

gender—regardless of whether the government's motive is malicious or benign. If the precepts of "equal protection" and "due process" are to mean anything, then they must ensure that no one in this country is granted favorable or unfavorable treatment on the basis of some single differentiating characteristic.

My reading of the Constitution is supported by the Supreme Court's 1995 decision in *Adarand versus Pena*. In that decision, the Court rules that the DBE and other race-based affirmative action programs can only be upheld if they are narrowly tailored to meet a compelling governmental interest. This test, commonly referred to as "strict scrutiny," makes it exceedingly difficult for any affirmative action program to pass constitutional muster. It should come as no surprise, then, that after the Court remanded the *Adarand* case, a federal district court judge found that the DBE program fails strict scrutiny, and thus is unconstitutional. Indeed, it is worth pointing out that the last time that the Supreme Court upheld a statute based on a racial- or national-origin classification under the strict scrutiny test was in 1944.

In my opinion, the correct course of action is to award highway contracts on the basis of cost, performance, and the most efficient use of taxpayer's money. This merit-based approach is both fair and constitutionally appropriate.

Despite these reservations about DBE, I also recognize that the courts have not yet definitively ruled on the constitutionality of affirmative action programs. The *Adarand* district court decision is currently on appeal, and I look forward to further clarification of the constitutionality of programs such as DBE.

Furthermore, while I support the McConnell amendment in principle, I believe that further debate and scrutiny is necessary. This amendment has not yet been subjected to the committee process, which is so essential to determining the true merits and flaws of a proposal. Before we replace the DBE program with an Emerging Business Enterprise Program, we need to ensure that the replacement does exactly what we want it to do. Otherwise, we risk hurting some small businesses through rash, ill-considered action. For these reasons, I voted to table the McConnell amendment.

#### MORNING BUSINESS

Mr. LOTT. Mr. President, I ask unanimous consent that there be a period for the transaction of morning business until 12 noon, with Members allowed to speak for up to 10 minutes each.

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

Mr. LOTT. Mr. President, I would like to be recognized for a statement now.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. LOTT. I thank the Chair.

(The remarks of Mr. FRIST, Mr. LOTT, Mr. JEFFORDS, Mr. KENNEDY, Mr. HARKIN, and Mr. BINGAMAN pertaining to the introduction of S. 1722 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. TORRICELLI address the Chair. The PRESIDING OFFICER. The Senator from New Jersey.

Mr. TORRICELLI. Thank you, Mr. President.

#### STATUS OF PUERTO RICO

Mr. TORRICELLI. Mr. President, inscribed on the corridors of this Capitol are the words of William Henry Harrison, spoken at his Presidential inauguration in 1841. He said: "The only legitimate right to govern is an express grant of power from the governed."

Indeed, the very principle of the consent of the governed is the foundation of this democratic society. That issue was at question in the House of Representatives this week when the Congress considered the issue of the political status of Puerto Rico.

I believe it is clear that it is not in the interest of these United States to leave the 20th century, with it being claimed in any quarter of this globe, that the United States is in an involuntary political arrangement with any peoples. The unfinished business of American democracy is the political status of Puerto Rico.

The history of the 20th century for the United States have been the constant expansion of enfranchisement of the governed. Within this century, we have either guaranteed or attempted to assure the right to participate in our democracy to women and, through the struggle of civil rights, for African Americans.

In 1913, we changed the U.S. Constitution to ensure that all citizens of the United States could participate in choosing Members of this Senate. In 1971, we extended the right to vote for those who are 18 years old. And, indeed, also in this century, we ensured this enfranchisement was expanded geographically to include the citizens of Hawaii and Alaska.

But this only begs the question of the unanswered issue since 1898, at the end of the Spanish-American War, of what is to be done with the arrangement of the people of Puerto Rico and the Government of the United States. It is an issue that has come before this Congress continuously. In 1917, Congress granted citizenship to the people of Puerto Rico. In 1952, Congress revisited the issue to provide commonwealth under American jurisdiction.

And yet, the issue continues, because the full rights of citizenship granted to those of the 50 States remain withheld to the people of Puerto Rico. The people of Puerto Rico are subject to laws and regulations passed by this legislative body, yet they have no voting representation. The people of Puerto Rico are led by a President and Vice President exercising full executive authority, but they cannot vote to choose that executive leadership.

The people of Puerto Rico hold citizenship in a country whose legislature can take away or compromise their rights of citizenship at any moment. The legislation passed by the House of Representatives, legislation which I was proud to cosponsor—indeed, originally authored when I was a Member of that body—redresses this injustice.

This legislation does not mandate a political choice for the people of Puerto Rico. Whether or not Puerto Rico ultimately becomes a State of this Union is a question for the people of Puerto Rico, and only for the people of Puerto Rico, to decide. Whether or not the people of Puerto Rico are able to exercise that choice is a responsibility of this Congress.

I do not believe that this Congress should express itself on that issue. Whether or not the choice is statehood, independence, or commonwealth is only a matter for the people of Puerto Rico. But as certainly as it is our responsibility that the people of Puerto Rico have a right to exercise that choice, it is our responsibility in the United States to ensure they exercise it honestly, with legitimate choices.

The bill authorizes Puerto Rico to hold a referendum by the end of 1998 as to whether or not to remain a commonwealth, seek independence, or choose statehood. If a majority of citizens were to decide to seek independence or statehood, then the President would submit legislation to the Congress outlining a transition plan that would culminate in 10 years.

Then, the people of Puerto Rico would take to the polls once again to approve or reject the plan. If it were passed by a majority of the people of Puerto Rico, then the President would submit legislation to the Congress recommending a date to end the transition period. Then, for a third time the people of Puerto Rico would vote again on the issue of self-governance.

This is an extensive and a complicated plan for final political status. It is important that these three votes be held over an extensive transition period, because as history has made clear, any judgment to join this Union is irreversible and it is final. A decision on statehood is made once and never made again.

Mr. President, I understand that there are some Members of the Senate who are concerned about this legislation because of its impact on our Union. I believe that a decision by the Puerto Rican people, if they make it in their own judgment, is in the interests of this Union.

The United States would be enriched culturally. Indeed, it would make clear that the bridge that the United States has enjoyed for so long culturally to Europe is equally as strong with the peoples of Latin America. Indeed, I believe all Americans would be proud and enriched by this judgment.

Mr. President, that, of course, is a decision for the people of Puerto Rico to make. But if they make it, I hope

people in our country and Members of the Senate will welcome their judgment.

But on this day, Mr. President, I call upon the Energy and Natural Resources Committee to immediately commence hearings on the important Puerto Rico self-determination bill. I join with Senator GRAHAM and Senator CRAIG in offering this legislation. I hope the people of Puerto Rico can be proud that this Senate will await their judgment and will offer them this opportunity.

Mr. President, I yield the floor.

#### EXTENSION OF MORNING BUSINESS

Ms. COLLINS. Mr. President, I request unanimous consent that, notwithstanding the previous order, the Senator from Ohio and I be permitted to proceed in morning business for 15 additional minutes.

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

Ms. COLLINS addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

(The remarks of Ms. COLLINS and Mr. DEWINE pertaining to the introduction of S. 1724 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

#### INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1997

The Senate continued with the consideration of the bill.

Mr. CHAFEE. Mr. President, I will send an amendment to the desk. I will not ask for its immediate consideration. This is an amendment that would require the Secretary of Transportation to reduce the amounts made available under the ISTEA of 1998 for the fiscal year 1998 by the amounts made available under the extension that we did last fall, the so-called 6-month extension bill.

Now, last year, Mr. President, as you recall, the Senate passed a 6-month extension bill which allowed the States to use their unobligated balances to fund eligible transportation projects. The bill also allocated an additional \$5.5 billion in new money to the States.

As you remember, the ISTEA I expired on September 30 so we knew we were not going to be able to enact a new ISTEA bill—indeed we have not enacted it yet—and that carried us over to May 1 of this year. In it we provided not only that States could use their unobligated balances but there was also allocated an additional \$5.5 billion.

The Senate agreed to provide this new \$5.5 billion on the condition that the amounts allocated under ISTEA II in fiscal year 1998 would be reduced by the amount each State received under the 6-month extension. In other words, yes, we gave them additional money to carry them through during this extension,

but when we enact a final bill, as I hope we will do next week, then the amounts that the States would have received would be deducted from the amounts that we provide for them for the fiscal year 1998.

For example, the amount each State will receive in the surface transportation program, so-called STP funds, under ISTEA II will be reduced by their portion of the more than \$1 billion provided in STP funds under the 6-month extension.

Now, there are several reasons why this extension reduction is necessary. First of all, ISTEA II provides money for each fiscal year 1998 through 2003. It does not provide a half-year amount for 1998. If this reduction is not required, States would be receiving one-and-a-half times as much as they should for 1998. In other words, we give them the entire 1998 money in the bill, and we have also previously given them half of that so it doesn't make sense for them to have one-and-a-half times as much money for 1998 as required. Indeed, our bill would be subject to a point of order.

Second, a reduction ensures that each State will receive money based on the new formula provided in ISTEA II instead of the old formula or amounts received in the past. We worked hard to bring this new formula up to date in order to make it fairer, and we believe we have achieved that.

So, Mr. President, this technical and noncontroversial amendment has been cleared by both sides. We want to make sure that this amendment is available for any of the States who would choose to review it. They can get in touch with me and we will give them a copy, obviously.

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

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

#### AMENDMENT NO. 1719

(Purpose: To include the enhancement of safety at at-grade railway-highway crossings and the achievement of national transportation safety goals in the purpose of the intelligent transportation system program)

Mr. BAUCUS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Montana [Mr. BAUCUS], for Mr. KERREY, proposes an amendment numbered 1719.

Mr. BAUCUS. 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:

On page 385, strike lines 13 and 14 and insert the following: increasing the number and severity of collisions;

"(14) to encourage the use of intelligent transportation systems to promote the achievement of national transportation safety goals, including safety at at-grade Railway-highway crossings; and

"(15) to accommodate the needs of all users of".

Mr. BAUCUS. Mr. President, this amendment that I am offering on behalf of Senator KERREY from Nebraska adds another goal to the intelligent transportation system's research program in the underlying bill. It would add the achievement of national transportation safety goals, including at-grade railway-highway crossings to the ITS, intelligence transportation system program.

I think it is a good idea to enhance the ITS program. We all know the problems of rail crossings. There are a lot of accidents and deaths, regrettably, at railway-highway crossings. This added language will help in the development of the ITS to try to find ways to minimize these types of things.

I urge that we agree to this amendment.

Mr. CHAFEE. Mr. President, this amendment is acceptable to this side.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 1719) was agreed to.

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

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

The motion to lay on the table was agreed to.

#### AMENDMENT NO. 1720 TO AMENDMENT NO. 1676

(Purpose: To include the development of techniques to eliminate at-grade railway-highway crossings in the goals of the innovative bridge research and construction program)

Mr. BAUCUS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Montana [Mr. BAUCUS], for Mr. KERREY, proposes an amendment numbered 1720.

Mr. BAUCUS. 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:

On page 371, strike lines 6 and 7 and insert the following:

"in highway bridges and structures;

"(5) the development of cost-effective and innovative techniques to separate vehicle and pedestrian traffic from railroad traffic and

"(6) the development of highway bridges and".

Mr. BAUCUS. Mr. President, this amendment would add to the types of works the Secretary should undertake with regard to innovative bridge research. The Secretary would have the flexibility to look at innovative techniques to separate vehicle and pedestrian traffic from railroad traffic. It is