acceptable for an agency charged with protecting employees to promulgate a regulation that has insufficient scientific and medical support. We are saying that it is acceptable for OSHA to tell employers that we don't have the answers, but we expect you to come up with them, and we will fine you if you don't. We are saying that it is acceptable for an agency that should be focusing on helping employers protect their employees from hazards, instead to tell them that they have no idea how to help them do this, but it would be OK for them to be cited just the same.

The heart of this issue is that although there have indeed been many studies conducted, they have not managed to answer the critical questions that employers need to know to be able to protect their employees: ''How much lifting is too much?'', How many repetitions are too many?'', and ''What interventions can an employer implement to protect his or her employees?'' This is what we mean by saying that there is not sufficient sound science to support this regulation.

This regulation, whenever it comes out and takes effect, will be the most far reaching regulation ever issued by OSHA. It will be one of the most far reaching regulations from any agency and will ultimately effect every business in this country. To say that we will allow OSHA to proceed with a regulation of this nature, that we know is horribly flawed and without adequate scientific and medical support, borders on a dereliction of our duty.

Many speakers opposed to my amendment have focused on the number of workers who are believed to be suffering from ergonomics injuries. One of the great uncertainties about this issue is that we don't even know what it means to be in that group. That number includes many people who suffer from common problems like back pain which may or may not have any connection to the workplace. What constitutes a musculoskeletal disorder is one of those questions around which there is still no consensus within the medical and scientific communities.

Under the Occupational Safety and Health Act, OSHA has jurisdiction only over workplace safety questions. If the condition which represents a hazard is not part of the workplace, OSHA has no authority to compel an employer to address the problem. With ergonomics, there is no way for an employer to be able to tell when a condition has arisen because of exposures at the workplace or because of activities or conditions that have nothing to do with the workplace. Many factors such as age, physical condition, diet, weight, and even family history can influence whether someone is vulnerable to an ergonomic injury. We still don't know why two workers doing the same work for the same amount of time will have different experiences with injuries. It is simply beyond an employer's role and ability to ask them to determine how much of an injury may have been caused by factors outside their control. I do not believe that we should be telling employers that they should intrude into their employee's private lives to the degree that would be necessary to eliminate all possibility of suffering an ergonomic injury.

I will continue to seek opportunities to come back to this issue because I believe so strongly that without sound science on this issue, OSHA's regulation on ergonomics will force many small businesses to choose between complying and staying in business. Under this decision everyone loses. However, in the interest of moving the Labor/HHS appropriations bill, I will allow my amendment to be withdrawn.

AMENDMENT NO. 1825 WITHDRAWN

Mr. LOTT. I ask unanimous consent that amendment 1825 be withdrawn.

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

The amendment (No. 1825) was withdrawn.

The PRESIDING OFFICER. The Senator from West Virginia.

THE COMPREHENSIVE TEST BAN TREATY

Mr. BYRD. Mr. President, the Senate tomorrow is scheduled to begin debate on one of the most important and solemn matters that can come before this body—a resolution of ratification of a Treaty of the United States. The Treaty scheduled to come before us on Friday is the Comprehensive Nuclear Test Ban Treaty, commonly referred to as the CTBT.

Consideration of a Treaty of this stature is not—and it should never be—business as usual. A Treaty is the supreme law of this land along with the Constitution and the Laws that are made by Congress pursuant to that Constitution. Article VI of the Constitution so states: ''This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution of Laws of any State to the Contrary notwithstanding.''

Mr. President, consideration of a Treaty is not business as usual.

And yet, Mr. President, I regret to say that the Senate is prepared to begin consideration of the Comprehensive Test Ban Treaty under a common, garden-variety, unanimous consent agreement, the type of agreement that the Senate has come to rely upon to churn through the nuts-and-bolts legislation with which we must routinely deal, as well as to thread a course through the more contentious political minefields with which we are frequently confronted.

In fact, unanimous consent agreements have become so ubiquitous that silence from a Senator's office is often automatically assumed to be acquiescence. So it was the case when this unanimous consent request came to my office. I was not in the office at the time. We are very busy doing other things, working on appropriations bills, and so on. And so at the point when this unanimous consent agreement proposal reached my office, I was out of the office. When I came back to the office a little while later, the request was brought to my attention. But by the time it was brought to my attention, it was too late. I notified the Democratic Cloakroom that I would object to the unanimous consent agreement, but I was informed that the agreement had already been entered into.

I make this point not to criticize the well-intentioned objective of this unanimous consent agreement, which was to seek consensus on the handling of a controversial matter. I do not criticize the two leaders who devised the agreement. I criticize no one. I do, however, point out the unfortunate repercussions of the agreement as it affects the Senate's ability to consider the ratification of a treaty.

In short, unanimous consent is a useful tool, and it is a practical tool of the Senate. I suppose I may have, during the times I was majority leader of the Senate, constructed as many or more unanimous consent agreements than perhaps anybody else; I certainly have had my share of them, but it is not an all-purpose tool.

The unanimous consent agreement under which the Comprehensive Test Ban Treaty is to be considered reads as follows, and I now read from the Executive Calendar of the Senate dated Thursday, October 7, 1999.

Ordered, That on Friday, October 8, 1999, at 9:30 a.m., the Senate proceed to executive session for consideration of the Comprehensive Nuclear Test-Ban Treaty; that the treaty be advanced through the various parliamentary stages, up to and including the presentation of the resolution of ratification; that it be in order for the Majority Leader and the Democratic Leader to each offer one relevant amendment; that amendments must be filed at the desk 24 hours before being called up; and that there be a time limitation of four hours equally divided on each amendment.

Ordered further, That there be fourteen hours of debate on the resolution of ratification equally divided between the two Leaders, or their designees; that no other amendments, reservations, conditions, declaration, statements, understandings or motions be in order.

Ordered further, That following the use or yielding back of time and the disposition of the amendments, the Senate proceed to vote on adoption of the resolution of ratification, as amended, if amended, all without any intervening action or debate.

So if one reads the agreement, it is obvious that the treaty itself will not be before the Senate for consideration. I allude to the words in the unanimous consent request, namely:

. . . that the treaty be advanced through the various parliamentary stages, up to and including the presentation of the resolution of ratification.

So the Senate will not have any opportunity to amend the treaty, itself, but it is the resolution of ratification that will be before the Senate.

Mr. President, the foregoing unanimous consent agreement may be expedient and there may be some who would even consider it to be a savvy way to dispose of a highly controversial and politically divisive issue in the least amount of time with the least amount of notoriety. The politics of this issue are of no interest to me. I am not interested in the politics of the issue. I have not been contacted by the administration in any way, shape, form, or manner. Nobody in the administration has talked with me about this. I am not interested in the politics of it. Not at all. There has been some politics, of course, abroad, about this agreement, but I am not a part of that. I did join in a letter to the chairman of the Foreign Relations Committee urging that there be hearings, but I have not been pressing for a vote on the treaty.

The politics of the issue do not interest me. But the propriety of this unanimous consent agreement does. Simply put, it is the wrong thing to do on a matter as important and as weighty as an arms control treaty.

The Senate Armed Services Committee began a series of hearings on the CTBT just this week, and I commend the distinguished chairman of the Committee, Senator WARNER, and the distinguished ranking member, Senator CARL LEVIN, for their efforts and commitment to bring this matter before the Senate and to have hearings conducted thereon.

The first hearing, on Tuesday, was a highly classified and highly informative briefing by representatives of the CIA and the Department of Energy. I wish that all of my colleagues had the opportunity to hear the testimony given at that hearing, and to question the witnesses. Unfortunately, only the members of the Senate Armed Services Committee were privy to that information. I should say the distinguished ranking member of the Senate Foreign Relations Committee, Mr. BIDEN, was present also.

The second hearing, yesterday, brought before the Committee Defense Secretary Bill Cohen; General Henry Shelton, the chairman of the Joint Chiefs of Staff; Dr. James Schlesinger, the former Secretary of Defense and Energy; and General John Shalikashvili, former Chairman of the Joint Chiefs. Again, their testimony was very illuminating. I wonder how many of my colleagues, outside of the Armed Services Committee, and Mr. BIDEN, had the opportunity to follow that hearing—which lasted almost five hours—given the crush of other important business on the Senate floor?

My coilleagues simply haven't had the opportunity to do it, other than those of us on the Armed Services Committee.

I wonder how many of my colleagues have had an opportunity, since the vote on the CTBT was scheduled last week, to analyze, question, and digest the testimony and the opinions of the distinguished officials that the Committee heard from yesterday? I wonder, for example, how many of my colleagues heard from Secretary Cohen that a new National Intelligence Estimate that will have a major bearing on the consideration of this Treaty is due to be completed early next year? It is my judgment that the Senate should have that assessment in hand before it considers imposing a permanent ban—a permanent ban—on nuclear testing.

The Armed Services Committee held its third, and I believe final, hearing on the CTBT this morning. The witnesses included Energy Secretary Bill Richardson, as well as the current directors of the nuclear weapons laboratories, and a selection of arms control experts, including a former director of one of the labs. Again, it was an extraordinarily informative hearing.

I was there for most of it. Unfortunately, I was scheduled to go elsewhere near the close of the hearing. But it was an extraordinarily informative hearing. The laboratory directors were candid and forthcoming in their observations. They raised a number of important issues. I wonder how many of our colleagues here, outside the membership of the Armed Services Committee, heard those.

I have attended every hearing and every briefing available this week in order to prepare myself for tomorrow's debate. But I did not prepare myself before this agreement was entered into. When the agreement came to my office and I objected and found that I objected too late, then I bestirred myself to learn more about this treaty. I have listened to witnesses, and I have questioned witnesses. I still have many questions—more now than when I started.

I wonder how many of my colleagues—particularly those who have not had the same entree that members of the Senate Armed Services Committee have had to this week's hearings—have questions about this treaty. With the exception of Senator BIDEN—and, incidentally, Senator BIDEN is very knowledgeable about the treaty. He has studied it thoroughly and is very conversant with the details of the treaty. Perhaps some of the other members of the Foreign Relations Committee have done likewise. But other than that committee and the Committee on Armed Services, I daresay that few Senators have had an opportunity to engage themselves in a study of the treaty and even fewer, perhaps, have had the opportunity to hear witnesses and to question those witnesses.

But, with the exception of Senator BIDEN, not even the members of the Senate Foreign Relations Committee have had the opportunity to hear and question the witnesses who appeared before the Armed Services Committee this week. I wonder how many of my colleagues will participate in the debate tomorrow and how many will participate in the debate next Tuesday. These days are bookends around the holiday weekend when no votes are scheduled after this evening until 5:30 p.m. Tuesday at the earliest. I am confident that many Senators have important commitments in their home States that may conflict with this debate. Does anyone in this Chamber seriously believe we can give the Comprehensive Test Ban Treaty the consideration it deserves in the amount of time that has been set aside to debate it?

Beyond the question of time, Mr. President, is an even more disturbing question: The propriety of considering a major treaty under the straitjacket of procedural constraints in which only two amendments, one by each leader, will be in order. I have questions since I have read this treaty. I have reservations. Perhaps they will be put to rest by the debate. Or, it may be, as I continue to study the treaty and listen to the debate, that I would want to offer an amendment myself. I might want to offer an understanding or a condition.

I might want to offer a reservation. I have done so on other treaties. It may be that some of my colleagues would wish to do likewise. We do not have that opportunity under this unanimous-consent agreement, with the exception of our two fine leaders. I know that they will go the extra mile, as they always do, to accommodate the concerns of the Members. But they, too, are in a cul-de-sac—only one way in, one way out. They are limited to one amendment each. Without exception, the other 98 Members of the Senate are effectively shut out from expressing, in any meaningful and binding way, reservations or concerns about this treaty.

Mr. President, that is not the way to conduct the business of weighing a resolution dealing with the supreme law of the land. We might do that on an agriculture bill. We might do it on a bill making appropriations for the Department of the Interior. But this is a treaty we are talking about. A law can be repealed a year later but not a treaty.

For the good of the Nation, this unanimous consent agreement ought to be abandoned, and there are ways to do it. It is a unanimous-consent agreement, I understand that, and ordinarily a unanimous-consent agreement can only be vitiated by unanimous-consent, or it can be modified by unanimous consent. But there are ways to avoid this vote. I urge my colleagues to put politics aside in this instance, at least, and to seek a consensus position on considering a comprehensive test ban treaty that upholds the dignity of the United States Senate and accords the right to United States Senators to debate and to amend.

One need only read Madison's notes concerning the debates at the Convention to understand the importance of treaties in the minds of the framers.

We are talking here not about an appropriations bill; we are not talking about a simple authorization bill; we are talking about something that affects the checks and balances, the separation of powers that constitutes the cornerstone of our constitutional system in this Republic. This is one of those checks and balances; this involves the separation of powers. The Senate, under the Constitution, has a voice in the approval of treaties. The President makes the treaty, by and with the consent of the United States Senate.

I was here when we considered the Test Ban Treaty of 1963. I was on the Armed Services Committee at that time. I listened to Dr. Edward Teller, an eminent scientist who opposed that treaty. I voted against that treaty in 1963. I opposed it largely on the basis of the testimony of Dr. Edward Teller.

We need to listen to the scientists. We need to listen to others in order that we might make an appropriate judgment. Who knows how this will affect the security interests of the United States in the future. This is a permanent treaty. It is in perpetuity, so it is not similar to a bill. As I say, we can repeal a law. But not this treaty. This treaty is in perpetuity—permanent. Maybe that is all right, but we need more time to study and consider it.

We are told that the polls show the people of the Nation are overwhelmingly in favor of this treaty. I can trust the judgment of the people generally, but the people have not had the opportunity to study the fine print in this treaty. Most Senators have not. This is not a responsibility of the House of Representatives. This is the responsibility solely of the Senate under the Constitution of the United States. It is a great burden, a great responsibility, a very high duty, and we must know what we are doing.

I have heard dire warnings as to what a rejection of the treaty might mean. One way to have it rejected fast, I am afraid, is to go through with this vote. But then how can we make up for it if we find we have made a mistake? If we find that we are wrong, it may be too late then. We had better stop, look, and listen and understand where we are going. We need more hearings.

I hope we will put politics aside in this instance and seek a consensus position on considering a comprehensive test ban treaty that upholds the dignity of the United States Senate. I am an institutionalist. I have an institutional memory. I have been in this body for 41 years, and I have taken its rules seriously. I believe the framers knew what they were doing when they vested the responsibility in the Senate to approve or to reject treaties. We ought not take that responsibility lightly. The very idea of the unanimous-consent request says Senators cannot offer reservations; they cannot offer conditions; they cannot offer amendments; they cannot offer understandings.

Let us so act that we reflect the importance of the treaty. Reject it if you will or approve it if you will, but let's do it with our eyes open. Let's not put on blinders. Let's not bind our hands and feet and mouths and ears and minds with a unanimous-consent agreement that will not allow unfettered debate or amendments.

Let the Senate be the institution the framers intended it to be.

I have not said how I shall vote on the treaty. I want to understand more about it. But I want other Senators to have an opportunity to understand it as well.

Mr. President, I thank Senators for listening, and for their patience in indulging these remarks.

I yield the floor.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER (Mr. ALLARD). The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, first let me commend the distinguished Senator from West Virginia for those very thoughtful remarks on the Comprehensive Test Ban Treaty.

I share his concern about the timing of the vote. I think the Senate is not yet ready to vote. My view is that there should have been hearings a long time ago. I attended part of the hearings—closed-door hearings—in S–407 on Tuesday of this week. They lasted about 5 hours.

I concur with the Senator from West Virginia that it is a very complex subject. I had studied the matter and had decided to support it. But I do think more time is necessary for the Senate as a whole—not just to have a day of debate on Friday and a day of debate on Tuesday and to vote on it. I think the Senate ought to ratify, but only after adequate consideration has been given to it. While the United States has been criticized for not taking up the treaty, if we were to reject it out of hand on what appears to be a partisan vote, it would be very disastrous for our foreign policy.

So I thank the Senator from West Virginia for his customary very erudite remarks on the Senate floor.

Mr. BYRD. I thank the distinguished Senator for his enlightened remarks. And, as always, he approaches a matter with an open mind, devoid of politics, and with only the interest of doing good, not harm; and that is his response in this instance.

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2000—Continued

Mr. SPECTER. Mr. President, we are now prepared to move on to our next amendment. I ask unanimous consent that there be 30 minutes equally divided prior to a motion to table on the amendment to be offered by the distinguished Senator from New Hampshire, Mr. SMITH, relative to Davis-Bacon, and no amendments be in order prior to a vote in relation to the amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. SMITH of New Hampshire addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

AMENDMENT NO. 1844

(Purpose: To limit the applicability of the Davis-Bacon Act in areas designated as disaster areas)

Mr. SMITH of New Hampshire. Mr. President, I call up my amendment No. 1844 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Hampshire (Mr. SMITH) proposes an amendment numbered 1844.

Mr. SMITH of New Hampshire. Mr. President, I ask unanimous consent 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. . No funds appropriated under this Act may be used to enforce the provisions of the Act of March 3, 1931 (commonly known as the Davis-Bacon Act (40 U.S.C. 276a et seq.)) in any area that has been declared a disaster area by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

Mr. SMITH of New Hampshire. Mr. President, this is a very simple, straightforward amendment that would prohibit enforcing Davis-Bacon prevailing wage requirements in areas designated by the President as natural disaster areas. Section 6 of the Federal Davis-Bacon Act allows the President to suspend this act in the event of a national emergency.

I think all of us would agree, especially those Senators in North Carolina and in Virginia as well, that we did have a national emergency with Hurricane Floyd.

Pursuant to this authority, President Bush suspended Davis-Bacon in 1992 to help speed up and lower the cost of rebuilding the communities ravaged by Hurricanes Andrew and Iniki.

So Hurricane Floyd has dealt this tremendous blow to the residents of the eastern seaboard, from Florida to North Carolina, even as far as New York. FEMA has called this one of the biggest multistate disasters in U.S. history. Many States believe cleanup costs from Hurricane Floyd will far exceed the costs of either Hurricanes Fran or Hugo. So relaxing the Davis-Bacon provisions in these hard-hit States will lower tremendously the cost of rebuilding these communities and help create job opportunities for those in need of work.

Many people come to these communities and volunteer their time to help their friends and relatives and neighbors in need, and others cut their costs of services to help these unfortunate