We believe the Secretary must seek statutory amendments to the Indian Gaming Regulatory Act of achieve the authority he asserts and have encouraged him to engage in a dialogue with states and tribes to work toward that goal.

While the short time frame before this year's Interior Appropriations is marked up prevents us from conducting a formal survey of the Attorneys General, we can assure you that there is an informal consensus to urge that the moratorium remain in place during the coming fiscal year. Continuation of the moratorium will avert the need for costly and prolonged litigation over the Secretary's administrative authority and encourage a meaningful dialogue about amendments to the IGRA which would benefit the Secretary, the tribes and the states.

Sincerely,

NELSON KEMPSKY,
Executive Director, Conference of Western Attorneys General.
CHRISTINE MILLIKEN,
Executive Director & General Counsel, National Association of Attorneys General.

Mr. ENZI. Mr. President, we have also received a number of letters from individual Attorneys General from a number of states, and my colleague from Alabama, who himself was a distinguished State Attorney General before coming to the United States Senate, will discuss these at more length. This letter is also supported by the National League of Cities. I would like to quote from this letter of endorsement. This is from the National League of Cities representing the cities and towns across our Nation.

While further legislation is required to remove the power of the Interior Secretary to administratively create enclaves exempt from state and local regulatory authority, passage of this amendment would be a first step in this process.

Because passage of the Enzi/Sessions amendment would slow the creation of new trust land in one narrow set of circumstances, NLC urges support of this amendment as a first step. The concept of allowing an appointed federal official to overrule and ignore state and local land use and taxation laws through the creation of trust lands flies in the face of federalism and intergovernmental comity.

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The Supreme Court has ruled that provisions of the Indian Gaming Regulatory Act, 25 U.S.C. 2701 et seq. (IGRA) violate certain constitutional principles that establish the obligations, immunities and privileges of the states. The Interior Department appears to be determined to implement the remaining provisions of IGRA despite the fact that the Supreme Court decision really requires a congressional re-examination of the IGRA statute and the more general topic of trust land designation. For these reasons, the NLC strongly urges Congress to extend the current moratorium, as proposed in the Enzi/Sessions amendment, through fiscal year 1999.

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

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

NATIONAL LEAGUE OF CITIES,
Washington, DC, September 14, 1998.

Hon. SLADE GORTON,
Chairman, Subcommittee on Interior Appropriations, U.S. Senate, Washington, DC.
Hon. ROBERT C. BYRD,
Ranking Member, Subcommittee on Interior Appropriations, U.S. Senate, Washington, DC.

DEAR CHAIRMAN GORTON AND SENATOR BYRD: I am writing to you on behalf of the National League of Cities (NLC) to urge you to support the Enzi/Sessions amendment to the FY '99 Interior Appropriations Bill which seeks to continue the moratorium on implementation of procedures by the U.S. Secretary of the Interior for fiscal year 1999. The NLC urges support of the Enzi/Sessions amendment in order to slow the creation of new trust land. While further legislation is required to remove the power of the Interior Secretary to administratively create enclaves exempt from state and local regulatory authority, passage of this amendment would be a first step in this process.

Because passage of the Enzi/Sessions amendment would slow the creation of new trust land in one narrow set of circumstances, NLC urges support of this amendment as a first step. The concept of allowing an appointed federal official to overrule and ignore state and local land use and taxation laws through the creation of trust lands flies in the face of federalism and intergovernmental comity.

The membership of the NLC has adopted policy which declares that: ''lands acquired by Native-American tribes and individuals shall be given corporate, not federal trust, property status.'' This policy is advocated ''in order that all lands may be uniformly regulated and taxed under municipal laws.''

The Supreme Court has ruled that provisions of the Indian Gaming Regulatory Act, 25 U.S.C. 2701 et seq. (IGRA) violate certain constitutional principles that establish the obligations, immunities and privileges of the states. The Interior Department appears to be determined to implement the remaining provisions of IGRA despite the fact that the Supreme Court decision really requires a congressional re-examination of the IGRA statute and the more general topic of trust land designation. For these reasons, the NLC strongly urges Congress to extend the current moratorium, as proposed in the Enzi/Sessions amendment, through fiscal year 1999.

Sincerely,

BRIAN J. O'NEILL,
President and Councilman.

Mr. ENZI. Mr. President, there is a growing number of groups, including the Christian Coalition which is very concerned about the explosion of unregulated gaming in America. I have a letter from the Christian Coalition. I share with you a paragraph from that.

Under the Indian Gaming Regulatory Act, every State has the right to be directly involved in tribal-state compacts without Federal interference. Every state also has the right, as upheld by the Supreme Court in the Seminole Tribe of Florida v. Florida decision, to raise its 11th Amendment defense of southern immunity if a tribe tries to sue the state for not approving a casino compact. However, in the wake of the Seminole decision, the Department of Interior has created new rules whereby a tribe can negotiate directly with the Secretary of Interior on casino gambling compacts and bypass a state's

rights to be involved. These new rules are a gross violation of states' rights. An unelected cabinet member should not be given sole authority to direct the internal activities of a state, especially with regards to casino gambling contracts.

Christian Coalition is also very concerned with the severe social consequences of casino gambling. There is much evidence that the rise of casino gambling leads to a rise in family breakdown, crime, drug addiction, and alcoholism. With such staggering repercussions, it is vital that tribal-state gambling contracts remain within each individual state and not be commandeered by an unelected Federal official.

I ask unanimous consent that this letter be printed in the RECORD.

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

CHRISTIAN COALITION,
Washington, DC, July 9, 1998.

DEAR SENATOR: When the Senate considers the FY '99 Interior appropriations bill, an amendment sponsored by Senator Enzi (WY) and Senator Sessions (AL) is expected to be offered. This amendment would protect states' rights in negotiating tribal-state compacts, especially when negotiating casino gambling.

Under the Indian Gaming Regulatory Act, every state has the right to be directly involved in tribal-state compacts, without federal interference. Every state also has the right, as upheld by the Supreme Court in the *Seminole Tribe of Florida v. Florida* decision, to raise its 11th Amendment defense of sovereign immunity if a tribe tries to sue the state for not approving a casino compact. However, in the wake of the *Seminole* decision, the Department of Interior has created new rules whereby a tribe can negotiate directly with the Secretary of Interior on casino gambling compacts and bypass a state's right to be involved. These new rules are a gross violation of states' rights. An unelected cabinet member should not be given sole authority to direct the internal activities of a state, especially with regards to casino gambling contracts.

Christian Coalition is also very concerned with the severe social consequences of casino gambling. There is much evidence that the rise of casino gambling leads to a rise in family breakdown, crime, drug addiction and alcoholism. With such staggering repercussions, it is vital that Tribal-State gambling compacts remain within each individual State and not be commandeered by an unelected federal official.

The Enzi/Sessions amendment would prohibit the Secretary of Interior, during fiscal year 1999, from establishing or implementing any new rules that allow the Secretary to circumvent a state in negotiating a tribal-state compact when that state raises its 11th amendment defense of sovereign immunity. It also prohibits the Secretary from approving any tribal-state compact which has not first been approved by the state.

Christian Coalition urges you to protect states' rights and vote for the Enzi/Sessions amendment to the FY '98 Interior appropriations bill.

Sincerely,

JEFFREY K. TAYLOR,
Acting Director of Government Relations.

Mr. ENZI. I want to point out that this amendment does not affect any existing tribal-State compact. It does not in any way prevent States and tribes from entering into compacts where both parties are willing to disagree on class 3 gambling on tribal lands within a State's borders. The amendment does ensure that all stakeholders must be involved in the process—Congress, tribes, States, the administration.

Mr. President, a few short years ago, the big casinos thought Wyoming would be a good place to gamble. The casinos gambled on it. They spent a lot of money. They even got an initiative on the ballot. They spent a lot more money trying to get the initiative passed. I became the spokesman for the opposition.

When we first got our meager organization together, the polls showed over 60 percent of the people were in favor of gambling. When the election was held, the casino gambling lost by over 62 percent, and it lost in every single county of our State. The 40-point swing in public opinion happened as people came to understand the issue and the implications of casino gambling in Wyoming.

That is a pretty solid message. We do not want casino gambling in Wyoming. The people who vote in my State have debated it and made their choice. Any Federal bureaucracy that tries to force casino gambling on us will obviously inject animosity.

Why did we have that decisive a vote? We used a couple of our neighboring States to review the effects of limited casino gambling. We found that a few people—a few people—make an awful lot of money at the expense of everyone else. When casino gambling comes into a State, communities are changed forever and everyone agrees there are costs to the State. There are material costs, with a need for new law enforcement and public services. Worse yet, there are social costs. And not only is gambling addictive to some folks, but once it is instituted, the revenues can be addictive, too.

But I am not here to debate the pros and cons of gambling. I am just trying to maintain the status quo so we can develop a legislative solution rather than a bureaucratic mandate.

Mr. President, the rationale behind this amendment is simple. Society as a whole bears the burden of the effects of gambling. A State's law enforcement, social services, communities, and families are seriously impacted by the expansion of casino gambling on Indian tribal lands. Therefore, a State's popularly elected representatives should have a say in the decision about whether or not to allow casino gambling on Indian lands. This decision should not be made unilaterally by an unelected Cabinet official. Passing the Enzi-Sessions amendment will keep all the interested parties at the bargaining table. By keeping all the parties at the table, the Indian Affairs Committee will have the time it needs to hear all the sides and work on the legislation to fix any problems that exist in the current system.

I urge my colleagues to stand up for the constitutional role of Congress and for the rights of all 50 States by supporting this amendment.

I thank the Chair and yield the floor.

Mr. CAMPBELL. Mr. President, I rise in opposition to the Enzi amendment on Indian gaming. I think it is patently unfair because it will result in preventing Indian tribes from engaging in business activities that are now enjoyed by non-Indian neighbors. If we are going to talk about the merits of gambling—and I noticed my friend from Wyoming spoke eloquently about the down side of gambling—maybe we ought to shut down Reno and Las Vegas so millions, hundreds of millions of Americans cannot go there because it is bad for their health or sight or something.

We are not here, by the way, Mr. President, to defend the actions of the Secretary of Interior, and I hope we will not confuse that. His mismanagement is one thing, but the letter of the law is something else. And I firmly believe you can't fix an otherwise good bill, this Interior appropriations bill, with a bad amendment. This simply makes a good bill bad.

The Indian Gaming Regulatory Act of 1988 was a compromise to give State governments a voice in what kind of gaming would occur on Indian reservations within a State's borders. This was an unusual break from Federal Indian policy because States have no constitutional role in negotiating with Indian tribes, as you know.

I was here in 1988, in fact, and helped write that original authorizing legislation, IGRA, the Indian Gaming Regulatory Act. There was no intent at the time to usurp State laws, but as with many laws we have passed, there have been unintended consequences. The way it was written, a State can prevent a tribe from operating gaming facilities on its reservation simply by refusing to negotiate with the tribe. And that, of course, was upheld in the Seminole decision. My friend from Wyoming has spoken to that.

But in 1988, it didn't occur to us, when we were writing the bill, that States might simply refuse to negotiate in good faith. Since tribes are limited to those types of gaming allowed under State law, we have tribes prohibited from being in the same business as their non-Indian neighbors. I think that is discriminatory in the least. It is wrong to do that, and I think it violates the treaties. I should also point out to my colleagues that in many cases non-Indian gaming is promoted and even operated by State governments. They certainly don't want the competition.

Since Congress' intent under IGRA was that States should not have the ability to unilaterally veto gaming on Indian land, the Department of Interior has proposed regulations to address this situation. Although the proposal may need refinement, we do not believe the Secretary should be precluded from at least developing and proposing alternative approaches to State-tribal impasses in the gaming negotiations. In fact, in a letter issued on September 9, the Bureau of Indian Affairs has stated

the Enzi amendment could be very harmful in their ongoing negotiations.

Coming from a Western State, I am as supportive as anybody of States rights, but those who say this new procedure overrides the States are simply wrong. Under the draft proposal, if a State objected to a decision made by the Interior Secretary, that State could challenge that decision in Federal court. For those who claim the Interior Department is acting without legislative oversight, I would point out that Congress will have the authority to review any proposed regulations before they take effect. As those proposed regulations come before the authorizing committees, any new gaming regulations will get a careful review, and if, after input from the rest of the Senate, those regulations are found to be unacceptable, they simply will not pass. We will legislate a new approach if they do not pass.

I understand that there are Members in the Chamber who are simply against gaming. That is not what this debate is about. Under Federal law, tribes are limited to the types of gaming allowed under the laws of the State in which they reside. In my own State of Colorado as an example, there are two tribes, the Southern Ute and the Ute Mountain Ute. They are limited to slot machines and low-stakes table games, just as the other gaming towns in Colorado. In Utah, State law prohibits all gaming. Therefore, no tribes can do any kind of gaming whatsoever, and the tribes in other States cannot do gaming if a State law prevents that.

Contrary to the statement already made that there have been no hearings, we have done hearings. We simply have not gotten to the important part of the legislation, which is a markup, but we will. This debate is about whether a Governor of a State can limit a type of business activity to certain ethnic groups. That is unfair and un-American. Let's not jeopardize a good bill with a bad amendment. I urge my colleagues to vote against the Enzi amendment and allow the regulatory and legislative process to work.

I yield the floor, Mr. President.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. BRYAN. Mr. President, I support the Enzi amendment. I think a statement may be helpful to my colleagues who have not followed this issue as closely as the Senators who have joined us on the floor for purposes of discussing this amendment, the statement of Justice Oliver Wendell Holmes that a page of history may be more instructive than a volume of logic. This issue dates back to the time of a court decision involving the Cabazon Indian Tribe. As a result of that decision, the Congress, in 1988, passed the Indian Gaming Regulatory Act, which has been referred to in the course of this debate as IGRA.

I think the philosophical underpinnings of that legislation continue to be valid. Let me make it clear, because sometimes my view is misconstrued, I support the right of Indian tribes to enjoy entrepreneurial gaming activities to the same extent that State law, as a matter of public policy, permits those entrepreneurial activities to be available to all. So this debate is not whether you agree with Indian gaming or disagree with Indian gaming. I believe the tribes, subject to the qualification I have just stated, have a right to participate in gaming to the extent that, as a matter of State policy, a State chooses to permit gaming entrepreneurial opportunities.

We have marked contrasts in the West. The State of Utah, as a matter of State law—as the distinguished Senator from Colorado just pointed out—as a matter of State policy, permits no form of gaming. It is, in my judgment, clear and properly so under IGRA that no tribe within the State of Utah would have a right to participate in any form of Indian gaming.

The contrast to my own State is quite marked. In Nevada, as a matter of public policy since 1931, a full range of gaming entrepreneurial activities are available to the citizens of Nevada, and it is clear that the tribes in Nevada have the same opportunity. And, indeed, there have been five compacts negotiated with the tribes in the State of Nevada to permit that.

Under IGRA, gaming is divided into three different categories referred to as class I, class II, and class III. Class I and class II are not a part of this discussion. Class I deals with traditional Indian games; class II deals with bingo, and class III deals with casino types of gaming, including slot machines.

Again, to repeat, the premise of IGRA is that a Governor of a State is obligated to negotiate with a tribe to provide the same opportunities to tribes in his or her State to the extent the States, as a matter of law, permit gaming in general in that State.

Here is what brings us to the floor again this year, as my distinguished colleague from Wyoming points out. Under IGRA, what is contemplated in those States that permit any form of gaming is a compacting process under State law, where the Governors—and, indeed, in the law of some States it is the Governors and the State legislators—are required to negotiate with the Indian tribes within that State to provide those tribes with an equal opportunity to participate in the entrepreneurial aspects of gaming. There is no quarrel by this Senator with respect to that approach.

Here is what gives us cause for great concern. Some tribes have asserted that if the Governors of a respective State refuse to grant them everything they want by way of gaming, even though what they want is beyond what is permitted as a matter of State law, that that constitutes bad faith in the negotiating process. They want to be able to bypass that process; namely, the negotiation with the Governors, and in some States the negotiations with the Governors that must be approved by the State legislature.

The Enzi amendment does two things. No. 1, it prevents the Secretary of the Interior from moving forward to promulgate the final regulation that would, in effect, seek by regulation to bypass or change the procedure that currently exists. The second thing the amendment does is to prevent the Secretary of the Interior from, in effect, bypassing the compacting process and authorizing a compact that is not in compliance with State law.

My colleague from Wyoming has pointed out that this is an issue that is bipartisan in nature; this is not something that divides us on a partisan basis. It does not divide us regionally. It does not divide us philosophically. Some of my colleagues who have spoken oppose gaming in all forms. I respect that. This Senator does not take that position. But the National Governors' Association, the National Association of Attorneys General—both organizations of which I have been privileged to be a member in the past when serving as attorney general and Governor of my State—have gone on record as supporting the Enzi amendment. The reason why they are supporting this amendment so strongly is they want to preserve the right of State governments to determine, as a matter of policy, what, if any, form of gaming activity is permitted.

So, for those who find some type of invidious discrimination in this process, I must say this Senator does not. To the extent that a State permits gaming, it is clear that Governors are obligated to negotiate that same right to Indian tribes within the State. To the extent that a State, such as Utah or Hawaii, permits no form of gaming, the Governors of those two States are not required to enter into any kind of compact because those States, as a matter of public policy, have the right to determine what that policy is, and they have said, as a matter of public policy, they oppose gaming, do not want any form to exist within the State.

I must say, I thought we had hopefully put this issue to rest a year ago when we offered a similar amendment to the appropriations bill. I thought we had sent a clear message that the Congress of the United States does not want the Secretary of the Interior to bypass a process provided by law; namely, for Indian tribes to negotiate with the Governors as to what kind of gaming activity is to be permitted in that State consistent with that State's public policy. No sooner had this issue been approved by this body, the other body, and it became part of the Interior appropriations bill last year, than the Secretary of the Interior began a rulemaking process that, in my judgment, is violative of the spirit and contrary to the law in terms of what is his authority.

It is that disagreement that brings Governors from all regions of the country, Democrat and Republican, in support of the Enzi amendment. It is that same concern that brings the Nation's attorneys general together in a similar bipartisan way to strongly support the Enzi amendment. They do so as a matter of preserving and protecting the ability of each State to determine how much, if any, or how little, gaming is to be permitted within that State.

So, this is not, my colleagues, an issue of whether one favors Indian gaming or opposes Indian gaming. It is not an issue of whether you support gaming or oppose gaming. This amendment is designed to preserve the existing law which gives to each State Governor and the legislature the ability in that State to determine whether gaming is to be permitted and, if so, what form of gaming.

This is an extraordinarily significant piece of legislation. I must say, I am not familiar with any circumstances currently in the country where the tribes have not been able to negotiate a compact with those States that permit some form of gaming. At last count, there were 150 compacts negotiated in 20 States, pursuant to the law that was enacted by Congress in 1988. I am not suggesting that IGRA is perfect. I am not suggesting that some modification or change may not be needed with respect to some aspect. But that is a decision for the Congress of the United States, not a decision for the Secretary of the Interior. So I implore my colleagues to support the Enzi amendment in a bipartisan fashion, because what it seeks to accomplish is to reserve to the respective States the ability to determine what public policy will be with respect to gaming activities conducted within that State.

As I have observed throughout my comments, to the extent that a State as a matter of public policy has determined that they will permit some form of gaming, it is clear in IGRA that State Governors are obligated to negotiate those same entrepreneurial opportunities, and I have no quarrel with that. That is the law. But what we are really talking about here is an attempt to make an end run around IGRA. To the extent that the Secretary of the Interior, by regulation or by determining that an impasse exists, is able to bypass the State compacting process, no longer is it the State determining what the public policy with respect to gaming in that State may be. It is the Secretary of Interior. I have great respect for the Secretary of Interior but, with great respect, that is not an authority that he, or any Secretary of Interior, ought to have.

That is an authority that ought to be reserved to the State and the State legislature. We would do real violence to the very carefully crafted balance that was accomplished in IGRA when that was adopted a decade ago.

For that reason, Mr. President, I urge my colleagues to support the Enzi amendment when this comes for a vote. I yield the floor.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER (Mr. GREGG). The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I have the greatest respect for the junior Senator from Wyoming. I have heretofore on other occasions accepted and supported his various concerns in this area, but I want to share with him and the Senate a situation that perhaps deserves some special consideration for New Mexico, even if it is for a time certain. Let me, as best I can, explain this.

First of all, there is a case called the Seminole case, very much understood in Indian country. It pertains to gaming in this manner. The Federal courts have ruled under the Seminole case that the States are immune from suit and that means they can't be sued by an Indian tribe. So we start with that premise.

In the State of New Mexico, we have 14 Pueblos and two Apache tribes that have gaming houses and have compacts. But the compacts are very different than anyone else's in the country, for a couple of reasons.

First of all, in order to make the compacts valid, the Supreme Court of the State of New Mexico ruled that the legislature had to be involved in getting this done, not just the Governor. The State of New Mexico, through its legislature, I say to my friend Senator ENZI, came along and imposed, not by way of compact agreement, but just imposed as part of the authority for the Governor to enter into a compact, that each casino owned by the various Indian groups be charged 16 percent on gross slot machine revenues.

Obviously, that has not been negotiated, and my friend from Nevada is talking about compacts that are negotiated and that he doesn't know of any situation where they were not negotiated. I am suggesting one where they were not negotiated, but pursuant to a mandate from the legislature that charged them 16 percent gross tax on slot machines. They either took it or left it. The Secretary, I say to the Senator from Wyoming, said, ''I'm not going to sign the pacts, because if I sign them, I am at least implicitly agreeing that the legislature can tax Indian casinos.''

He let the pacts go in under a provision that says if he doesn't sign it within a certain amount of time, it goes into effect anyway.

We have compacts with our Indian tribes being assessed 16 percent, and I am not here to ask the U.S. Senate for relief from that, for I don't even know if 16 percent is right or not. All I know is it is a very big piece of money for very small casinos, but we have nothing yet in New Mexico that rivals the smallest, most minute casino in the State of the distinguished Senator from Nevada who just argued in favor of the Enzi amendment. They are very small casinos, with one exception, and even that is not a rival to anything the Senator has in a State that has legalized gaming.

Our Indian people would like to contest the 16 percent. Isn't it interesting, the Seminole case, which I just recited, prevents them from going to court, so they can get no relief from what they want to argue is an illegal imposition of this license fee, or at least arbitrary and unreasonable based upon what they are making. There they sit.

The point of it is there is at least a hope and an avenue for potentially getting this issue into the courts if you leave the section in the law that Senator ENZI chooses to remove from the law, because it provides for a remediation section and a Secretarial procedure which is being removed, so we will leave them in the status quo with no way to challenge.

Frankly, I repeat, I don't know whether their challenge is going to be valid or not, but it seems a little bit unfair that there is no way to challenge it even when a Secretary of the Interior is suggesting that the States didn't have the authority to impose that tax or that much. The Secretary can't do anything about it either, because all he does is sign the pacts or let them go into effect based on the expiration of time. In either case, you will have left the 16 percent license fee, gross fee, in place with no way to challenge it in any court because of the Seminole case.

I say to the Senator from Wyoming, he is probably going to win today. I haven't had a chance to explore how we might effect some justice and fairness here, but I do suggest that it is at least right for me to come down here and object, and I believe there might be a way that you can ameliorate New Mexico's problem by exempting them, by leaving the statute that we are concerned with in place for the New Mexico licensed casinos.

If you say you don't want it anywhere else, you want to wipe it out because it may have an opportunity to get around the need for compacts, you could at least leave it in effect somehow or another for those in New Mexico who are suffering under the situation which I have just described.

Having said that, because of this, obviously I can't vote aye on the amendment. You don't need to worry because I haven't been out lobbying Senators because this is a particular problem, very peculiar and particular to New Mexico. The Indian people think they have a case for just fairness, that they ought to be able to challenge this, and they will never have a chance to challenge it if your amendment wipes out the statute which gives the Secretary some additional power.

The Pueblo of Laguna in New Mexico has done a great deal of research on this. I ask unanimous consent that their analysis be printed in the RECORD.

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

ENZI-REID-SESSIONS RIDER MUST BE REJECTED—CONGRESS SHOULD NOT ALTER FEDERAL POLICY AND STATUTORY PROTECTIONS OVER INDIAN AFFAIRS BY ATTACHING RIDERS TO ANNUAL APPROPRIATIONS BILLS

A. ENZI-REID-SESSIONS RIDER IS A MEANS OF IMPROPERLY CIRCUMVENTING FEDERAL LAW WHICH PROTECTED TRIBAL GOVERNMENTS

Enzi-Reid-Sessions Rider is an unfair, bypass of the legislative process.

Enzi-Reid-Sessions Rider unfairly subordinates tribal authority to pursue reservation economic development in violation of the federal trust responsibility to protect Indian tribes and to promote tribal economic self-determination.

Enzi-Reid-Sessions Rider would effectively give states what amounts to a unilateral ''veto'' over Indian gaming, which is inconsistent with federal law, the Indian Gaming Regulatory Act of 1988 (''IGRA'').

Enzi-Reid-Sessions Rider is a drastic means to amend IGRA, and it would alter a change in federal-tribal relations. Such a drastic change should not be done through the mechanism of a budget rider attached to a spending bill, with no hearings, findings, tribal consultation of input.

Enzi-Reid-Sessions Rider will deny Indian tribes notice and an opportunity for hearing which is tantamount to a denial of the ''due process'' guaranteed by the U.S. Constitution.

B. THE GAMING TRIBES IN NEW MEXICO WILL HAVE NO REMEDY TO ADDRESS THE INJUSTICES THAT OCCURRED OVER THE STATE'S FAILURE TO NEGOTIATE OVER GAMING ACTIVITIES ON TRIBAL LANDS

In New Mexico, IGRA's Secretarial procedures provisions are necessary to provide a remedy to the tribal governments who have been unsuccessful in obtaining negotiated tribal/state Class III compacts, a negotiated process that the states clamored to obtain when IGRA was enacted. There are 14 compacts in New Mexico, known as the ''HB 399 Compacts'' which are the product of a state legislative process, and which were not negotiated by any of the gaming tribes.

The gaming tribes in New Mexico were forced to (1) to accept the compacts that they had no voice in drafting and which were contrary to the federal law which authorized the compact, or (2) to reject HB 399 and risk closure and criminal prosecution by the U.S. Attorney. No state in this country would tolerate such unfair and coerced treatment by another government.

Some gaming tribes in New Mexico have challenged certain provisions of the New Mexico HB 399 compacts as being contrary to IGRA, and therefore, a violation of federal law. HB 399 calls for a 16 percent ''revenue-sharing'' with the state and hefty flat regulatory fees, even through IGRA prohibits the state from assessing fees, taxes, and other levies on tribal gaming and requires that regulatory costs bear relation to the actual costs of regulating gaming activists.

In addition, opponents of New Mexico Indian gaming have challenged the validity of HB 399 compacts. If this action succeeds, the gaming tribes will be prevented from getting the state to the negotiating table, due to the state's 11th Amendment immunity from suit. Again, the unfair and unjust result will be that gaming tribes in New Mexico will have no remedy to address these federal law violations.

The Pueblos and Indian tribes in New Mexico who may seek to conduct lawful gaming activities on their tribal lands will have no avenue to bring the state to the negotiating table. This is an unfair and unjust result that will leave these tribes with no remedy.

PUEBLO OF LAGUNA POSITION ON ''ENZI-REID-SESSIONS'' INDIAN GAMING RESTRICTIONS FY 1999 INTERIOR APPROPRIATIONS BILL

The Pueblo of Laguna strongly opposes the budget riders to the FY 1999 Interior Appropriations Bill, which would place restrictions on Indian gaming activities that are otherwise recognized and authorized pursuant to the Indian Gaming Regulatory Act of 1988 (''IGRA''). Enzi-Reid-Sessions amendment to the Interior Appropriations Bill (''Enzi-Reid-Sessions Rider'') would prohibit the Secretary of the Interior from promulgating alternate compacting procedures where an impasse occurs in tribal-state negotiations, and it would prevent the Secretary from approving Class III gaming compacts that have not been the product of the tribal-state negotiation and agreement Enzi-Reid-Sessions Rider would constitute an unfair circumvention of IGRA's provisions which were designed to protect tribal governments. Enzi-Reid-Sessions Rider will constitute an denial constitutional due process because gaming tribes in New Mexico will be left without a remedy to address injustices that over occurred over gaming.

The Pueblo of Laguna protests these budget riders on substantive and procedural grounds. First, the budget riders unfairly subordinate an area of inherent tribal governmental authority, on reservation economic development, to state government authority in violation of the Federal trust responsibility to protect Indian tribes from the often hostile state governments. Second, since the formation of the Union, the United States has dealt with Indian tribes on a bilateral government-to-government basis because Indian peoples have a natural, human right to self-government that predates the formation of the United States. The proposed budget riders amount to nothing less than legislative ''fiats,'' which disregard our government-to-government relationship and tread on our inherent, human right to self-government on our traditional homelands.

Before the passage of the Indian Gaming Regulatory Act of 1988 (''IGRA''), states had no authority to regulate Indian gaming. The regulation of Indian gaming was the subject of inherent tribal government authority. The states, however, clamored for the passage of the IGRA to provide them a ''voice'' in the development of Indian gaming regulatory systems. Hence, IGRA was enacted to build strong tribal governments, spark economic opportunities on depressed tribal lands and economies, and it was a compromise that provided states an opportunity to negotiate in ''good faith'' for a role in regulating gaming on Indian lands. As initially enacted, IGRA gave states a ''voice'' in regard to Indian gaming, not a ''veto.'' IGRA's ''good faith negotiation'' provision mandated states to negotiate in good faith for Class III compacts with Indian tribes for gaming activities that are permitted to be played in the state by any person or entity. Tribes do not have to blindly accept state regulatory laws because we have our own laws. IGRA intends tribes and states to enter the negotiation and true sovereign-to-sovereign accommodation. If states decline to negotiate in good faith, IGRA provides tribes with a remedy; IGRA authorized tribes to sue states in federal court for failure to conduct good faith negotiations.

In 1996, the U.S. Supreme Court disrupted this careful compromise between tribal and state interests by striking down the authorization to tribes to sue states for failure to negotiate in good faith on the grounds that the states' 11th Amendment immunity from suit bars such an action in federal court (even though the states had originally asked Congress for the opportunity to negotiate compacts with tribes). However, the Court left intact IGRA's provision which allow the Secretary of the Interior to promulgate alternate regulations for the Class III gaming where an impasse develops in state-tribal gaming negotiations. That is because, under the Federal trust responsibility to protect Indian tribes, Congress never intended to leave tribes completely at the mercy of the states in regard to Indian gaming. Congress intended to authorize only ''good faith'' sovereign-to-sovereign negotiation. Yet is important to recognize that state gaming laws and policy are adhered to under the Secretarial procedures avenue. Therefore, the Secretarial procedures do not provide a ''bypass'' of state law, as alleged by the proponents of the Enzi-Reid Sessions Rider.

The Pueblo of Laguna strongly opposes the Enzi-Reid-Sessions Indian gaming restrictions budget rider to the FY 1999 Interior Appropriations Bill.

A. THE ENZI-REID-SESSIONS RIDER UNDERMINES FEDERAL LAW AND POLICY REGARDING TRIBAL SELF-GOVERNMENT AND THE FEDERAL/TRIBAL GOVERNMENT TO GOVERNMENT RELATIONSHIP

1. *Self-Government is a Natural Right of Indian Peoples.* Tribal governments predate the formation of the United States, and as Indian peoples, we retain our original, natural right to govern ourselves on our own lands. Under the Federal trust responsibility to protect Indian tribes, Congress should develop Indian affairs legislation based on consultation and consensus with Indian tribes. Anything less deprives Indian tribes of our inherent human rights to self-government. The Enzi-Reid-Sessions Rider would constitute an extreme altering of the comprehensive IGRA legislation, which strikes a careful balance between federal, tribal, and state interests. It is inappropriate and disrespectful to pursue such important substantive tribal legislation as budget riders to annual appropriations measures. The attempt to alter the face of such legislation would signal a change in federal-tribal relations. Clearly, this should not be done through the mechanism of a budget rider attached to a spending bill, with no hearings, findings, tribal consultation or input.

2. *Government-to-Government Relations.* The Enzi-Reid-Sessions Rider would undermine the government-to-government relationship between the United States and the Indian nations, which is grounded in the United States Constitution and reflects inherent tribal rights of self-government. Congress has long recognized its trust responsibility to protect and promote tribal self-government. At the very least, members of Congress should have the opportunity to fully examine what impact the Enzi-Reid-Session Rider will have upon tribal governments and to hear from the tribal governments that will be impacted by the legislation. Clearly, adoption of the Enzi-Reid-Sessions Rider will undermine this government-to-government relationship. Moreover, denying Indian tribes notice and an opportunity for hearing is tantamount to a denial of the ''due process'' guaranteed by the United States Constitution.

B. NEW MEXICO GAMING TRIBES NEED IGRA'S ALTERNATE SECRETARIAL PROCEDURES TO PROVIDE ADEQUATE SAFEGUARDS AND RELIEF

1. *Without IGRA's Secretarial procedures, tribes in New Mexico will have no remedy.* In New Mexico, the IGRA's alternate procedures are necessary to provide a remedy to the tribal governments who have been unsuccessful in obtaining negotiated tribal/state Class III Gaming compacts. Currently, there are 14 compacts in effect in New Mexico since 1997. They were never negotiated and they contain provisions which are detrimental to tribal governments and which may be

in violation of federal policy. These compacts are referred to as ''HB 399 Compacts'' because they are the product of a state legislative process which has no room for tribal governments at the negotiating tables. (HB 399 refers to the House Bill enacted by the New Mexico Legislature). The gaming tribes in New Mexico were faced with the unconscionable choice: (1) to accept the compacts that they had no voice in drafting and which appeared to violate the federal law which authorized the compact, or (2) to reject HB 399 and risk closure and criminal prosecution by the U.S. Attorney. No state in this country would tolerate such unfair and coerced treatment by another government.

2. The HB 399 Compacts impose an impermissible 16 percent gross receipts ''tax'' on the Indian tribes of New Mexico, which the tribes must pay to the state before they earn one penny for themselves from their own establishments. As a result, some of New Mexico's tribes are no longer able to profitably operate gaming establishments. Two of the Pueblos have filed a federal court action against the Secretary of the Interior relating to his failure to review and remove HB 399's sixteen percent of slot machine revenue sharing requirement, and the hefty flat regulatory fees that must be paid to the sate pursuant to HB 299, as both being violative of federal law. IGRA prohibits the state from assessing fees, taxes and other levies on tribal gaming, and it requires that regulatory costs must bear relation to the actual costs of regulating Indian gaming. The United States has filed a motion to dismiss based on the legal argument that the case cannot go forward without the state of New Mexico, because the state is an indispensable party that cannot be jointed due to its 11th Amendment immunity from suit. Therefore, the alternate Secretarial procedures authorized by IGRA are necessary to provide the New Mexico gaming tribes a remedy in the event that the Pueblos are judicially prevented from obtaining relief. Preferably, the New Mexico gaming tribes would prefer to seek a negotiated resolution with the state to resolve these types of issues; but, pursuant to the states' 11th Amendment immunity, the state cannot be compelled to negotiate with tribal governments over these matters.

3. HB 399 also contains a binding arbitration provision which is designed to provide a mechanism to address and resolve any breaches of the compact of failure to comply therewith. Accordingly, other tribes in New Mexico are engaged with the state in binding arbitration over the sixteen percent revenue sharing and the regulatory fees. However, in this context there is a real question of whether the arbitrator can address the constitutional preemption question of whether the IGRA preempts HB 399's flat assessment of a set revenue sharing and regulatory fees. Assuming that the New Mexico gaming tribes are prevented form going forward with their federal court action and assuming that the HB 399's arbitration process lacks the requisite authority to decide federal preemption questions, the tribes will be left without any remedy to address these important issues.

4. In addition to the above-stated obstacles, other opponents of Indian gaming in New Mexico have filed an action challenging the validity of HB 399. If this action is successful, the tribes will be without a remedy in any forum.

Clearly, New Mexico and other states should not be given what amounts to a ''veto'' over Indian gaming by the Enzi-Reid-Sessions Rider. New Mexico Indian gaming is a good, productive local industry, which we respectfully submit should be protected by our New Mexico delegation from anti-Indian gaming legislation offered by delegations from other states.

THE NEED FOR SECRETARIAL PROCEDURES: STATE LAW INVALIDATION OF APPROVED COMPACTS

Under the decisions in State ex rel. Clark v. Johnson and Pueblo of Santa Ana v. Kelly, a tribal-state class III gaming compact that has been approved by the Secretary and has ''taken effect'' under IGRA can nevertheless be declared invalid on the basis of a state-court determination that the compact was never validly entered into by the state. Such a decision, based strictly on principles of state statutory or constitutional law, would be unreviewable by any federal court.

The case of State ex rel. Coll v. Montoya, currently pending in state district court in Santa Fe (on temporary remand from the state Supreme Court), is a broad attack on the validity of House Bill 399, as enacted by the 1997 New Mexico legislature, the bill that authorized the governor to sign compacts and revenue-sharing agreements with the tribes. Just as in Clark, the tribes are not parties to the case, and so far the courts have turned a deaf ear to the argument that inasmuch as the case seeks to invalidate the compacts, it should not be allowed to proceed in the absence of the tribes as parties. (In federal court, that point would conclusively lead to dismissal of the case.)

If the Supreme Court were ultimately to rule for the plaintiffs in Coll, and hold that HB 399 is invalid, that could mean that Gov. Johnson never had valid authority from the legislature to sign the compacts, and that the compacts are ''void ab initio'' (invalid from their inception), as the court said in Clark.

In short, even if a state legislature agrees to a compact, and the compact is approved and takes effect under IGRA, the decisions in Clark and Santa Ana mean that state courts are still free to invalidate the compact on state law grounds, even without the tribes being able to be heard. Tribes attempting to operate in good faith under approved compacts thus have no legal protection whatever, and their rights can be cut off at the whim of a state Supreme Court.

Allowing the regulations authorizing the Secretary to issue ''procedures'' under which a tribe could conduct class III gaming even if the state refuses to enter into a compact provides tribes with some leverage against recalcitrant states, and against parties who would seek to invalidate approved compacts as described above. By giving the tribes an alternative, assuring them that (as Congress intended) they would be able to conduct class III gaming that is permitted in the state even if they cannot achieve valid, approved compacts, the regulations change the strategic balance as between tribes and the state. The state will be forced to act reasonably, and anti-gaming zealots will be forced to recognize that by going to court to attack approved compacts they may cause a situation in which tribes will be able to engage in class III gaming (under secretarial procedures) with the state cut out of the process (and the revenues) entirely. This restores the balance that Congress attempted to create in IGRA, and gives the tribes a fair opportunity to enjoy this important economic development opportunity.

Mr. DOMENICI. I thank the Chair, and I yield the floor.

Mr. SESSIONS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Thank you, Mr. President.

I would first like to congratulate the Senator from Wyoming, Senator ENZI for his amendment and his work on this issue. In his comments he has laid out a detailed and comprehensive analysis of the problem and has stated plainly and with integrity and insight exactly how it is we ought to deal with it.

Let me try to briefly share some thoughts I have on this matter. I was attorney general of the State of Alabama. In this capacity I was one of 25 attorneys general who signed, just over two years ago, a letter to the Secretary of the Interior indicating to him our firm conviction and legal opinion that he did not have the authority to enter into compacts with Indian tribes in the manner detailed in the proposed regulations he drafted. Let me tell you why that is very important.

Alabama has one recognized Indian tribe, the Poarch Band of Creek Indians, a very fine group. Chairman Tullis of that tribe is a friend, and I have known him for many years. We had occasions, when I served as Federal U.S. attorney, to work on a number of issues, and I have always admired his commitment and work.

He has at that Indian tribe a large bingo parlor. They make a considerable amount of money on it. Under Alabama law the tribe has the ability to build a horse racetrack or a dog racetrack. But under the law the tribe does not and has not been given the authority by the Governor of the State of Alabama to build a casino. Alabama has debated this repeatedly, and the casino advocates have failed.

Let me provide some further background on this Alabama example. In Alabama, the Poarch Creek tribe has about 2000 members, and it owns about 600 acres of property. It has been recognized for less than 30 years, and it is a small tribe. But they own property, near both Mobile, AL, where their primary location is, and also near Wetumpka, Alabama. The city of Wetumpka is near Montgomery, AL, and is roughly 180 miles away from Mobile. The tribe would like to build casinos outside of Mobile and outside of Montgomery and Birmingham, AL, in the little town of Wetumpka where they have property.

Do you see the significance of this? If the Secretary of the Interior can override the opinion of the people of the State of Alabama and give this Indian tribe the right to build casinos on their land, then they could build at least two, maybe three casinos in Alabama and would, in fact, abrogate the considered will of the people of the State who have consistently rejected casino gambling.

It is just that simple. This is not an insignificant matter. We are talking about giving the Secretary of the Interior, who is now under investigation by a special prosecutor for campaign contributions arising out of his approval of one Indian tribe's activities with regard to gambling, the unilateral authority to override the considered opinion of States all over this country. If

this amendment doesn't pass we are talking about the Secretary of the Interior having the ability to enrich selected tribes by millions or hundreds of millions of dollars overnight by the stroke of a pen.

That is a powerful thing. You can raise a lot of campaign money with that ability to do such a thing. I do not think it is healthy. The attorneys general association, the National Association of Attorneys General, steadfastly opposes the regulations promulgated by the Secretary of Interior that would give him this ability, and strongly supports the Enzi-Sessions amendment. Allowing the Secretary to have this kind of power is wrong. He does not have the constitutional power to do it, first, in my opinion, yet he persists in suggesting that he does and is moving forward with regulations that appear to suggest that in fact he will.

So what is the first thing that is going to happen if the Secretary's regulations are enacted? Lawsuits are going to spring up all over the country attacking his authority to do this and cost all kinds of money. And we are going to continue with litigation involving it. I think ultimately he is going to lose. But what we are saying is, let us not go down that road; let us not do that.

Let me show you what the midsized city of Wetumpka feels about this issue. Wetumpka is a wonderful town. I have a number of friends there. This is what the mayor, Jo Glenn, wrote me. She writes this:

> Our infrastructure and police and fire departments could not cope with the burdens this type of activity would bring. [That is a casino.] The demand for greater social services that comes to the area around gambling facilities could not be adequately funded. Please once again convey to Secretary Babbitt our city's strong adamant opposition to gaming facilities.

The City of Wetumpka support this amendment. Additionally, the Montgomery Advertiser states in an editorial written opposing the Secretaries proposed regulations that:

> Direct Federal negotiations with tribes without State involvement would be an unjustifiably heavy-handed imposition of authority on Alabama. The decision whether to allow gambling here is too significant a decision economically, politically, socially to be made in the absence of extensive State involvement. A casino in Wetumpka—not to mention the others undoubtedly that would follow in other parts of the State—has implications far too great to allow the critical decision to be reached in Washington. Alabama has to have a hand in this high-stakes game.

Let me note that others have expressed similar objections to the Secretary's proposed regulations. Attorney General Robert Butterworth of Florida and Attorney General Gale Norton of Colorado have written expressing support for this amendment. My successor as Attorney General of Alabama, Bill Pryor, who is a brilliant lawyer, Tulane graduate, editor-in-chief of the Tulane Law Review, and a fine legal scholar—says:

> Again, I strongly support the proposed amendment [Enzi-Sessions]. I have no confidence that the Secretary listens when the states tell him that he lacks the power to override their Eleventh Amendment immunity and that he operates under an incurable conflict of interest when he proposes to act [himself] as a mediator. The proposed amendment is necessary to stop further action on the Secretary's part.

His opinion is shared, as I mentioned, by the National Association of Attorneys General. A number of other attorneys general have written me to express that same position as well.

Mr. President, I say again, this is not a matter of theoretical debate now. We are beyond that. It is a matter of real public policy. And if you allow every Indian reservation in America to overnight, or step by step, tribe by tribe, after having to wine and dine the Secretary of the Interior and sweet-talk the Secretary of the Interior and the President and maybe making campaign contributions, to induce him to approve gambling, then we are going to have one of the most massive erosions of the public's ability to set social policy within their State we have ever seen. This is really a major event.

Senator ENZI's proposal is reasonable. I am proud to be a cosponsor with him on it. It simply delays this thing so we can make sure we are doing the right thing.

As to Senator DOMENICI's problem, I think that will need to be dealt with specifically and not as part of this amendment. But I believe we cannot allow this amendment to fail. The Governors, the attorneys general, groups like the Christian Coalition, and others, support this amendment, because they recognize the negative consequences that arise from allowing the Secretary of Interior to exert this sort of power.

I again thank Senator ENZI for his leadership.

Mr. President, I yield the floor.

Mr. INOUYE addressed the Chair.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, I rise today, as I have in prior years, to oppose the amendment proposed by my colleague, the Senator from Wyoming, Senator ENZI.

Mr. President, I have had the privilege of serving on the Committee on Indian Affairs for over 20 years. And I believe that in order to fully appreciate and understand the matter before us, a brief review of the history of our relationship with Indian country might help, because over the course of those 20 years, I have learned a bit about the state of Indian country and the pervasive poverty which is both the remnant and result of too many years of failed Federal policies.

Mr. President, there was a time in our history when the native people of this land thrived. They lived in a state of optimum health. They took from the land and the water only those resources that were necessary to sustain their well-being. They were the first stewards of the environment. And those who came later found this continent in pristine condition because of their wise stewardship.

Even after the advent of European contact, most tribal groups continued their subsistence way of life. Their culture and their religions sustained them. And, Mr. President, they had very sophisticated forms of government, so sophisticated and so clearly efficient and effective over many centuries that our Founding Fathers could find no other better form of government upon which to structure the government of a new nation, the United States of America.

So our Founding Fathers—Benjamin Franklin, THOMAS Jefferson—adopted the framework of the Iroquois Confederacy, a true democracy, and it is upon that foundation that we have built this great Nation. But, unfortunately, there came a time in our history when those in power decided that the native people were an obstacle, an obstruction to the new American way of life and later to the westward expansion of the United States.

So our Nation embarked upon a course of terminating the Indians by exterminating them through war and the distribution of blankets infected with smallpox. We nearly succeeded in wiping them out. Anthropologists and historians estimate that there were anywhere from 10 million to 50 million indigenous people occupying this continent at the time of the European contact. By 1849, when the United States finally declared an end to the era known as the Indian wars, we had managed to so efficiently decimate the Indian population that there were a mere 250,000 native people remaining in the lower 48.

Having failed in that undertaking, we next proceeded to round up those who survived, forcibly marched them away from their traditional lands, and across the country. Not surprisingly, these forced marches—and there were many of these trails of tears—further reduced the Indian population because many died along the way.

Later, we found the most inhospitable areas in the country on which to relocate the native people and expected them to scratch out a living there. Of course, we made some promises along the way; that in exchange for tribal lands in the millions of acres we would provide them with education—at least we promised them education—health care and shelter.

We told them, often in solemn treaties, that these new lands would be theirs in perpetuity. There are many wonderful treaties in our archives, some that begin with phrases:

> As long as the sun rises in the East and sets in the West, and waters flow from the mountain tops to the sea, this land is yours.

We promised them that their traditional way of life would be protected from encroachment by non-Indians and that we would recognize their inherent right as sovereigns to retain all powers of government not relinquished. Their rights to hunt, fish, gather food, to use

the waters that were necessary to sustain life, were also recognized as preserved in perpetuity for their use.

But over the years, these promises and others were broken by our National Government, and our vacillations in policies, of which there were many, left most reservation communities in economic ruin.

It grieves me to repeat this, but there were 800 treaties solemnly entered into by the Government of the United States and the leaders of Indian country—800. It was the responsibility of this body, the U.S. Senate, to ratify these treaties. Mr. President, 430 of them were ignored. They lie in our files at this moment; 370 were ratified by the U.S. Senate. And of the 370, we proceeded to violate every single one of them.

The cumulative effects of our treatment of the native people of this land have proven to be nearly fatal to them. Poverty in Indian country is unequal anywhere else in the United States. The desperation and despair that inevitably accompanies the economic devastation that is found today in Indian country accounts for the astronomically high rates of suicide and mortality from diseases. For Indian youth between the ages of 18 and 25, the rate of suicide is 14 times the national norm of the United States.

Within this context, along came an opportunity for some tribal governments to explore the economic potential of gaming. It didn't prove to be a panacea, but it began to bring in revenues that tribal communities didn't have before. Then the State of California entered this picture by bringing a legal action against the Cabazon Band of Mission Indians, a case that ultimately made its way to the Supreme Court.

Consistent with 150 years of Federal law and constitutional principles, the Supreme Court ruled that the State of California could not exercise its jurisdiction on Indian lands to regulate gaming activities.

This was in May of 1987. In the aftermath of the Supreme Court's ruling, we got into the act, the Congress of the United States. During the 100th session of the Congress, I found myself serving as the primary sponsor of what is now known as the Indian Gaming Regulatory Act of 1988. There were many, many hearings and many, many drafts leading up to the formulation of the bill that was ultimately signed into law.

Initially, our inclination was to follow the well-established and time-honored model of Federal Indian law which was to provide for an exclusively Federal presence in the regulation of gaming activities on Indian lands. The Constitution and the laws of our land say the relationship will be between the Federal Government and the Indian government. Such a framework would have been consistent with constitutional principles, with the majority of our Federal statutes addressing Indian country, and would have reflected the fact that as a general proposition, it is Federal law, along with tribal law, that governs most all of what may transpire in Indian country.

But State government officials—Governors, attorneys general—came to the Congress, demanding that a role in the regulation of Indian gaming be shared with them. Ultimately, we acquiesced to those demands. After much thought, many hearings, much debate, the Congress of the United States selected a mechanism that has become customary in dealings amongst sovereign governments.

This mechanism, a compact between a State government and a tribal government, would be recognized by the Federal Government as the agreement between two sovereigns as to how the conduct of gaming on Indian lands would proceed.

The Federal participation in the agreement would be accomplished when the Secretary of the Interior approved the tribal-State compact as part of the law. In an effort to ensure that the parties would come to the table and negotiate a compact in good faith, and in order to provide for the possibility that the parties might not reach agreement, we also provided a means by which the parties could seek the involvement of the Federal district court, and if ordered by the court, could avail themselves of a mediation process. It is not for the Indian leaders to determine whether the process is being carried out in good or bad faith.

The court will decide that, and the court is not an Indian court. It is the district court of the United States of America. That judicial remedy and the potential for mediated solution when the parties find themselves at an impasse has subsequently been frustrated by the ruling of the Supreme Court upholding the 11th amendment, the amendment that provides immunity to the several States of the Union.

Thus, while there are some who have consistently maintained that sovereign immunity is an anachronism in contemporary times, in this area at least, the States still jealously guard their sovereign immunity to suit in the courts of another sovereign.

In so doing, the States have presented us with a clear conflict, which we have been trying to resolve for several years.

Although 24 of the 28 States that have Indian reservations within their boundaries have now entered into 159 tribal-state compacts with 148 tribal governments, there are a few States in which tribal-state compacts have not been reached.

And the conflict we are challenged with resolving is how to accommodate the desire of these States to be involved in the regulation of Indian gaming and their equally strong desire to avoid any process which might enable the parties to overcome an impasse in their negotiations.

The Secretary of the Interior is to be commended in his efforts to achieve what the Congress has been unable to accomplish in the past few years.

Following the Supreme Court's 11th amendment ruling, the Secretary took a reasonable course of action.

He published a notice of proposed rulemaking, inviting comments on his authority to promulgate regulations for an alternative process to the tribal-state compacting process established in the Indian Gaming Regulatory Act.

Thereafter, he followed the next appropriate steps under the Administrative Procedures Act, inviting the input of all interested parties in the promulgation of regulations.

When the Senate acted to prohibit him from proceeding in this time-honored fashion, he brought together representatives of the National Governors Association, the National Association of Attorneys General, and the Tribal Governments, to explore whether a consensus could be reached on these and other matters.

In fact, a working group of those interests will be meeting this week in Denver to pursue the Secretary's initiative.

In the meantime, my colleagues propose an amendment that would not only prohibit the Secretary from proceeding with the regulatory process, but which would prevent those State and tribal governments that desire to enter into a compact from securing the necessary Federal approval.

By the latter formulation, my colleagues would federally pre-empt what is otherwise the prerogatives of sovereign governments—namely the State and tribal governments—to pursue that which is their right under Federal law and their right as sovereigns.

Once again, there have been no hearings on this proposal—no public consideration of this formulation—no input from the governments involved and directly affected by this proposal.

Last year, the Secretary of the Department of the Interior made clear his intention to recommend a veto of the Interior appropriations bill should this provision be adopted by the Senate, and approved in House-Senate Conference.

I would suggest that it is unlikely that the Secretary's position has changed in any material respect—particularly in light of all that he has undertaken to accomplish, including frank discussion amongst the State and tribal governments.

As one who initiated a similar discussion process several years ago, I am more than a little familiar with the issues that require resolution.

However, in the intervening years, court rulings have clarified and put to rest many of the issues that were in contention in that earlier process.

I have continued to talk to Governors and attorneys general and tribal government leaders on a weekly if not daily basis, and I believe, as the Secretary does, that the potential is there for the State and tribal governments to come to some mutually-acceptable resolution of the matters that remain outstanding between them.

I believe the Secretary's process should be allowed to proceed.

I also believe that pre-empting that process through an amendment to this bill could well serve as the death knell for what is ultimately the only viable way to accomplish a final resolution.

The alternative is to proceed in this piecemeal fashion each year—an amendment each year to prohibit the Secretary from taking any action that would bridge the gap in the Indian Gaming Regulatory Act that was created by the Court's ruling and which will inevitably discourage the State and tribal governments from fashioning solutions.

This is not the way to do the business of the people.

There are those in this body who are opposed to gaming.

As many of my colleagues know, I count myself in their numbers. I am opposed to gaming.

Hawaii and Utah are the only two States in our union that criminally prohibit all forms of gaming, and I support that prohibition in my State. We don't have bingo or poker.

Mr. President, like many of my colleagues, I have walked many miles in Indian country, and I have seen the poverty, and the desperation and despair in the eyes of many Indian parents and their children.

I have looked into the eyes of the elders—eyes that express great sadness.

I have met young Indian people who are now dead because they saw no hope for the future.

I have seen what gaming has enabled tribal governments to do, for the first time—to build hospitals and clinics, to repair and construct safe schools, to provide jobs for the adults and educational opportunities for the youth—and perhaps most importantly, to engender a real optimism that there can be and will be—the prospects for a brighter future.

It is for these reasons, and because of their rights as sovereigns to pursue activities that hold the potential for making their tribal economies become both viable and stable over the long term, that I support Indian gaming.

If our country—this great Nation—had followed the provisions in our treaties and abided with our promises, then there would be no need for me to be supporting Indian gaming.

Mr. President, it is for these reasons, that I must, again this year, strongly oppose the efforts of my colleagues to take from Indian country, what unfortunately has become the single ray of hope for the future that native people have had for a very long time.

Mr. REID. Mr. President, I rise in support of the Enzi amendment which restricts the Secretary of Interior's ability to move forward with a rule that would supplant a state's ability to decide what types of gaming activities would be permissible on Indian lands.

The proposed rule, announced by the Secretary in January, circumvents Congress' role in deciding the framework for regulating Indian gaming.

Congress is the best body to lay out the process for establishing the balanced framework for tribal state negotiations over Indian gaming.

The proposed rule would upset the necessary balance and invest in the Secretary an exceptional amount of authority in deciding the outcome of these negotiations. Its effect would be the expansion of Indian Gaming notwithstanding the objections of a state.

This Enzi amendment is simple and fair. It simply restricts the Interior Secretary from promulgating as final regulations a rule that would allow him to decide whether a state is negotiating with a tribe in good faith; and which types of gaming activities a state must accept on tribal lands.

There is a long history to this issue and it is something that the Governors feel quite strongly about.

In fact, on July 23, the National Governor's Association wrote Senators LOTT and DASCHLE encouraging the Senate to support passage of the Enzi amendment.

As the letter states:

> The nation's governors strongly believe that no statute or court decision provides the Secretary . . . with authority to intervene in disputes over compacts between Indian tribes and states about casino gambling on Indian lands. Such action would constitute an attempt by the Secretary to preempt states' authority under existing laws and recent court decisions and would create a incentive for tribes to avoid negotiating gambling compacts with states.

What this issue is about is states rights and whether this Congress is going to give the Secretary of Interior—who has fiduciary and trust responsibilities to the tribes—the authority to dictate to states which gaming activities they must accept.

I do not believe we are prepared for the unfettered proliferation of Indian gaming.

The Supreme Court, in the *Seminole* decision, did great harm to what we sought to do when we enacted IGRA.

The courts have made a mess of the compacting process we put in place in 1986.

The result is that we are now faced with the dilemma of (1) who must decide whether or not a state is negotiating in good faith; and (2), what types of gaming activities is a state required to negotiate over.

As the Assistant Secretary for Indian Affairs said in his April 1st testimony before the Indian Affairs Committee: ''Any attempts [to decide] this issue administratively is certain to draw court challenges and for that reason, we would prefer legislation.

Secretary Gover is right, a decision of this import should not be left entirely in the hands of a federal official who is statutorily biased against a state.

The Department of Interior is responsible for administering IGRA—not reauthorizing it.

Last year's Interior Appropriation's bill—which the President signed—included a similar provision that prevented the Secretary from approving class III (casino styled) compacts.

The Secretary's decision in January evidenced the Department's intent to disregard the clear congressional intent of last year's bill.

This issue should be resolved legislatively and the Enzi amendment will ensure that solution. It will do so in a manner that is respectful of state's rights.

Mr. COATS. Mr. President, I rise today in support of the Enzi amendment. It is quite simple, but I would like to briefly restate the effect of the amendment in order to frame my remarks. The amendment would prohibit the Secretary of the Interior from promulgating new regulations empowering the Secretary to approve class III gambling activities without State approval.

Mr. President, as a result of the Supreme Court ruling in the Seminole of Florida versus the State of Florida, and subsequent activities by the Secretary of the Interior, we are confronted with a situation where an unelected federal official, using the rulemaking process, is seeking to empower himself with the ability to supersede the authority of the popularly elected State government, and to impose Indian gambling activity on an unwilling State.

Mr. President, the Indian Gaming Regulatory Act attempted to construct a delicate balance, the intent of which was to provide a definitive role for the States in determining whether to allow the introduction of new gambling activities. The Court's ruling has upset this balance.

During debate over the fiscal year 1998 funding measure, a similar measure to the one we are debating today was adopted. It was adopted with the understanding that congressional action was needed in order to address this concern, as well as others, with IGRA. However, no action has yet been taken. And thus, we have the need to extend this moratorium.

Now, what does all of this mean to the individual States? The distinguished Senator from Wyoming has already placed into the RECORD the various letters of support from the nation's governors, and states attorneys general. I will let that support speak for itself. I would like to relate the experience of the State of Indiana.

I have here an article from the Indianapolis Star. The article documents the latest development in a struggle that has been on-going in Northern Indiana for several years now. The article begins: ''Potawatomi tribe buys land near Indiana town; A reservation would be OK, resident says, but many fear a casino would eventually follow.''

The article goes on to describe that; ''The Pokagon Band of the Potawatomi Indians acquired land in Indiana, the first step toward establishing a reservation and casino in the State.'' A spokesperson for the tribe points out in this article that they intend to do

many important things with the land they have purchased; provide housing, schools, and a health clinic. However, she goes on to point out that a land-based casino in Indiana is among the tribe's eventual goals.

The Pokagons have been attempting for several years now to purchase land in the area. However, they have met with significant resistance from local landowners and community leaders for fear that casinos would follow any land sale. In fact, over the past 2 years, the town counsel of North Liberty, the town adjacent to the land purchase, has unanimously passed two resolutions in opposition to casino gambling. Further, the Governor of Indiana has announced his opposition to Indian gambling amid public outcries against the proposition.

Yet, Mr. President, under the rules proposed by the Secretary, the will of the people of North Liberty, of the elected representatives of the State of Indiana, would be laid to waste by an unelected federal official. By any interpretation of IGRA, this was not the intention of Congress in passing the law.

The gambling industry is booming. In 1988, only two states (Nevada and New Jersey) permitted casino gambling. By 1994, 23 states had legalized gambling. During this time, casino gambling revenue nearly doubled. In 1993, $400 billion was spent on all forms of legal gambling in America Between 1992 and 1994, the gambling industry enjoyed an incredible 15 percent annual growth in revenues.

Many of my colleagues would look at this performance and say ''good for them.'' Many would cite the gambling industry as an American success story. I am not so enthusiastic. There are many unanswered questions regarding the hidden costs of rolling out the welcome mat for the gambling industry. Many of the promises made by the gambling industry—of jobs, economic growth, and increased tax revenues—are dubious at best. The statistics on the devastating impact on our families are beginning to roll in. Concern about teenage gambling addiction is growing as more and more teens are lured by the promise of easy money. Crime and suicide numbers are sky-rocketing in communities where gambling has taken root.

The National Gambling Impact Study Commission is currently studying this issue. By passing this resolution, we will create the necessary time to modify IGRA to ensure the law is clear in protecting the rights of the individual states. It will allow the states to determine how and when gambling operations will begin or expand within their borders, and to look to the report to the Gambling Commission for help in making those decisions.

I commend the efforts of the Senators from Wyoming and Alabama in bringing this issue before the Senate, and urge my colleagues to support this amendment.

I ask unanimous consent that the article from the Indianapolis Star be printed in the RECORD.

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

[From the Indianapolis Star Sept. 2, 1998]

POTAWATOMI TRIBE BUYS LAND NEAR INDIANA TOWN; A RESERVATION WOULD BE OK. RESIDENT SAYS, BUT MANY FEAR A CASINO WOULD EVENTUALLY FOLLOW

(By Don Ward)

NORTH LIBERTY, Ind.—The Pokagon Band of Potawatomi Indians has acquired land in Indiana, the first step toward establishing a reservation and casino in the state.

The 2,600-member tribe, which is based in Michigan, acknowledged this week that it has bought 135 acres along Ind. 4 near North Liberty.

''This is a significant first step, but not necessarily toward getting a casino,'' Pokagon spokeswoman Maureen Shagonaby said Tuesday.

''Our overall goal is, an always has been, to establish a land base to provide housing, schools and a health clinic for our members. But unfortunately, everyone thinks all we're interested in is a casino.'' Shagonaby confirmed the tribe also is considering the purchase of 900 acres adjacent to the 135-acre tract.

The site is about 15 miles south of South Bend and Elkhart, where the Pokagon faced fierce opposition as tribal officials scouted for land.

But the tribe also has faced opposition here.

North Liberty, whose downtown extends only about a half-mile and has a population of 1,360, was targeted by the Pokagons as a possible reservation site as early as 1996.

Since then, the Town Council has unanimously passed two resolutions against casinos.

''We're not against the Pokagons coming into the area to live and raise children, but it they want to bring in a casino, I'm not for that type of industry,'' said beauty salon owner Kelly Prentkowski, 32. ''Our town is not about profit and gain.''

Shagonaby conceded that a land-based casino in Indiana is among the tribe's eventual goals but said, ''There's no time line for it. That's a decision the tribal council will make.''

Last year, during the town's bitter debate over casinos, groups gathered signatures on petitions both for and against the gambling facilities. But City Clerk Paul Williams said he couldn't remember which group brought in more signatures. Many names were duplicates, he said.

Many residents thought the issue was dead until this week, when they learned of the tribe's deal to buy the tract, located near a golf course and the Kankakee River just northwest of town.

A casino supporter, Greg Shortt, 33, quickly organized a news conference and invited Pokagon representatives to discuss their plans.

Shortt, who lives in Plymouth but runs a package liquor store on North Liberty's main street, is president of the 2-year-old citizen group ''Pro Casino.'' ''North Liberty is already a tourist town because we've got Pokagon State Park, and a casino would be added value for our town,'' he said.

Casino opponents say they fear increased traffic would negatively affect the rural town and that a casino would do nothing for local businesses.

''We don't need 10,000 people and tour buses driving in and out of town every day,'' said Marian Spitzke, 51. ''They're not going to stop and shop or eat here. They'll just go right to the casino and then leave.''

Ted Stepanek, 70, owner of the town barber shop, said, ''I'm not against gambling—I just don't want it here.''

Mr. BROWNBACK. Mr. President, I rise today to support the Enzi-Sessions amendment which ensures that the Secretary of Interior does not circumvent Congress and the States in gaming on Indian lands. It would also extend the moratorium on expansion of gambling on tribal lands.

The growth of the gambling industry in this country in recent years has been explosive. Twenty years ago, only two States allowed casino gambling. Today, the industry reins in $40 billion each year in 23 States and generates revenues that are six times the revenue from all American spectator sports combined. The amount of money wagered annually in the United States exceeds $500 billion.

It concerns me that this explosive growth in the gambling industry has taken place during the same time period that so many other aspects of our culture have declined. Two years ago, Congress enacted PL–104–169, which established the National Gambling Impact and Policy Commission for the purpose of studying the social and economic impact of gambling and reporting its findings to Congress. I supported that legislation. In fact, not one member in either the House nor the Senate rose in opposition to that legislation. This I believe, illustrates the need Congress has to gather more information on the implications of the extraordinary growth of the gaming industry. Until the findings of the Commission are available to guide the actions of Congress, I simply believe that it is reasonable for Congress to not take any action that may proliferate a problem in our society until the ramifications are better understood.

The problems correlated with gambling are serious. Increased family violence, child abuse, suicide, white collar crime, alcohol abuse, prostitution, drug activities, and organized crime have all been linked to gambling. Furthermore, I am concerned about the destructive societal impact of compulsive gamblers. Compulsive gamblers will bet their entire savings and anything of value that can be sold or borrowed against while neglecting family responsibilities to pursue the short-lived thrill of betting. They are more likely to abuse their spouses and their children, and most have contemplated suicide. Compounding these problems, there is speculation that the gambling industry actually targets these vulnerable individuals as well as another faction of vulnerable individuals—the poor.

And, the economic benefits promised to communities which open their doors to gambling are often exaggerated. On the contrary, some municipalities have found that casinos flourished at the expense of existing businesses, and that the incidences of theft and larceny increased.

In fact, I would like to submit for the RECORD an article which was printed in the Topeka Capitol-Journal on April 28, 1998. The article chronicles the difficulties that two Northeast Kansas counties are facing as a result of two Indian casinos recently established within the counties. This year, the local State Representative appealed to the State legislature to provide a special financial grant to deal with rising law enforcement and social service costs. Since one casino opened, the number of arrests in that county for driving under the influence, possession of drug paraphernalia, and possession of marijuana has increased sharply. The sheriff says there has been an ''explosion'' in criminal cases of forgery, narcotics abuse, possession of stolen property, and worthless checks. Even more troubling is that when the counties asked the owners of the casinos to help reimburse the counties for the increased law enforcement costs, the tribes refused. This is an example of how the economic development brought about by the tribes has been a drain, not a boon, to the local government and economy.

Yet, while I have qualms about the possible destructive effects of gambling, I recognize that many will maintain that these claims are speculative and dispute that there is a conclusive link between gambling and increased crime. This is why I think we need to receive the Commission's report before allowing any new facilities to be established. The National Gaming Impact Study Commission itself agrees, as does the National Governor's Association and the Christian Coalition.

Mr. President, I do not want my views to be construed as opposition to the chance for economically deprived Indian nations to bring needed economic activity to their communities. On the contrary, I commend the efforts to generate income and become more self-sufficient in view of decreasing Federal aid. I think that it is a positive thing that tribes are striving to provide employment, health care, housing, and other important services without Federal assistance.

However, even the benefits of gaming to the tribes themselves is a question. Typical problems are a direct result of disorganized, fractionalized, and historically poor communities and their lack of experience in managing large sums of money. Unfortunately, the lack of understanding of what the management of gaming facilities entails has spelled disaster for a large number of tribes. Furthermore, signs of increased crime are seen on the tribal lands, too. Economic development that invites destructive behavior is not sustainable and is not a healthy way to provide for social services to a community.

This amendment takes a moderate approach. it does not ban Indian gaming and does not affect gaming compacts which already are operational or already have been approved. It simply places prohibits the Secretary from approving any new Tribal-State compacts. It also prohibits the Secretary from promulgating rules that are designed to circumvent Congress and all 50 States until Congress better understands the societal ramifications of the Federal Government's actions to approve gambling, and I believe this is a reasonable approach to take.

The PRESIDING OFFICER. Who seeks time?

Mr. GRAMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. GRAMS. Mr. President, I rise to briefly make a few comments in strong support of the amendment. I do so not because it will assist my State of Minnesota, which already has an established gaming compact with Minnesota Indian tribes, but because this is an issue of fundamental fairness for States and localities.

I find it difficult to understand how anybody can argue that the Secretary of the Interior should be given the authority to approve a class III gaming compact, absent the consent of the State in which the gaming is to occur. States must, I believe, have the authority to negotiate and object to gaming compacts. If you remove their right to object to a gaming compact, then you remove their right to negotiate a gaming compact as well.

Similar to what now happens in trust applications, the tribal authority will have little incentive for negotiating in good faith, knowing that the Secretary of the Interior can come in and improve their compact and bypass the State anyway.

Our States and localities are much too often becoming irrelevant in the decisionmaking process of the Department of the Interior when considering tribal-related situations.

The amendment we are addressing here today prevents a Secretary of the Interior from ignoring the impact of gaming operations on States and localities and from circumventing their authority and making unilateral decisions.

Mr. President, States must have the right to negotiate gaming compacts without undue interference from the Federal Government and without the heavy hand of an overactive Secretary of the Interior waiting to usurp that authority.

Again, the Enzi-Sessions amendment has the support of the National Governors' Association, the National Organization of Attorneys General, and the Christian Coalition.

The amendment extends the current moratorium placed on the Secretary of the Interior from using Federal funds to approve tribal-State compacts, again, without the consent of the States. It doesn't only prevent Secretary Babbitt from moving forward on new regulations but in fact gives him authority to bypass State approval.

So I urge my colleagues to stand up for the rights of our States by supporting the Enzi-Sessions amendment.

Thank you very much, Mr. President. I yield the floor.

Mr. ENZI addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I thank everybody involved for all of the great discussion this afternoon.

I feel compelled to answer some of the questions that were raised during the course of the debate.

I would like to particularly thank Senator SESSIONS and all of the other cosponsors who are on the bill cosponsoring the amendment with me.

I would also like to thank Senator SESSIONS for the comments on behalf of attorneys general, since he is a former attorney general from Alabama.

He gave me copies of letters. One is from my own attorney general, William Hill of Wyoming; another is from Mark Barnett of South Dakota; another is from Bill Pryor of Alabama; another individual letter is from Mr. Gale Norton, attorney general of Colorado; another is from the Honorable Carla Stovall, Topeka, KS; another letter is from Robert Butterworth of the State of Florida; another is from Don Stenberg of the State of Nebraska; another is from Frank Kelley of the State of Michigan.

Mr. President, I ask unanimous consent to have these letters printed in the RECORD.

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

OFFICE OF THE ATTORNEY GENERAL,
Cheyenne, WY, July 28, 1998.

Re Enzi/Sessions Amendment to Interior Appropriations Bill.

Chairman SLADE GORTON,
U.S. Senate,
Washington, DC.

Ranking Member ROBERT C. BYRD,
U.S. Senate,
Washington, DC.

DEAR SENATORS GORTON AND BYRD: This office is writing in support of and urges the adoption of the Indian gaming amendment to the Interior Department Appropriations Bill sponsored by Senator Michael B. Enzi and Senator Jeff Sessions. Last year's Interior Appropriations Bill contained a provision establishing a moratorium on implementation of proposed procedures by the Secretary of the Interior to permit tribal gaming where a state and a tribe reach an impasse in negotiations and no tribal/state compact is entered into. The Enzi/Sessions amendment would extend that moratorium.

This office believes that the Secretary of the Interior lacks statutory authority to use the proposed procedures and must seek amendment of the Indian Gaming Regulatory Act for this authority. To this end, numerous state attorneys general and governors have initiated negotiations with the Secretary and the Indian tribes in an effort to reach agreement on amendments to the Act. Preliminary discussions are currently taking place in preparation for a meeting at which all interests will be represented, probably sometime between now and November, 1998.

Continuation of the moratorium will avert the need for costly and prolonged litigation over the Secretary's authority and will allow for meaningful discussions concerning amendments to the Indian Gaming Regulatory Act which will benefit the Secretary, the tribes and the states.

Thank you for your support of the Enzi/Sessions Amendment.

Sincerely,

WILLIAM U. HILL,
Attorney General.

OFFICE OF ATTORNEY GENERAL,
Pierre, SD, July 23, 1998.

Re Proposed amendment to S. 2237 regarding a moratorium on implementation of gaming procedures.

Hon. ROBERT C. BYRD,
U.S. Senate,
Washington, DC.

Hon. THOMAS A. DASCHLE,
U.S. Senate,
Washington, DC.

Hon. SLADE GORTON,
U.S. Senate,
Washington, DC.

Hon. TIM JOHNSON,
U.S. Senate,
Washington, DC.

DEAR SENATORS: I am writing this letter in support of the amendment of Senators Enzi and Sessions to S. 2237, the Interior appropriations bill. This amendment would continue a provision included in last year's Interior appropriations act which established a moratorium on implementation of procedures by the Secretary of the Interior to permit tribal gaming when a state and tribe stall in negotiations and the state asserts sovereign immunity in court proceedings.

It is my view that the Secretary plainly lacks statutory authority for the proposed procedures. A detailed letter to the Secretary of the Interior has set out the views of twenty-five attorneys general that the Secretary lacks such authority. I believe, as do the other attorneys general, that the Secretary must seek statutory amendments to the Indian Gaming Regulatory Act to achieve the authority he asserts and I join with the other attorneys general in encouraging the Secretary to engage in a dialogue with the states and the tribes on this matter.

I appreciate your consideration of the moratorium amendment to Senate Bill 2237.

Sincerely yours,

MARK BARNETT,
Attorney General.

OFFICE OF THE ATTORNEY GENERAL,
Montgomery, AL, July 23, 1998.

Re Proposed Enzi-Sessions Amendment to Interior Appropriations Bill.

Senator SLADE GORTON,
U.S. Senate,
Washington, DC.

Senator ROBERT C. BYRD,
U.S. Senate,
Washington, DC.

GENTLEMEN: I write to register my strong support for an amendment to the Department of the Interior appropriations bill proposed by your colleagues, Senators Enzi, Sessions, Lugar, Brownback, Ashcroft, and Grams. That amendment would continue the moratorium imposed in last year's bill on the Secretary's implementation of procedures that would empower the Secretary to allow tribal gaming when a tribe and a state stall in negotiations and the state asserts its Eleventh Amendment immunity in court proceedings.

I believe that the Secretary lacks the statutory authority to propose procedures that would have the effects of abrogating the states' Eleventh Amendment immunity and compelling the states to negotiate with Indian tribes regarding the permissible scope of Class III gaming. Several state Attorneys General provided comments to this effect in 1996 when the Secretary published his Advance Notice of Proposed Rulemaking. The Attorneys General repeated their objections to the Secretary's proposed course of action in June 1998 when they submitted comments on Interior's Proposed Regulations. Notwithstanding the presence of a moratorium, the Secretary continues to propose expanding his authority in this area. The amendment that your colleagues have proposed would make clear the limits on the Secretary's authority to abrogate the states' Eleventh Amendment immunity.

Again, I strongly support the proposed amendment. I have no confidence that the Secretary listens when the states tell him that he lacks the power to override their Eleventh Amendment immunity and that he operates under an incurable conflict of interest when he proposes to act as a mediator. The proposed amendment is necessary to stop further action on the Secretary's part. Continuing the moratorium on action by the Secretary will allow negotiations between the attorneys general and the tribes to continue and will preclude a lawsuit by one or more states against the Secretary. Such an expensive and protracted lawsuit is almost certain in the event the Secretary continues on his present course.

Very truly yours,

BILL PRYOR,
Attorney General.

STATE OF COLORADO, DEPARTMENT OF LAW, OFFICE OF THE ATTORNEY GENERAL,
Denver, CO, July 24, 1998.

Hon. MICHAEL B. ENZI,
U.S. Senate,
Washington, DC.

Hon. JEFF SESSIONS,
U.S. Senate,
Washington, DC.

DEAR SENATORS ENZI AND SESSIONS: I write in support of your proposed amendment to S. 2237, the Interior Appropriations legislation.

I believe that the moratorium concerning the Secretary's regulations regarding Indian gaming should remain in place during the coming fiscal year. Continuation of the moratorium will avoid the need for costly and prolonged litigation over the Secretary's administrative authority and encourage a meaningful dialogue about amendments to the IGRA which would benefit the Secretary, the tribes and the states.

Sincerely,

GALE A. NORTON,
Attorney General.

OFFICE OF THE ATTORNEY GENERAL,
Topeka, KS, July 24, 1998.

Hon. SLADE GORTON,
Chairman, Interior Subcommittee on Appropriations, U.S. Senate, Washington, DC.

Hon. ROBERT C. BYRD,
Ranking Member, Interior Subcommittee on Appropriations, U.S. Senate, Washington, DC.

DEAR SENATORS GORTON AND BYRD: I am writing in support of the Enzi-Sessions proposed amendment to the Interior Appropriations Bill.

On behalf of the State of Kansas, I joined several other Attorneys General in opposing the Department of Interior's proposed regulations establishing an administrative means by which Indian Tribes may bypass the compacting process set forth in the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§2701 *et seq.* In the IGRA, Congress has provided that States should have a specific role in that process. I and other Attorneys General believe that the Secretary has no legal authority to rewrite the IGRA as has been proposed in those regulations. Such a task is obviously the province of Congress.

Whiel I am confident that the courts would agree with my position regarding the Secretary/Department's lack of authority to promulgate these regulations, the Enzi-Sessions amendment would avoid the need to litigate the issue before Congress has the opportunity to consider whether IGRA should be so amended. I therefore support the Enzi-Sessions amendment.

As a matter of background, the State of Kansas has entered into Compacts for Class III, *i.e.*, casino gaming with the four resident Tribes. The existing compacting process in the IGRA worked for us. The State and the Tribes negotiated in good faith, believing that these were the only four Tribes with Indian lands within the State that could be used for Indian gaming purposes.

Since completing our compacting process with the four known Kansas Tribes, the State has been approached by numerous other Tribes interested in gaming revenues; these Tribes assert various ''claims'' to land in the State, thus evidencing a very real need to ensure that the compacting process remains neutral so the State is not arbitrarily forced by the Secretary acting as a sponsor to Indian Tribes into additional gaming that was never envisioned by the IGRA.

Moreover, the Secretary's proposed regulations not only adversely affect the interest of States, but also pit Indian Tribes against each other. For example, the four resident Tribes in Kansas have a strong interest in ensuring that they recover on their significant investment in developing gaming within the State, an interest which is adversely affected by the gaming ambitions of new, non-resident Tribes.

I am willing to meet with the Department, Tribal, and State representatives to seek agreement on amendments to the IGRA that will address the concerns of Tribes with regard to the compacting process, but I am opposed to any unilateral effort on the part of the Department to usurp the authority of Congress as the proposed regulations have done.

Thank you for your favorable consideration of this amendment.

Very truly yours,

CARLA J. STOVALL,
Attorney General of Kansas.

OFFICE OF ATTORNEY GENERAL,
State of Florida, July 24, 1998.

Re amendment to Interior appropriations bill sponsored by Sens. Enzi, Sessions, Lugar, Brownback, and Grams.

Hon. SLADE GORTON,
U.S. Senator, Washington, D.C.
Hon. ROBERT C. BYRD,
U.S. Senator,
Washington, D.C.

DEAR SENATORS GORTON AND BYRD: I am writing this letter to voice my support for the Interior Appropriations amendment sponsored by Senators Enzi, Sessions, Lugar, Brownback, and Grams. The purpose of this amendment is to prohibit specifically the final adoption of rules by the Department of the Interior regarding Indian gambling.

These proposed rules are an outgrowth of the *Seminole Tribe* decision of the Supreme Court and represents an attempt to legislate a remedy for Indian Tribes in the absence of statutory authority. My views, and those of twenty four other Attorneys General, are set forth in detail in our letter of June 19 to Secretary Babbitt commenting on the proposed regulations. In short, we feel that there is no statutory authority for the Department to adopt such rules and that the rules are fundamentally flawed because, in those rules, the Secretary arrogates to himself the authority to determine whether the State has negotiated in good faith and what the proper scope of gambling on Indian reservations should be based on *his* interpretation of State law.

In conclusion, I wholly support the efforts of the sponsors of the subject amendment. We are currently attempting to negotiate a consensus amendment to the Indian Gaming Regulatory Act that will obviate the perceived need for such regulations and I believe that the proposed Appropriations amendment will help those negotiations along by lessening by the pressure on the parties and avoiding litigation over the validity of the regulations.

Thank you for your attention to this matter.

Sincerely,

ROBERT A. BUTTERWORTH,
Attorney General.

OFFICE OF THE ATTORNEY GENERAL,
Lincoln, NE, July 24, 1998.

U.S. Senator MICHAEL ENZI,
U.S. Senator JEFF SESSIONS,
U.S. Senate,
Washington, DC.

DEAR SENATORS ENZI AND SESSIONS: I write in support of your proposed amendments to S. 2237, the interior appropriations legislation. The Secretary of the Interior should not be allowed to authorize types of gambling on Indian reservations when that gambling would be illegal if conducted anywhere else within the state.

It is my opinion that the Secretary of the Interior lacks any statutory authority to permit tribal gaming where a state and a tribe stall in negotiations and the state asserts sovereign immunity in court proceedings. Your proposed legislation will support this position.

Yours truly,

DON STENBERG,
Attorney General.

STATE OF MICHIGAN,
DEPARTMENT OF ATTORNEY GENERAL,
Lansing, MI, July 31, 1998.

Hon. MIKE ENZI,
U.S. Senator,
Washington, DC.

DEAR SENATOR ENZI: Currently there are tribal-state compacts between the State of Michigan and seven Indian tribes, each of which received federal recognition prior to the effective date of IGRA. Since conclusion of these seven compacts, federal recognition has been extended to four additional Indian tribes. Litigation initiated in federal court against the State of Michigan under IGRA by one of these newly recognized tribes was successfully defended on Eleventh Amendment grounds resulting in entry of an August 23, 1996 order of dismissal in *Little River Band of Ottawa Indians, et al* v. *State of Michigan,* U.S. District Court, Western District, No. 5:96–CV–119.

Without question, the 1996 decision in *Seminole Tribe of Florida* v. *State of Florida,* 517 US 44; 134 L Ed 2d 252; 116 S Ct 1114 (1996), has precipitated a need for thorough review of federal policy regarding tribal gaming operation. However, pending completion of that task, I share the position held by most state Attorneys General that the Secretary of Interior lacks authority to unilaterally promulgate rules for the operation of activities defined as class III gaming under IGRA. As the state official with the responsibility under Michigan law to defend all lawsuits against the state, it is my firm conviction that a decision to advance a valid defense should not be influenced by a threat that a particular defense will precipitate an unauthorized response by a federal agency.

In light of the foregoing, I wish to voice my support for your effort to adopt a narrowly focused amendment to the Department of Interior appropriations legislation which will preclude steps to authorize class III gaming without specific authorization by an impacted state.

Very truly yours,

FRANK J. KELLEY,
Attorney General.

Mr. ENZI. Mr. President, I also thank the other Senators who have addressed this along with me, and I want to make some comments on the things that were said.

I would particularly like to thank the Senator from New Mexico for his comments. More particularly, I would like to thank him for all the education he gave me a year ago when we debated this amendment. That was one of the first amendments that I worked on, and I have to say it needed a lot of work. With his cooperation, and with the Senator from Hawaii, we came up with an amendment that protected the status quo. It was an amendment that we thought would keep things from moving forward and supplanting the States' ability to negotiate it. I found out later that there are even some more careful wordings that have to be done on bills that we work on around here. Had I done it more particularly about finalizing the rule itself, perhaps we would have avoided the need to bring it up again. I didn't. So we need to talk about it some more.

I mentioned that what we are really trying to do with this amendment is to preclude the finalization of rules and regulations that would supplant the States. I will be one of the first to admit that at the present time the States have the bigger stick. Until the rules get approved and the bigger stick switches hands, and the tribes have the bigger stick and the control of that stick forever—if we leave the stick in the hands of the States, there is an easy way to change that in the interim and to make the kinds of exemptions that the Senator from New Mexico talked about. The way to do that is to have hearings by the Indian Affairs Committee—hearings that are balanced, hearings that take into account how difficult it is to properly negotiate between the States and the tribes.

We can come up with a compromise piece of legislation. That piece of legislation would eliminate this amendment on an appropriations bill and this amendment in any future years. But we have to have that discussion. We have to see what the arguments are between the States and the tribes and get those resolved. I know there is common ground. We have hit around the edges of it today. But there have been statements on both sides that take it a little bit further each way than probably it ought to be. But I can tell you that we are not going to get it resolved and we will just give the whole stick to the tribes unless we put this amendment on the bill.

I thank the Senator from Hawaii for the care and concern with which he has spoken in every instance that we have debated this issue. This is the third time. I appreciate today particularly the 20 years of experience that he has on this and the tremendous knowledge that he has about the history of the tribes in the United States.

I grew up in Sheridan, WY, 60 miles from the Crow Reservation, which is in Montana. But I have had the opportunity to work with them and the tribes in Wyoming before. This is not an attempt to take away from the Indian tribes. This is an attempt to get that fair playing field through hearings, through legislation—not through something by an unelected Secretary of the Federal Government to put it in the hands of Congress. We are the ones who ought to be making these kinds of decisions. If there are decisions left undone, we ought to go back and redo them so that they take care of all the problems. We need to have all of the interested parties. We need to have hearings on it.

The comment was raised that on my amendment there haven't been hearings. I kind of have to contest that a little bit, because this is the third time we have debated it, which is a form of hearing among the Members. It is not my fault that there have been no hearings on this. The Indian Affairs Committee has not held hearings on this in spite of the requests last year, in spite of that being the primary way that we can bring everybody together to focus on the issue and to come up with a solution that will work for everybody.

I don't think this is a death knell for the talks between people. Instead, it is the beginning of a process that can work with the Indian Affairs Committee to see that we have some hearings, reach a solution, and bring it to conclusion. It is in the hands of the Indian Affairs Committee. But there is only a need for them to meet on it, if we pass my amendment.

I ask that you pass the amendment. I will briefly summarize some of the points.

It maintains the status quo of the Indian Gaming Regulatory Act for one more year. It preserves the right of Congress to pass laws. It continues the incentive for tribes and States to pursue legislative changes to IGRA. It gives the Indian Affairs Committee time to hold the hearing and recommend the IGRA changes. It prevents Secretary Babbitt from bypassing Congress. It protects States rights without harming the Indian tribes. And it honors the advice of the National Gambling Impact Study Commission so that they can finish their work, as they requested.

Mr. President, I thank the Chair. I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I know of no one else desiring to speak on this Enzi proposal. It seems to me that it is a relatively simple one. It simply enjoins for one additional year the right of the Secretary of the Interior to avoid the requirements of both the 11th amendment and of present law by making it a determination that a State has

not engaged in good faith in negotiating a class III gambling compact and that it has stated its sovereign immunity in an action by an Indian tribe or another kind against it.

In light of the fact that the report of a long-term commission on the effect of gambling in the United States has not yet been made, it seems to me that this is a reasonable amendment. I know of no request for a rollcall vote on the amendment.

Mr. President, I believe we are ready to vote on the ENZI amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3592) was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. GORTON. Mr. President, the Senator from Missouri, Mr. ASHCROFT, is here and will be ready in just a few moments to present an amendment respecting the National Endowment for the Arts. We will debate that until debate is completed. I rather suspect that amendment will require a rollcall vote. But this is to notify Members who are interested in the National Endowment for the Arts that this will be their opportunity to speak on that subject. It was the subject of some controversy and a number of speeches last year, and I suspect there may very well be Members on both sides who would like to make their views on the subject known, and they are invited to come to the floor.

With that, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GORTON. 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. GORTON. Mr. President, I understand now that Members on both sides have agreed to a 1-hour—I will withhold that request at this point.

Is the Senator ready?

Mr. ASHCROFT. I am prepared to go ahead.

Mr. GORTON. Then, Mr. President, I will yield the floor and I will ask the Senator's indulgence, if we have cleared a time agreement, to get that time agreement. We would like to have a vote on the amendment before the lecture by Senator BYRD at 6 o'clock this evening.

The PRESIDING OFFICER. The Senator from Missouri.

AMENDMENT NO. 3593

(Purpose: To eliminate funding for the National Endowment for the Arts and to transfer available funds for the operation of the National Park System)

Mr. ASHCROFT. Mr. President, I thank the Chair.

I come for the second straight year to offer an amendment to the Interior appropriations bill, and I send the amendment to the desk.

The PRESIDING OFFICER. Without objection, the pending amendment will be set aside. The clerk will report.

The legislative clerk read as follows:

The Senator from Missouri [Mr. ASHCROFT] proposes an amendment numbered 3593.

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

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

The amendment is as follows:

Beginning on page 109, strike line 21 and all that follows through line 18 on page 110 and insert the following:

''Notwithstanding any other provision of this Act, the amount available under the heading 'National Park Service, Operation of the National Park Service' under title I shall be $1,325,903,000.''.

Mr. ASHCROFT addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. ASHCROFT. Mr. President, I come to the floor for the second straight year to offer an amendment to the Interior appropriations bill. This amendment, while dealing with a relatively small amount of money—and I wince a little bit when I call the amount of money small, but in comparison to the multibillion-dollar funding bill it does address a small percentage of that bill—addresses a profound and fundamental issue that is before this body. Should the Federal Government be in the business of judging and funding art? Should the Federal Government be telling the rest of the country this is good art, or this is not good enough for the Federal Government, signaling to the rest of the country this art is superior or this art is worthy of your support while other art is not?

While my efforts last year to eliminate funding for the National Endowment for the Arts were unsuccessful, I am compelled to continue to raise this issue, hoping to persuade my colleagues that the Federal Government should resign from its role as a national art critic. It seems to me that to have the Federal Government as an art critic which determines what type or types of art are superior to other types of art is not something that a free nation would want to encourage. Government should not be in the business of subsidizing free speech or putting its so-called ''Good Housekeeping Seal of Approval'' on certain pieces of so-called art. My amendment simply eliminates the $100 million appropriated by the bill to the National Endowment for the Arts, and it takes the available funds and puts them toward the renovation and preservation of our national park system.

Since the last time we debated this issue, two relevant events have occurred regarding the National Endowment for the Arts. First, news about the play, and I quote the title here, ''Corpus Christi,'' which the NEA had agreed to fund, has become available; and, secondly, the Supreme Court of the United States has rendered a decision in the case of National Endowment for the Arts v. Finley.

I would like to discuss each of these developments as well as other arguments and show how they support elimination of funding for the National Endowment for the Arts.

The play ''Corpus Christi'' is merely the latest example of why we should defund the National Endowment for the Arts.

In the last few months, we have heard a great deal about the play planned to be staged by the Manhattan Theatre Club in New York City. This play, entitled ''Corpus Christi,'' has generated a lot of controversy because of its content and because the National Endowment for the Arts approved a $31,000 grant to the theater to fund production of this play.

Let me give a brief chronology of the involvement of the National Endowment for the Arts with ''Corpus Christi.'' The Manhattan Theatre Club first applied to the National Endowment for the Arts in October of 1995 to request funding for ''Corpus Christi.'' The theater's summary of the project activity stated as follows:

MTC is requesting support from the National Endowment for the Arts for the world premiere of Terrence McNally's new play, CORPUS CHRISTI. The production is scheduled for fall, 1996 on Stage 1.

I continue to quote:

Mr. McNally will develop the rehearsal draft of the script in house at Manhattan Theatre Club during the next year. CORPUS CHRISTI is a play for 13 actors. Requested and matching funds will be spent on development, preproduction, rehearsal and the subscription run of the play at the Manhattan Theatre Club.

That was the summation of the project activity included in the request for funding as submitted by the Manhattan Theatre Club. The NEA application asked the applicant to ''give a detailed description of the proposed project,'' including, among other things, ''the degree of development of the project.'' The Manhattan Theatre Club supplied the NEA with the following description:

Spirituality has been one of the major themes in Terrence McNally's most recent plays at MTC. His next play, Corpus Christi, will be an examination of good and evil. He will use certain miracles in the life of Christ as the inspiration for the story, which will have a contemporary setting.

* * * * *

Corpus Christi is an extremely ambitious new work for Mr. McNally. MTC is proud to serve as the artistic home for this eminent American playwright. Our relationship with him is one of the most important and far-reaching models in our commitment to writers. We are confident that this project will break new ground for Mr. McNally as an artist, and that it will continue our tradition of providing innovative, important new plays to audiences in our community and beyond.

That was from the Manhattan Theatre Club grant application of October 2, 1995.

The NEA approved the grant to fund Corpus Christi. On June 14, 1996, the NEA informed the Manhattan Theatre Club that it had been awarded a $31,000 grant ''to support expenses for the development and world premiere of the new play, 'Corpus Christi,' by Terrence McNally, as outlined in your application cited above and the enclosed project budget.''

On December 17, 1996, however, the Manhattan Theatre Club wrote the NEA requesting a scope change amendment to its grant so that it could receive Endowment funding for the New York premiere of Donald Margulies' ''Collected Stories,'' instead of for ''Corpus Christi.'' The Theatre Club gave this sparse description of the new project:

''Collected Stories'' follows the relationship between an esteemed writer, Ruth Steiner, and her promising student, Lisa Morrison. As Lisa gradually transforms from protege to peer, so does her relationship with Ruth. MTC has produced [Margulies'] 'The Loman Family Picnic,' the Obie winning 'Sight Unseen' and 'What's Wrong With This Picture.' This continues a very important artistic relationship between [Margulies] and MTC.

The National Endowment approved the scope change request. It switched the funding from Corpus Christi to the Collected Stories application. Based on that single paragraph, the NEA approved the scope change requested in January, 1997.

It was after that time that we began to understand something about Corpus Christi. We had heard very little about either the Manhattan Theatre Club or Corpus Christi until the last few months. Recently we have begun to see the truth about Corpus Christi and the reason for switching from one pocket to the other the grant application. We have learned more about the play for which the National Endowment for the Arts awarded a grant—but did not fund—because the Manhattan Theatre Club, not the NEA, requested a scope change in its grant.

On May 29 of this year, the New York Times reported that it had obtained a draft of the script for Corpus Christi, and stated that this draft, quoting from the New York Times:

* * * suggests that rather than having specific phrases or scenes likely to cause controversy, it is the overall tenor, focus and point of the work that could be most at issue.''

While the Manhattan Theatre Club had described the play in its fall schedule as telling the story of ''a young gay man named Joshua on his spiritual journey'' and providing Mr. McNally's own unique view of the ''greatest story ever told,'' the New York Times columnist found a very different kind of story.

From beginning to end, says the columnist, the script:

* * * retells the Biblical story of a Jesus-like figure from his birth in a Texas flea-bag hotel * * * to his crucifixion as ''king of the queers'' in a manner with the potential to offend many people. Joshua has a long-running affair with Judas and sexual relations with the other apostles. The draft ends with the frank admission: ''If we have offended, so be it. He belongs to us as well as you.''

A writer for a London newspaper, The Guardian, gave even more descriptive details of the play Corpus Christi, which initially had been funded directly by the National Endowment and then, at the suggestion of the Manhattan Theatre Club, had its NEA funding switched to another project of the theater to avoid the direct funding of Corpus Christi. Most of the details given in The Guardian cannot be discussed on the Senate floor. However, the columnist concludes that, ''the play's wit rests on its deliberately offensive, knowing re-interpretation of the scripture.''

Once the truth about Corpus Christi became public, the NEA quickly disavowed any involvement with the play. On June 10, the NEA sent a letter to Members of Congress stating emphatically that ''the NEA is not in any way supporting development or production of Corpus Christi.'' Yet it can't be denied that the NEA approved funding for the play, regardless of the vague description given it at the time of the grant request.

The NEA fully intended to use taxpayers' money to subsidize Corpus Christi. As a matter of fact, I believe that with the switching of the grant from the one pocket to the other of the Manhattan Theatre Club, the subsidy has the same impact. It was only at the later request of the Manhattan Theatre Club, not the NEA, that the money was diverted from Corpus Christi to the alternate project.

I am glad that no Federal funding directly went to pay for Corpus Christi. But it is because the Manhattan Theatre Club, not the NEA, made the change or sought the change. And nevertheless, when you have a composite of activities of an organization like Manhattan Theatre Club, some of which are subsidized locally or paid for locally, others of which are subsidized federally, the capacity to maintain that particular play as part of the offering of the club is assisted and simply made possible by the continuing support of the National Endowment for the Arts. Despite all the past controversy, despite all the improvements to the NEA statutes, there is still something fundamentally wrong with public funding of the arts.

This matter involving the NEA, the Manhattan Theatre Club, and Corpus Christi, demonstrates a number of problems we have when the Federal Government tries to fund art.

First, the NEA does not exercise proper oversight in awarding grants. It seems incredible that the NEA would approve such a significant change in a grant request—from one project to a completely different one—based on a single paragraph description in a letter from the grantee. Is this an appropriate exercise of oversight?

This action demonstrates how little the NEA knows about the projects it funds. It is supposed to judge based upon ''artistic excellence''—but how, based upon the Manhattan Theatre Club's first description of Corpus Christi—or based upon the sparse description of ''Collected Stories''—can any person or review panel make an informed decision regarding artistic excellence?

Second, the NEA's ease in allowing the Manhattan Theatre Club's scope change demonstrates that the agency chose to fund the project based upon the Theatre's reputation, rather than upon the merits of a particular project. Such an action seems to be allowing de facto ''seasonal support,'' which even the NEA admits is forbidden by law.

Seasonal support was the concept of saying we would just simply, as the Government, give a particular organization, an art organization, an amount of money in which to conduct a season's activities. It would not be with reference to specific activities of the organization. ''We are going to fund their 1998 season, or their 1996 season, or subsidize the season.''

The Congress, because it wanted more supervision on the part of the NEA—it wanted assessments of the quality and nature of those items being subsidized—outlawed or otherwise made improper, season support. It is forbidden in the law. Yet, when the NEA allows organizations simply to switch grants back and forth, it obviously provides a basis for the same kind of problems to arise as would arise when you just simply turned over the money to the organization to support a season, without regard to the specific matters being subsidized.

This situation also demonstrates the underlying problem with government funding of art. Government is not in a good position to determine what is art. When government funds art, it is put in a Catch-22 situation.

Many Americans, including myself, feel strongly that the Government has no business funding any theater that is going to openly and proudly denigrate the religious faith of a large segment of Americans.

However, if one takes this view, he will be accused of censoring or making unconstitutional value judgments. My view is that the subsidization of art is wrong in the first place, but certainly not to provide funding is not to censor, but that is the kind of charge that is made.

On the other hand, if you can't make value judgments based on the content of art, you will end up funding offensive and indecent materials.

When the Government funds art, it will always have to make value judgments on what is art and what is not, which is not an appropriate function of Government. The only way to solve this problem is to get the Government out of the business of funding art.

For those who say this is an issue of free speech, I ask you, How free is speech when the Government pays? Not very.

The events surrounding the National Endowment for the Arts' funding of the Manhattan Theatre Club in Corpus Christi underscore the need for the Federal Government to get out of the business of funding art, which is a form of speech. Speech is not free if the Government funds it. If the Government says that some speech is better than other speech and prefers it by providing a subsidy, the Government is impairing the right of every citizen to speak and to express himself freely.

Let me now turn to the second significant event that occurred since the last time we debated this issue on an appropriations measure, and that is the Supreme Court's recent decision in National Endowment for the Arts v. Finley.

In National Endowment for the Arts v. Finley, the Supreme Court upheld the Federal statute directing the NEA to take into consideration ''general standards of decency and respect for the diverse beliefs and values of the American public'' in making grants.

In the case of the National Endowment for the Arts v. Finley, I repeat, the Supreme Court upheld the will of the Congress expressed in the statute, signed by the President, directing the National Endowment for the Arts to take into consideration ''general standards of decency and respect for the diverse beliefs and values of the American public'' in making grants.

While some have said this ruling will appropriately address concerns over the offensive attacks on religious groups and otherwise offensive material that has been funded by the NEA, this is simply not the case.

In its opinion, the Supreme Court noted that the NEA has implemented the law ''merely by ensuring the representation of various backgrounds and points of view on the advisory panels that analyze grant applications.''

It is interesting to note that the Supreme Court upheld the Federal statute directing the NEA to take into consideration certain standards, and to see how the NEA had attempted to comply with the statute: by appointing individuals who might or might not represent those standards—''merely by ensuring the representation of various backgrounds and points of view on the advisory panels. . . .'' That was the response of the NEA.

The Court also said that the decency and respect provision does not preclude awards to projects that might be indecent or disrespectful. And, in fact, the Court cautioned against any future use of the decency and respect standard to discriminate on the basis of viewpoint.

Moreover, in response to the Finley decision, Chairman Ivey said that the ruling was a ''reaffirmation of the agency's discretion in funding the highest quality art in America'' and that it would not affect his agency's day-to-day operations.

What you have is the Supreme Court affirming the Congress' effort to shape the decisions of the NEA for subsidizing art and to move those decisions away from the affronts to the religious traditions of Americans. But then you have the chairman of the NEA saying that the ruling of the Court was a ''reaffirmation of the agency's discretion in funding the highest quality art in America'' and that it would not affect his agency's day-to-day operations.

Obviously, if the Congress' effort to provide a guideline for decency does nothing to affect the agency's day-to-day operations, we are going to have problems similar to the problems that came up surrounding the Corpus Christi funding.

Hence, the Finley case does nothing to solve the underlying problem confronting us and, in fact, demonstrates that Government simply should not be in a position to determine what is art and what is not.

There are a number of other reasons why we should stop funding the NEA. I question whether it is a proper role of the Federal Government to subsidize free speech as we do through the NEA. Government subsidies, even with the best of intentions, are dangerous because they skew the market toward whatever the Government grantmakers prefer. The National Endowment for the Arts grants place the stamp of U.S. Government approval on funded art. This gives the endowment enormous power to dictate what is regarded as art and what is not.

A number of art critics and even artists themselves have observed this. Jan Breslauer, Los Angeles Times art critic, puts it this way. She says that the NEA's subsidization of certain viewpoints poses great problems—and I quote Jan Breslauer:

> [T]he endowment has quietly pursued policies rooted in identity politics—a kind of separatism that emphasizes racial, sexual and cultural differences above all else. The art world's version of affirmative action, these policies . . . have had a profoundly corrosive effect on the American arts—pigeonholing artists and pressuring them to produce work that satisfies a politically correct agenda rather than their best creative instincts.

Jan Breslauer is basically saying that a subsidy which encourages art that the market would not otherwise respect or encourage corrupts the arts and entices people into producing a kind of art that they would not otherwise pursue for its artistically rewarding aspects. Rather, such a subsidy pressures them to produce work that satisfies a politically correct agenda.

In my judgment, this is not only an inappropriate disposition of taxpayers' dollars. When we find out that the Government purchase of art corrupts the arts by pressuring artists to work in politically correct areas instead of in areas that best reflect their creative instincts, we have gone beyond damage to the taxpayer: we have begun to damage the artistic community itself.

Joseph Parisi, editor of Poetry magazine, the Nation's oldest and most prestigious poetry magazine, I might add, said that disconnecting ''artificial support systems'' for the arts, such as cuts in NEA funding, has had some positive effects.

Parisi has said that cuts in Federal spending for the arts are causing ''a shake-out of the superficial.'' What he is basically saying is when we cut subsidies for the arts, we knock out superficial art that is not of value.

He goes on to say:

> The market demands a wider range, an appeal to a broader base. Arts and writers are forced to get back to markets. What will people buy? If you are tenured, if the Government buys, there is no response to irrelevance.

Here is an artist who simply says, in effect, that a subsidy to the arts not only wastes taxpayers' money but it corrupts the artists themselves.

In short, the Government should not pick and choose among different points of view and value systems and continue politicizing the arts. Garth Brooks fans pay their own way, while the NEA canvases the Nation for politically correct art that needs a transfusion from the Treasury. It is bad public policy to subsidize free expression.

I would also like to point out that Congress has no constitutional authority to create or fund the NEA. It is true that funding for the NEA is relatively small, although it is hard to say that $100 million is small. It is small in comparison to the overall budget. Regardless of the amount of money involved here, elimination of this agency would send the right message that Congress is taking seriously its obligation to restrict the Federal Government's actions to the limited role envisioned by the framers of the Constitution. Nowhere does the Constitution grant any authority that could reasonably be construed to include the promotion of the arts.

During the Constitutional Convention in Philadelphia, as a matter of fact, in 1787, Delegate Charles Pinckney introduced a motion calling for the Federal Government to subsidize the arts in the United States. Although the Founding Fathers were cultured individuals who knew firsthand of various European systems for public arts patronage, they overwhelmingly rejected Pinckney's suggestion because of their belief in limited constitutional government.

Accordingly, nowhere in its list of powers enumerated and delegated to the Federal Government does the Constitution specify a power to subsidize the arts. And that was in the face of a specific proposal to do so at the convention, but was overwhelmingly rejected.

There are a number of other reasons why we should eliminate funding for the National Endowment for the Arts, but time does not allow me to enumerate them. Suffice it to say, it is time to end the Federal Government's role of paying for and thereby politicizing art.

Former New York Times art critic Hilton Kramer observed this phenomenon back in the early 1980s and spoke

almost prophetically about how NEA funding could in fact harm the arts. He put it this way:

> The imperatives now governing much of the commentary devoted to art tend not to have anything to do with the real artistic issues, much less with the problem of artistic quality. They tend to be political. This, too, was probably inevitable given the role that [our] government now plays in our cultural life.

I continue quoting:

> So quickly has this role acquired the status of something external and irreversible that there now exists an entire generation of artists, critics, curators and bureaucrats who have come of age believing that the life of art is inconceivable without it. One sometimes wonders what they think the life of art in this country was like before 1965. It may come as news to them to learn that American art did not begin with the formation of the National Endowment for the Arts, and that there were great art museums flourishing in this country long before there were agencies in Washington monitoring, directing and subsidizing their activities. Of all the changes that have occurred on the American art scene since 1965, this one may well prove to be the most fateful of all, for it already shows signs of making the politicization of art, and of our thinking about art, a permanent feature of our cultural life. And this, I think, is not good news for the future of American art—or indeed, for the future of American society.

Thoughtful individuals understand the pollution that politics and government bring when they seek to subsidize art and favor some art over other art. We need to heed Mr. Kramer's warning and get the Federal Government out of the business of being a national art critic.

My amendment would do this by eliminating funding for the National Endowment for the Arts and by putting available funds toward a more legitimate cause—preserving and maintaining our national parks. Our national park system, comprising 376 units and about 83 million acres, is America's most educational playground, teaching more than 270 million visitors per year about our Nation's history, about our culture, about our traditions, and our natural landscapes.

Our national parks are often the choice for family vacations, school field trips, researchers, and foreign tourists. They represent an appropriate devotion of the resource which would otherwise go to subsidize art in a way which is counterproductive to the quality of art in our culture and many times is an affront to the understanding, beliefs, and closely cherished religious traditions of the American people.

I urge my colleagues to join me in passing this important amendment, this amendment which would zero out funding for the National Endowment for the Arts and make the remaining available funds available to the national park system for renovation and restoration and maintenance of the parks.

I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER (Mr. SMITH of Oregon). The Senator from Washington.

Mr. GORTON. Mr. President, by reason of the Byrd lecture this evening, I now ask unanimous consent that the time between now and 5:30 p.m. be divided, with 17 minutes for the opponents of the amendment and 8 minutes for the proponents of the amendment, and that at 5:30 the manager of the bill or his designee be recognized to offer a motion to table, and that no second-degree amendments be in order prior to the tabling vote.

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

Mr. GORTON. Mr. President, I note the presence of the Senator from Massachusetts. I am going to use very little of this time and will allow him to speak on it.

Mr. President, the eloquent and thoughtful Senator from Missouri has raised two specific criticisms of the continuation of funding for the National Endowment for the Arts. One relates to a notorious anti-Christian play called ''Corpus Christi'' about to be produced in New York City, the sponsor of which originally received the tentative NEA award on the basis of an application described by the Senator from Missouri.

Personally, I think the NEA should probably have turned down that application at the time at which it was granted on the ground that it sounded as though the play was on no subject other than a very standard and Orthodox Christian theme which is perhaps inappropriate for funding by government.

In any event, the National Endowment for the Arts has not funded the production of that play, might well have decided that it did not wish to subsidize anything else that the theater was doing, but certainly has not breached any of the requirements which Congress has laid down for the National Endowment for the Arts itself. Had it gone ahead knowing what the play was about, we might be having quite a much longer debate here today and one in which the future of the National Endowment for the Arts might be very seriously under threat, including, from among others, this Senator.

Secondly, the Senator from Missouri quite accurately describes the decision of the Supreme Court on the decency standards included in former and current versions of the funding for the National Endowment for the Arts. I say, joining myself with the Senator from Missouri as a former State attorney general, that I was somewhat disappointed in that Supreme Court decision which largely ducked the fundamental issues that were involved in the limitations Congress has placed on the way in which the National Endowment for the Arts can make its grants.

The Supreme Court at least nominally upheld those decency provisions but raised some very serious questions about their future applicability under future challenges. The bottom line was, however, that the National Endowment for the Arts, that had refused to fund certain activities by Ms. Finley, among others, was upheld in that refusal.

As long as the courts continue to uphold the National Endowment when it engages in that kind of rejection, I think we will be in good shape. If at some time in the future the Supreme Court should say that this Congress does not have the ability to provide limitations on the use of this money to enforce commonly held decency standards in the United States, we will be debating a different issue. But at the present time we are debating the issue of the continuation of the National Endowment for the Arts under the rules under which it has operated for the last couple of years, during which it has not funded grants that outraged a significant majority or even a very large minority of the American people.

The great bulk of the grants—or rather most of the money that the National Endowment for the Arts uses—goes to State art agencies. Most of the rest goes to institutional kinds of activities—symphony orchestras, art museums and the like. The restrictions on the NEA funding of individual projects are very, very significant and have prevented the kind of controversies that took place 5 or 6 years ago.

In other words, Mr. President, it is my view that the reforms that have been imposed on the National Endowment for the Arts by the Congress of the United States have, in fact, worked, and the grants made by the National Endowment for the Arts help the arts scene all across the country, which are far more decentralized than they were before, in far more underserved areas, in far more deserving entities in small towns and small cities around the United States.

On balance, it seems to me highly appropriate to continue the modest support that Congress gives for the NEA imprimatur. And almost all of our constituents involved in the arts tell us that even a tiny grant from the National Endowment provides for the arts and entities that get the great bulk of their money from charitable contributions, from generous-minded people in their own communities. I attended an opening of a new concert hall in Seattle on Sunday in which perhaps $100 million or more was spent for the Seattle Symphony Orchestra, an occasional minor recipient of grants from the NEA. That fund drive was greatly strengthened by the kind of support that the NEA gives. It is almost solely financed by State government, county government, local government contributions, and even larger contributions from the private sector itself.

The NEA, for better or worse, is a catalyst for arts support, private and public, all across the United States, and the endowment should be continued.

Mr. COATS addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. How much time remains of the Senator from Washington?

The PRESIDING OFFICER. There are 10 minutes 29 seconds remaining.

Mr. GORTON. Is the Senator not an opponent of the amendment?

Mr. COATS. Of the proponents' side of the issue, how much time remains?

The PRESIDING OFFICER. Senator ASHCROFT has 8 minutes remaining.

Mr. ASHCROFT. I yield such time as the Senator from Indiana may consume.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. COATS. Mr. President, I rise today in support of Senator ASHCROFT's amendment. I have thought long and hard about this issue. We have debated it a number of times in committee and on the floor. I have come to the conclusion that the Senator's amendment is a correct amendment. It is correct because in so many ways this agency, the National Endowment for the Arts, has shown itself as not responsive to the Congress and not responsive to the American people. This is, in many ways, a difficult position for me to take because I have long been a supporter of the central mission of the NEA. A number of beneficial grants have been given to institutions in Indiana, and projects have been promoted that I do believe serve a public interest.

I don't dispute the fact that knowledge and beauty are among some of the highest calls of any culture. But sadly, that has not been the debate of the last few years. We are not discussing the role of the arts in our society. There will always be a prominent role for art and culture in our society. What we are discussing here is the role of public subsidy of that art, and the question of whether or not we should appropriate tax dollars from our constituents to fund these types of projects, particularly when it seems that year after year that funding raises questions and controversy.

Whenever we seem to revisit this matter, we return to one central question: Do we in Congress have the right to take money from citizens and allow it to be used in ways that, for many, go against some of their most deeply held religious and moral beliefs?

Over the last several years, several Members have been trying to ensure that Federal dollars are not used in ways that offend a majority of Americans. The Senator from North Carolina has tried to stop support for the most offensive projects by restricting the ability of the National Endowment for the Arts to fund projects which defile or offend people's religious beliefs, and projects which depict the body in degrading and offensive ways. This effort to limit objectionable projects by holding all grants to a decency standard was a fiscally and, I believe, morally responsible position, one that was supported, happily, by a majority of the Senate. I was pleased to see that the decency standard was upheld by the Supreme Court this past June by a very substantial vote of 8–1.

Mr. President, the Senate should not have a role as art critic, and certainly not a role as censor. But it does have, as its primary and defining purpose, the role of determining if public funds are spent in the public interest.

I started out these comments by expressing my support for the central mission of the promotion of the arts and my appreciation for the grants that have been made to different projects in Indiana—worthy grants. However, in spite of this, I remain convinced that, during the last three decades in particular, the National Endowment for the Arts has failed in its mission to enhance cultural life in the United States. It has brought controversy to the whole area. Despite numerous attempts to reform it, the NEA attempts to support what I think are often politically correct but patently offensive projects. I don't think we can ignore this.

I think the central question is whether or not this is the best use of the taxpayers' dollars. There are alternatives. I have supported and voted for efforts to privatize this whole function. I have supported and voted for efforts to block grant these funds to State councils, which I think are much more responsive and responsible in terms of how they are distributed. I have looked for alternative ways of providing incentives to support some of these very valuable contributions that are made through various projects that exist in our States. But I have been discouraged time after time in terms of our ability here to rein in what I think is often an inappropriate use of these taxpayers' dollars. For that reason, I support the amendment being offered by the Senator from Missouri and urge my colleagues to do the same.

With that, I yield the floor.

Mr. GORTON. Mr. President, I yield half of our remaining time to the Senator from Massachusetts and half to the Senator from Utah.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I ask the Chair to notify me when 4½ minutes have passed.

Mr. President, I rise in strong support of the National Endowment for the Arts and full funding for the agency as provided in the Appropriations Committee bill.

I commend the committee for its continuing strong support for this important agency. I commend Senator GORTON, Senator BYRD, and many other members of the committee who have demonstrated impressive leadership on this issue, and essential funds are being provided to support Endowment programs in vital areas such as music, dance, visual arts, theater, opera and arts education.

For nearly a decade, Congress has debated the proper role of the Federal Government on the arts. Each year, a small group of Endowment bashers have led a charge against the agency—and each year the charge has effectively been turned back.

The funds provided in the current bill are the same amount approved by the Senate last year after lengthy debate and deliberation. The bill also includes the priorities and limitations on these funds from last year to ensure the effect of distribution of funds to neighborhoods and communities across the country.

The arts have a central and indispensable role in the life of America. The Arts Endowment contributes immensely to that life. It encourages the growth and development of the arts in communities throughout the nation, giving new emphasis and vitality to American creativity and scholarship and to the cultural achievements that are among America's greatest strengths.

Compelling research underscores the role of the arts in student performance in other academic subjects as well. A recent study by the College Board demonstrated a direct correlation between study of the arts and achievement on SAT scores. Students who had four or more years of arts courses scored 59 points higher on the verbal part of the SAT test and 44 points higher on the math part—compared to students with no equivalent courses in the arts.

If you were to, on the Senate floor, give us one indicator that can make a difference in enhancing the academic achievement and accomplishment of the young people in this country, the arts and the study of the arts has a record which is really second to none, let alone the value that it has in terms of enriching our culture and our history and the history of this Nation.

The arts are also an important part of the economic base of communities across the country. A study by the New England Foundation for the Arts emphasizes the economic impact. In 1995, cultural organizations in the region had a total economic impact of nearly $4 billion. During that time, over 99,000,000 people attended events and performances sponsored by cultural organizations. That number is nearly 8 times the entire population of New England. Clearly, programs in theater, music and art are significant community assets for both residents and tourists.

That benefit is one of the reasons why the United States Conference of Mayors strongly supports adequate funding for the arts and humanities. At their meeting last June in Reno, NV, the Conference adopted a resolution reaffirming its support of the Arts and Humanities Endowments and calling upon Congress to fund the agencies at the level of the President's fiscal year 1999 request. Although the bill we are debating today does not reach that amount, the level of funding is reasonable in light of the many other pressures in the budget, and I hope we can join in a bipartisan effort to enact it.

Bill Ivey, the new chairman of the Arts Endowment has pledged to comply

fully with the new regulations on oversight and outreach established by Congress last year. In an effort to reach out to new communities, the Endowment has developed a new pilot project, ArtsREACH, to help states that have received five or fewer grants during the previous two years. This new effort is a productive way to bring the Endowment's programs to new audiences in small neighborhoods across the country, and I commend Chairman Ivey for his leadership.

Mr. President, I remember the wonderful lines of President Kennedy when he talked about the age of Phidias also being the age of Pericles, and the age of de Medici is also the age of Leonardo da Vinci, and the age of Elizabeth is the age of Shakespeare. The point is that at the time when we have had the greatest intellectual achievement and the most creative aspects of civilization, going back to the time of the Greek civilization, we have also had ennobling periods in terms of the values of our own society and our own history and our own forms of government.

Mr. President, this is a modest proposal. It used to be that we allocated the equivalent of two stamps for every American, in terms of the arts. Now the reduction is down to one stamp. In this great Nation of ours, it seems to me that we can allocate those resources in ways that will help and assist, preserve, support, and further the arts in our society. I hope the amendment of the Senator is not accepted.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. BENNETT. Mr. President, I have two observations to make. We have had this debate virtually every year since I have been in the Senate. I don't want to repeat myself, although I have discovered since being here that there is no such thing as repetition in the Senate. We always pretend as if we have never said it before.

Two things. One, a historic comment by John Adams, writing to his wife Abigail. He said:

> I must study politics and war that my sons may have liberty to study mathematics and philosophy. My sons ought to study mathematics and philosophy, geography, natural history, naval architecture, navigation, commerce, and agriculture, in order to give their children a right to study painting, poetry, music, architecture, statuary, tapestry, and porcelain.

One of the dearest dreams of our Founding Fathers was that we, as a nation, would turn our attention to the arts and have our children and grandchildren do the same. The second point is that we have heard a great deal of various aspects of grants from the NEA, where they have gone and what tremendous harm they are doing.

I would simply like to share with the Senate where the funds from the NEA go in my home State. I don't usually list projects in my home State. But I think in this case it would make a good anecdote to some of the things we have heard.

In Utah, NEA funds have been used for children's theater with educational outreach in Coalville, Kamas, Duchesne, Roosevelt, Castle Dale, Salina, Beaver, and Price.

To those Senators who say they have never heard of those towns, I say that most people in Utah have never heard of them either. They are among some of our smallest communities. Without the NEA money, they would not have this educational outreach.

NEA funds have helped fund community arts' councils around the State, including those in Springdale, Vernal, Richfield, Riverton, Cedar City, and Bluffdale, again in rural Utah.

NEA funding in Utah includes the Festival of the American West, the Children's Museum of Utah, the Northern Utah Choral Society, the Chamber Music Society of Logan, the Payson Community Theater, the Utah Shakespearean Festival, the Dixie Art Alliance, the Sundance Children's Theater, Ballet West, Repertory Dance Theatre, Quarterly West, Ririe-Woodbury Dance Foundation, the Utah Symphony, and recently the central Utah Highlanders Pipe Band.

The projects that I have listed are Utah projects organized by Utahns. The vast majority of the money spent on them is raised in Utah by Utahns. But here comes a bit of national recognition that brings pride and satisfaction to the local folks all across my State that says what you are doing is important, what you are doing deserves national recognition, and what you are doing deserves Federal support.

I find as I walk around Utah spontaneously people coming up to me, saying, ''Senator, for all the things you do, the one thing we most appreciate is your defense of the arts.'' I would be unfaithful to those who asked me to continue that defense if I did not rise again, as I have on every occasion when this issue has come up, and make it clear that I support these appropriations.

I support the chairman of the subcommittee in the way he has handled these appropriations. It is a legitimate expenditure of public funds. I hope it continues.

Mr. JEFFORDS. Mr. President, I would like to commend the Chairman of the Subcommittee on Interior, Senator GORTON for his work, and the work of his staff in providing an increase in appropriations for the National Endowment for the Arts. I believe that the Committee recommendation reflects a sound understanding about what this public agency does. In recommending an increase in funding for NEA, the Committee has acknowledged the positive impact that the NEA has made to our nation, especially in the areas of education and exchange of cultural programs across the country.

As I just mentioned, one area that deserves particular attention is education. Broad based activities involving the arts make a significant and positive difference in the lives of millions of children each year.

It is in the national interest to provide support for programs which make the arts part of the education of our young people and NEA has funded extraordinary programs that do just that. By exciting students about learning—by making music, visual arts and song part of their lives—in school, afterschool or on weekends, we are strengthening their education. By strengthening their education, we are strengthening our nation.

A recent study has shown that students of the arts are more successful on the SAT. In 1995, College Board figures showed that students who had studied the arts four or more years scored 59 points higher in the verbal and 44 points higher in the math portions of the SAT compared with students who had no course work or experience in the arts. Increasing our nation's young people's exposure to the arts has measurable good results.

The NEA has also made a significant difference in extending the availability of the arts in communities throughout the country. There are programs supported by the NEA which are of immeasurable benefit to folks all across this nation—in every one of our States. Recently, the NEA has implemented the ArtsREACH program which is designed to increase the direct NEA grant assistance to underserved areas. ArtsREACH holds great promise in providing more American communities with the financial assistance that is necessary to strengthen their own locally-based arts endeavors.

While federal funding for the arts is but a small part of overall funding for the arts, the federal funds distributed by the NEA make a BIG difference in spreading the cultural and artistic wealth of our nation to small towns and communities everywhere. This commitment to promoting outreach, accessibility and participation in the arts, in my view, is the most important mission of the NEA. And it is something that the NEA has done quite well since its creation in 1965.

The NEA's commitment to excellence in and access to the arts is evident in the types of grants it made to Vermont. Vermonters—and others visiting the state—will now have an opportunity to learn more about the pottery produced in Bennington from the late 18th century thanks to a grant made to the Bennington Museum; they will have an opportunity to hear the Vermont Symphony Orchestra perform in rural communities as part of the statewide ''Made for Vermont'' tour; they will hear radio broadcasts on traditional storytelling as part of the ''New England Touchstones'' series produced by the Vermont Folklife Center. Another NEA grant will allow Vermont to export and share some of its talent with other states. NEA has provided support to the Manchester Music Festival so that the Music Festival Orchestra can play in schools in Vermont, New Hampshire, New York and Massachusetts.

It is examples like the ones I mentioned from Vermont, which underscore the value of the federal government's role in fostering our cultural heritage.

There is great value in ensuring that all individuals have an opportunity to experience the beauty of dance, the magic of theater, the enchantment of reading, and the wondrous way that visiting a museum can take you to another place. Our federal investment in the arts yields returns of immeasurable value.

For those who have been skeptical of providing funds to the NEA in the past, I would hope that they would take note of the significant changes that have been made by Congress and the Agency itself to improve operations and make the NEA more responsive to the needs of the American people. Bill Ivey has recently taken over as Chairman of the NEA and I believe we should give him an opportunity to succeed. As I mentioned, the ArtsREACH program will go a long way in ''spreading the wealth'' of the NEA more widely. This program represents a step in the right direction taken by the agency. There are now members of Congress sitting on the National Council on the Arts who are able to participate ''firsthand'' in the grant making decisions of the Agency. Caps on funds available to any one State are in effect assuring a more fair distribution of funds to all States. These improvements thoughtfully and directly address criticisms that have been made in the past.

Art is important to the people of this nation and the NEA helps make the arts a part of more peoples lives. Just two weeks ago, over 2,600 people waited in line for over six hours outside the National Gallery of Art to secure a ticket to the upcoming exhibition of works of art painted by Vincent Van Gogh. The temperature was 97 degrees! yet people braved the heat for hours just to have the opportunity to admire the works of this great master painter. This exhibition would not be possible without the support that the NEA provides though indemnity and clearly, this type of sponsorship is just the kind of thing the people of our nation want us to invest in—the numbers make that clear!

Society, since the beginning of time, has left behind a chronicle of the past through its art. We will be remembered and understood by the architecture, monuments, arts and writing we pass on to the next generation. What we do today will have an enormous impact in the future and how we as a nation are perceived in the future. We must not be shortsighted and we should recognize that nurturing and preserving the heart and the soul of our country today will preserve the greatness of the nation for all time.

It is my hope that the Senate will stand firm in and support the recommendation made by the Interior Appropriations Committee and support this modest increase in funding for the NEA.

The National Endowment for the Arts, the National Endowment for the Humanities and the Institute for Museum and Library Services are agencies with small budgets that provide extraordinary service to the people of this nation. I encourage my colleagues to support each of these agencies.

Again, I would like to thank Senator GORTON for his leadership on this issue.

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

The PRESIDING OFFICER. Two minutes 15 seconds.

Mr. GORTON. Mr. President, would the Senator from Arkansas like the last 2 minutes that is available?

Mr. BUMPERS. I would. I thank the Senator very much.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, since I have been in the Senate, I have come to the floor—and I would not want to miss my last opportunity before I leave the Senate—to express my strong, strong support of the National Endowment for the Arts.

We talk a lot in this country about how uncivil we have become; how uncivil our children have become. During the same time—I am not making the correlation—the National Endowment for the Arts' funding has gone down about 50 percent. I think it was close to $200 million when I came here.

I can tell you an experience I had when I was overseas waiting to come home after the war, and was bored to death. I have told this story before. But it is worth repeating. I saw a sign up on the bulletin board one day: ''Would you like to learn about Shakespeare? Come to such and such a room tonight.'' So about six people just like me, bored stiff, waiting to get home, went over. It turned out that a Harvard dramatist—a drama coach from Harvard—had put up the sign.

He began to tell us about Shakespeare. He began to tell us about Hamlet. He had a tape recorder. In those days I had never seen a tape recorder. I remember. He said, ''Listen to this.'' He spoke into his tape recorder and he proceeded to deliver Hamlet's speech to the players. It was a magnificent thing. It was the most mellifluous voice I had ever experienced. He played it back on his tape recorder. I was just stunned. It was just so beautiful. He handed us the tape recorder, and he said, ''We are going to have each one of you do the same thing.'' I remember. I was about the second one. He handed us the script. I cannot tell you how embarrassed I was. I went ahead, and read ''Speak the speech, I pray.'' I read the whole speech. I still remember it. I will not repeat it here. Then he turned the tape recorder on, and it came back. It was pure ''Arkansas redneck.''

I made up my mind right then that I did not want to sound like that the rest of my life. To be brutally frank with you, if it had not been for the experience I had with that drama coach for all of those nights—about six nights—I daresay I might not be standing on the floor of the Senate today. It was just a happenstance, just an opportunity.

Every time we give a child that kind of an opportunity, we are always a stronger, better, more civilized nation.

Thank you, Mr. President.

Mr. ASHCROFT addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri is recognized, and has 3 minutes 26 seconds remaining.

Mr. ASHCROFT. Mr. President, I rise to oppose the National Endowment for the Arts—not because I am against art, but because I favor art; not because I want to corrupt art, but because I want it to remain uncorrupted.

Let me address some of the issues that have been raised. It was just said that we lack civility; so we need Government funding for the arts. We have seen that Government funding has frequently meant pornography, obscenity, attacks on religious faith, Mapplethorpe—I don't have to go further.

We have had great art. We have had great civility in this country. But we have not had an increase of civility, as we have had the National Endowment for the Arts, since the 1960s. I challenge whether that is the case.

Secondly, it was said that those who study art get better grades in school. Well, undoubtedly they do. But since the 1960s, when we started the National Endowment for the Arts, we have not seen an increase in the Scholastic Aptitude Tests, we have seen a decrease in them. Art is one thing. Federally subsidized art is another.

It has been alleged that people are grateful for art welfare, that they come and they say, ''Thank you for the art money you give us.'' Well, I don't know of a single time when the Government hands out money that people don't gratefully come by and say, ''Thank you for the money you give us in our community.''

It has been alleged that the Founding Fathers such as John Adams liked art. Of course they liked art. They had better art to like in many circumstances than we do. It wasn't art corrupted by the Federal Government or a subsidy that demanded that the art be politically correct or that it be on the cutting edge of some social theory.

The suggestion is that our founders wanted us to have great art. Yes, they did, but they didn't want it in the Constitution, and they specifically rejected authority in the Constitution to fund art.

Let's just make it clear that the Federal Government does not need to be signaling to the art community or Americans what art is good art or what art is bad art. As a matter of fact, it even corrupts our foundations. About a year ago, the Orange County Register carried an editorial which said that so many foundations don't bother to assess what is going on anymore; they just look for where NEA is sending its grants, and they have their grants follow on.

I think we would be better off if we urged people consuming or funding art in this country to be careful about it, to think about it in terms of its quality, to think about it in terms of its potential for greatness, to think about what it calls us to. Does it call us to greatness? The Federal Government, with its sense of politics, doesn't need to be signaling that some art is worthy, some speech is worthy, other art is unworthy, other speech is to be disregarded.

It is not that we do not believe in art in America. All of us understand that the gifts of expression which God has given us are to be developed and they should be developed educationally and by individuals. But because art is expression and because it is related to values and because it is speech, it is inappropriate for the Government to say that some art is to be funded, some art is to be subsidized, and other art is to be disregarded, that other art is somehow unworthy and not to be provided merit.

I believe that we will be a more civil society if we have a marketplace which determines what happens in the art community rather than a subsidy from Government. I believe we will be a well educated people, but it will be when we understand art for its value to us, not art that we receive at the hand of Government or art that becomes a part of a welfare state for the rich or for others in the community. I believe that art is an expression that ought to be regarded as an individual's choice.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The manager of the bill.

Mr. GORTON. I move to table the Ashcroft amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion to table the Ashcroft amendment No. 3593. The yeas and nays have been ordered. The clerk will call the roll.

Mr. FORD. I announce that the Senator from South Carolina (Mr. HOLLINGS) and the Senator from Maryland (Ms. MIKULSKI) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announed—yeas 76, nays 22, as follows:

[Rollcall Vote No. 269 Leg.]

YEAS—76

Abraham	Byrd	Domenici
Akaka	Campbell	Dorgan
Baucus	Chafee	Durbin
Bennett	Cleland	Enzi
Biden	Cochran	Feingold
Bingaman	Collins	Feinstein
Bond	Conrad	Ford
Boxer	Craig	Frist
Breaux	D'Amato	Glenn
Bryan	Daschle	Gorton
Bumpers	DeWine	Graham
Burns	Dodd	Grassley
Gregg	Leahy	Santorum
Harkin	Levin	Sarbanes
Hatch	Lieberman	Smith (OR)
Hutchison	Lugar	Snowe
Inouye	Moseley-Braun	Specter
Jeffords	Moynihan	Stevens
Johnson	Murkowski	Thomas
Kempthorne	Murray	Thurmond
Kennedy	Reed	Torricelli
Kerrey	Reid	Warner
Kerry	Robb	Wellstone
Kohl	Roberts	Wyden
Landrieu	Rockefeller	
Lautenberg	Roth	

NAYS—22

Allard	Hagel	McConnell
Ashcroft	Helms	Nickles
Brownback	Hutchinson	Sessions
Coats	Inhofe	Shelby
Coverdell	Kyl	Smith (NH)
Faircloth	Lott	Thompson
Gramm	Mack	
Grams	McCain	

NOT VOTING—2

Hollings Mikulski

The motion to lay on the table the amendment (No. 3593) was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

Mr. DOMENICI. Mr. President, the Senate is now considering S. 2237, the Department of the Interior and Related Agencies appropriations bill for fiscal year 1999.

The Senate bill provides $13.5 billion in budget authority and $8.7 billion in new outlays to operate the programs of the Department of the Interior and related agencies for fiscal year 1999.

When outlays from prior year budget authority and other completed actions are taken into account, the bill totals $13.5 billion in budget authority and $14.0 billion in outlays for fiscal year 1999.

The subcommittee is below its section 303(b) allocation for budget authority and outlays.

Mr. President, I ask unanimous consent that a table displaying the Budget Committee scoring of this bill be printed in the RECORD at this point.

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

S. 2237, INTERIOR APPROPRIATIONS, 1999 SPENDING COMPARISONS—SENATE-REPORTED BILL

[Fiscal year 1999, in millions of dollars]

	De-fense	Non-de-fense	Crime	Man-datory	Total
Senate-reported bill:					
Budget authority		13,404		58	13,462
Outlays		13,959		58	14,017
Senate 302(b) allocation:					
Budget authority		13,410		58	13,468
Outlays		13,960		58	14,018
1998 level:					
Budget authority		13,712		55	13,767
Outlays		13,648		50	13,698
President's request					
Budget authority		14,063		58	14,121
Outlays		14,384		58	14,442
House-passed bill:					
Budget authority		13,370		58	13,428
Outlays		13,956		58	14,014
SENATE-REPORTED BILL COMPARED TO—					
Senate 302(b) allocation:					
Budget authority		−6			−6
Outlays		−1			−1

S. 2237, INTERIOR APPROPRIATIONS, 1999 SPENDING COMPARISONS—SENATE-REPORTED BILL—Continued

[Fiscal year 1999, in millions of dollars]

	De-fense	Non-de-fense	Crime	Man-datory	Total
1998 level:					
Budget authority		−308		3	−305
Outlays		311		8	319
President's request					
Budget authority		−659			−659
Outlays		−425			−425
House-passed bill:					
Budget authority		34			34
Outlays		3			3

Note.—Details may not add to totals due to rounding. Totals adjusted for consistency with current scorekeeping conventions.

Mr. DOMENICI. Mr. President, I commend the full committee and our Interior Appropriations Subcommittee for the hard work on this bill. As a member of the subcommittee, I am especially grateful to our chairman, the distinguished Senator from Washington (Mr. GORTON) for his sensitivity to the special needs and concerns of New Mexicans. We live in a State with vast Federal land ownership. Programs within the Interior Department and the Forest Service, especially, which are funded by this bill, have a major impact on the lives of my constituents. As in previous years, it has been a pleasure working with Senator GORTON to craft a bill that is good for both New Mexico and the Nation.

I am especially pleased that this bill accommodates additional funding for the New Mexico Hispanic Cultural Center in Albuquerque and the El Camino Real International Heritage Center, as well as for Bandelier, Aztec ruins and Petroglyph national monuments, the Rio Puerco watershed rehabilitation, and the Middle Rio Grande Bosque Research proposal. This bill also provides increased funding for the vanishing treasures initiative and continues support for my Indian diabetes initiative.

At a time when we are asking every committee of the Senate to work with tight spending caps to preserve and extend the progress we have made in balancing the budget, the committee has reported to the floor a bill that still provides for an increase in spending for our national parks. Hard choices were made to achieve this increase and I applaud the committee's work in providing this increase.

Mr. President, I urge the adoption of the bill.

MORNING BUSINESS

Mr. GORTON. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

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

ACKNOWLEDGMENT OF SENATOR COATS' 100TH PRESIDING HOUR

Mr. LOTT. Mr. President, today I have the pleasure to announce that Senator COATS is the latest recipient of the prestigious Golden Gavel Award,