Congress thus to define and limit the jurisdiction of the inferior courts of the United States.

Having been reaffirmed on a number of occasions (see *Boys Market* v. *Retail Clerks Union*, 398 U.S. 235 (1970)), Lauf is clearly authority for the proposition that there is no inherent power in these courts to issue injunctions in contravention of statutory provisions.

The present legislation is not only similar in structure to the Norris-LaGuardia Act but is motivated by much the same difficulties. In each instance, policies adopted by representative legislative bodies, in important areas of substantive public controversy, have been nullified and overturned by a single appointed Federal judge. Policies that have been adopted through the arduous give and take and compromise of the legislative process have been summarily rejected by individual judges.

The Human Life Anti-Injunction Act would not entirely remove the subject matter jurisdiction over abortion from the Federal courts. It would simply require that injunctions or restraining orders on the matter of abortions—a matter concerning which I and many others would argue individual life is at stake—be issued by the highest and most final court of the land. In addition, State courts would be permitted to issue such orders subject, of course, to State law.

Federal law presently prohibits the issuance of injunctions by Federal courts against nonviolent labor union activities, as well as those impeding utility rate changes. I do not believe that we can tolerate hasty decisionmaking in the area of abortion any more than we can in these areas. Innocent lives have been lost by the tens of thousands while lower court decisions in such cases as *McMaher* v. *Roe*, 432 U.S. 464 (1977), or *McRae* v. *Harris*, No. 79-1268 (1980), have wended their way to the Supreme Court only to have the Court reaffirm an elected legislature's right to refuse to fund abortions. Whatever substantive decisions are ultimately reached by the judicial branch on these issues, I simply do not feel that we can continue to allow the considered judgment of representative bodies to be subordinated during that period of time prior to a high court decision.

I would refer my colleagues to an outstanding article on this subject that I placed in the CONGRESSIONAL RECORD during the last Congress. It is entitled, "A Wink From the Bench: The Federal Courts and Abortion" by Prof. Basile Uddo (Tulane Law Review) and appeared on page S18740 of the December 15, 1979, RECORD. I ask unanimous consent that the bill be printed in the RECORD.

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

S. 583

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any other provision of law, a court of the United States may not issue any restraining order or temporary or permanent injunction in any case—

(a) involving or arising out of any Federal or State law or municipal ordinance that prohibits, limits, or regulates abortion (including any such law or ordinance relating specifically to abortion clinics or persons that provide abortions); or

(b) involving or arising out of any Federal or State law or municipal ordinance that prohibits, limits, or regulates the provision at public expense of funds, facilities, personnel, or other assistance for the performance of abortions.

SEC. 2. As used in this Act, the term "court of the United States" means any court, other than the United States Supreme Court, established by or under Article III of the Constitution of the United States.

By Mr. HATCH:

S. 584. A bill to amend section 1979 of the Revised Statutes (42 U.S.C. 1983), relating to civil actions for the deprivation of rights, to limit the applicability of that statute to laws relating to equal rights; to the Committee on the Judiciary.

S. 585. A bill to provide a special defense to the liability of political subdivisions of States under section 1979 of the Revised Statutes (42 U.S.C. 1983) relating to civil actions for the deprivation of rights; to the Committee on the Judiciary.

MUNICIPAL LIABILITY UNDER SECTION 1983

Mr. HATCH. Mr. President, during the post-Civil War Reconstruction era, the 42d Congress passed the Civil Rights Act of 1871 to protect persons from the deprivation, under the color of State law, "of any rights, privileges, or immunities secured by the Constitution of the United States." The Revised Statutes of the United States enacted in 1874, contained a remedial provision, now 42 U.S.C. 1983, for securing these rights. I am in strong agreement with the intent of these laws—to guarantee to every American the rights secured by the Constitution and laws providing for equal rights. Indeed, I feel one of our most sacred obligations is to insure the constitutional rights of all our citizens.

However, in two cases decided last year, the Supreme Court significantly broadened the interpretation of section 1983 in ways that have little or nothing to do with anyone's constitutional rights but will wreak havoc in the ability of our State and local governments to perform important services to the public.

In the case of *Maine* v. *Thiboutot*, U.S. , 100 S.Ct. 727 (1980), the Court expressly ruled, for the first time ever, that the phrase "and laws" was intended by Congress to provide a section 1983 remedy for deprivations of rights secured by any law of the United States. Civil actions may now be brought against State and local officials under 42 U.S.C. 1983 based on violations of laws which have no relevance whatsoever to deprivations of constitutional or statutory equal rights.

In *Owen* v. *City of Independence*, 445 U.S. 622 (1980), the Court held that local governmental entities may not assert the good faith of their agents as a defense to liability under section 1983 suits. In other words, a local government may be liable in damages for violating a constitutional right that was unknown when the event occurred.

The burdens imposed by these holdings will be onerous. At the very least, our crowded courts will become even more crowded; our tax dollars will increasingly be spent in damage suits instead of providing needed services; further, our State and local governments will be paranoid to the point of paralysis lest their action or inaction be later interpreted as unconstitutional and thus subject to costly damage suits.

The Court has been careful to point out in many of its section 1983 cases, including Owen and Thiboutot, that Congress could, if it chose to do so, modify the statute or limit its application to certain types of statutes. Although the Supreme Court has been far from unimaginative in its section 1983 decisions over the last 20 years, its most recent interpretation of congressional silence compels us to let our voice be heard on this matter.

Mr. President, because the Court's recent rulings, in the cases of Maine against Thiboutot and Owen against City of Independence, involve areas of the law which are better left to Congress than to judicial activism, I wish to introduce some relatively simple, yet important amendments to 42 U.S.C. 1983. I want to emphasize that my amendments will not compromise the intent of section 1983—to provide persons with a remedy for violations of rights secured by the Constitution and laws providing for equal rights.

MAINE VS. THIBOUTOT

The Thiboutots were recipients of AFDC benefits administered by the Maine Department of Human Services. The amount paid to the family was calculated on the number of dependents of Mr. Thiboutot—three children from a previous marriage—rather than on the number of dependents he and his present wife claimed. Their petition for a reassessment of the benefits was based on amounts due them as parents of eight children. The Superior Court of Maine, in an order affirmed by the Supreme Judicial Court of Maine, required the agency to make the requested changes and adopt new policies for similar cases. The supreme judicial court also awarded attorney's fees, 405 A.d 230 (Me. 1979); on appeal, the Supreme Court of the United States affirmed.

The Court observed that the debate over the "scanty legislative history" of section 1983 did not result in a definitive answer on the intended scope of section 1983. Justice Brennan, writing for the majority of the Court, interpreted the "plain language" of section 1983 as providing a broad base for claims arising not only out of violations of constitutional rights, but also out of statutory rights unrelated to equal rights. Such claims are not limited to constitutional rights or equal rights created by statute, reasons Justice Brennan, because the section merely states "and laws" and "Congress attached no modifiers" to explain what type of laws were intended to be covered by the section.

The result is that a cause of action under section 1983 may now rest on the violation or deprivation of any rights secured by any statute. In other words, a disgruntled citizen, feeling that an

official deprived him or her of some benefit under a program provided for by Federal law, may sue that official for damages under section 1983. Prior to this decision, section 1983 cases only involved rights secured by the Constitution and statutes which provided for equal rights. Now the Court has transformed this remedy into a catchall cause of action for the redress of any infringement of statutory rights.

In his dissenting opinion, Justice Powell, joined by the Chief Justice and Justice Rehnquist, stated that the "legislative history alone refutes the Court's interpretation of section 1983," and, further, that "until today this court never had held that section 1983 encompasses all purely statutory claims."

CONSEQUENCES OF THIBOUTOT

Even if we assume that the Court's interpretation of legislative history and legal precedent are correct, an assumption that is questionable at best, the devastating effect of the decision in Thiboutot on our State and local governments would necessitate our action.

Commenting on the ruling in Thiboutot, the Wall Street Journal said that it—

Couldn't do more harm if it were deliberately designed to subvert the federal system and bankrupt cities from coast to coast.

I do not think this statement is too far off the mark.

Justice Powell illustrates the new areas likely to be affected by the Court's extension of liability. I include the appendix to his opinion at this point because of the importance of understanding the extent to which this holding will intrude into the performance of State and local government officials.

Note the wide range of programs included in the list:

A small sample of statutes that arguably could give rise to § 1983 actions after today may illustrate the nature of the "civil rights" created by the Court's decision. The relevant enactments typically fall into one of three categories: (A) regulatory programs in which States are encouraged to participate, either by establishing their own plans of regulation that meet conditions set out in federal statutes, or by entering into cooperative agreements with federal officials; (B) resource management programs that may be administered by cooperative agreements between federal and state agencies; and (C) grant programs in which federal agencies either subsidize state and local activities or provide matching funds for state or local welfare plans that meet federal standards.

A. JOINT REGULATORY ENDEAVORS

1. Federal Insecticide, Fungicide, and Rodenticide Act, 86 Stat. 973 (1972), as amended, 7 U.S.C. §§ 136 et seq.; see, e.g., 7 U.S.C. §§ 136u, 136v.

2. Federal Noxious Weed Act of 1974, 88 Stat. 2148 (1975), 7 U.S.C. §§ 2801–2813; see 7 U.S.C. § 2808.

3. Historic Sites, Buildings, and Antiquities Act, 49 Stat. 666 (1935), as amended, 16 U.S.C. §§ 461–467; see 16 U.S.C. § 462(e).

4. Fish and Wildlife Coordination Act, 48 Stat. 401 (1934), as amended, 16 U.S.C. § 661–666c; see 16 U.S.C. § 661.

5. Anadromous Fish Conservation Act, 79 Stat. 1125 (1965), as amended, 16 U.S.C. § 757a–757d; see 16 U.S.C. § 757a(c).

6. Wild Free-Roaming Horses and Burros Act, 85 Stat. 649 (1971), as amended, 16 U.S.C. §§ 1331–1340; see 16 U.S.C. § 1336.

7. Marine Mammal Protection Act of 1972, 86 Stat. 1027, as amended, U.S.C. §§ 1361–1407; see 16 U.S.C. § 1379.

8. Wagner-Peyser National Employment System Act, 48 Stat. 113 (1933), 29 U.S.C. §§ 49 et seq.; see 29 U.S.C. § 49g (employment of farm laborers).

9. Surface Mining Control and Reclamation Act of 1977, 91 Stat. 447, 30 U.S.C. §§ 1201–1328; see 30 U.S.C. § 1253.

10. Interstate Commerce Act Amendments of 1935, 49 Stat. 548, as amended, 49 U.S.C. § 11502(a)(2) (enforcement of highway transportation law).

B. RESOURCE MANAGEMENT

1. Laws involving the administration and management of national parks and scenic areas: e.g., Act of May 15, 1965, § 6, 79 Stat. 111, 16 U.S.C. § 2die (Nez Perce National Historical Park); Act of Sept. 21, 1959, § 3, 73 Stat. 591, 16 U.S.C. § 410u (Minute Man National Historical Park); Act of Oct. 20, 1972, § 4, 86 Stat. 1302, 16 U.S.C. § 460bb–3(b) (Muir Woods National Monument).

2. Laws involving the administration of forest lands: e.g., Act of March 1, 1911, § 2, 36 Stat. 961, 16 U.S.C. §§ 563; Act of Aug. 29, 1935, ch. 808, 49 Stat. 963, 16 U.S.C. §§ 567a–567b.

3. Laws involving the construction and management of water projects: e.g., Water Supply Act of 1958, § 301, 72 Stat. 319, 43 U.S.C. §390b; Boulder Canyon Project Act, §§ 4, 8, 45 Stat. 1058, 1062 (1928), as amended 43 U.S.C. §§ 617c, 617g; Rivers and Harbors Act of 1899, § 9, 30 Stat. 1151, 33 U.S.C. § 401.

4. National Trails System Act, 82 Stat. 919 (1968), as amended, 16 U.S.C. §§ 1241–1249; see 16 U.S.C. § 1246(h).

5. Outer Continental Shelf Lands Act Amendment of 1978, § 208, 92 Stat. 652, 43 U.S.C. § 1345 (oil leasing).

C. GRANT PROGRAMS

In addition to the familiar welfare, unemployment, and medical assistance programs established by the Social Security Act, these may include:

1. Food Stamp Act of 1964, 78 Stat. 703, as amended, 7 U.S.C. § 2011–2025; see, e.g., 7 U.S.C. § 2020(e)–2020(g).

2. Small Business Investment Act of 1958, § 602(d)(1), 72 Stat. 698, as amended, 15 U.S.C. §636(d).

3. Education Amendments of 1978, 92 Stat. 2153, as amended, 20 U.S.C. §§ 2701 et seq.; see, e.g., 20 U.S.C. §§ 2734, 2902.

4. Federal-Aid Highway legislation, e.g., 21 U.S.C. §§ 128, 131.

5. Comprehensive Employment and Training Act Amendments of 1978, 92 Stat. 1909, 29 U.S.C. §§ 801 et seq.; see, e.g., 29 U.S.C. §§ 823, 824.

6. United State Housing Act of 1937, as added, 88 Stat. 653 (1974), as amended, 42 U.S.C. § 1437 et seq.; see, e.g., 42 U.S.C. §§ 1437d(c), 1437j.

7. National School Lunch Act, 60 Stat. 230 (1946), as amended, 42 U.S.C. §§ 1751 et seq.; see, e.g., 42 U.S.C. § 1758.

8. Public Works and Economic Development Act of 1965, 79 Stat. 552, as amended, 42 U.S.C. §§3121 et seq.; see, e.g., 42 U.S.C. §§ 3132, 3151a, 3243.

9. Justice System Improvement Act of 1979, 93 Stat. 1167, 42 U.S.C. §§ 3701–3797; see, e.g., 42 U.S.C. §§ 3742, 3744(c).

10. Juvenile Justice and Delinquency Prevention Act of 1974, 88 Stat. 1109, as amended, 42 U.S.C. §§ 5601 et seq.; see, e.g., 42 U.S.C. § 5633.

11. Energy Conservation and Production Act of 1976, 90 Stat. 1125, as amended, 42 U.S.C. §§ 6801 et seq.; see, e.g., 42 U.S.C. §§ 6805, 6836.

12. Developmentally Disabled Assistance and Bill of Rights Act, 89 Stat. 486 (1975), as amended, 42 U.S.C. §§ 6001 et seq.; see, e.g., §§ 6011, 6063.

13. Urban Mass Transportation Act of 1964, 78 Stat. 302, as amended, 49 U.S.C. §§ 1601 et seq.; see, e.g., §§ 1602, 1604(g)(m).

Mr. HATCH. Now, "virtually every . . . program, together with the State officials who administer [them] becomes subject to judicial oversight at the behest of a single citizen, even if such a dramatic expansion of Federal court jurisdiction never would have been countenanced when these programs were adopted." See *Chapman* v. *Houston Welfare Rights Org.*, 441 U.S. 600, 645 (1978), (concurring opinion, Justice Powell).

Ironically, with the expenses of increased litigation and court ordered spending that will accompany this decision, local governments will be less able to implement federal programs than they were before the ruling in Thiboutot. In addition, as if this expanded liability was not enough to invite a deluge of litigation, the Court opened the floodgates further by ruling that attorney's fees are available in any section 1983 action. Thus, there is even more incentive to initiate litigation.

This is not to say that a person should be without remedy when truly deprived; on the contrary, causes of action are provided for by many statutes. When necessary, Congress, not the Courts, should create specific statutory rights such as the remedies included in many of the programs listed by Justice Powell. However, the use of section 1983 as an all-inclusive remedy is not appropriate. Justice Powell summed up the effect of the Thiboutot decision:

No one can predict the extent to which litigation from today's decision will harass state and local officials; nor can one foresee the number of new filings in our already over-burdened courts. But no one can doubt that these consequences will be substantial.

As we all know, our local governments face the problem of providing services to the public with limited budgets. Our State and local governments are already strapped. Why should we leave them in a straitjacket?

PROPOSED AMENDMENT

My amendment to section 1983 would add the words "and by any law providing for equal rights" in the place of the ambiguous and broad "and laws" language. The text would then read:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and by any law providing for equal rights of citizens or of all persons within the jurisdiction of the United States, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

This wording would provide that section 1983 actions be based on deprivations of those rights secured by the Constitution and by those laws which provide for equal rights. Thus, State and local governments would not face the harassment that is sure to follow the decision in Thiboutot, and, at the same time, the civil rights of individuals will be protected as Congress originally intended.

OWEN VERSUS CITY OF INDEPENDENCE

In this case, a dismissed city police chief sued the city, city manager, and city council for violating his due process rights. The Supreme Court, reversing the court of appeals, held that the city was liable to the police chief because its ordinance allowing his summary dismissal was unconstitutional and went against the Court's holdings in *Roth* v. *Board of Regents*, 408 U.S. 564 (1972) and *Perry* v. *Sindermann*, 408 U.S. 593 (1972). These decisions had been handed down after the actions taken by the city. Therefore, the district court had allowed a good faith defense because the city and its officials could not have anticipated the Supreme Court's future interpretations of constitutional law. The Supreme Court, however, disallowed the good faith defense and held the city liable even though it had no way of predicting the Court's actions. The Court reasoned that since Congress was silent on municipal immunity, no immunity was intended.

Justice Powell, joined by the Chief Justice, Justice Rehnquist, and Justice Stewart, stated in dissent:

This strict liability approach inexplicably departs from this court's prior decisions under section 1983 and runs counter to the concerns of the 42nd Congress when it enacted the statute. The court's ruling also ignores the vast weight of common-law precedent as well as the current state of municipal immunity.

The dissenters also noted that—

Municipalities . . . have gone in two short years from absolute immunity under section 1983 to strict liability.

CONSEQUENCES OF OWEN

Again, even if we accept the questionable use of legislative history and legal precedent, the policy considerations of this ruling force us to act. The ruling is not only unfair in holding a city responsible for violating a right which first came into existence after the city acted, but it is also detrimental in shackling local governments with the need to predict future Federal court decisions. In this ruling, the Court has administered what could be, for many of our local governments, a fatal dose of municipal immobilization.

While the Court could find no reason for any immunity for local governments, it has given numerous reasons for immunity to government officials such as judges, police officers, school board members, prison officials, and prosecutors. In Owen, the Court stated that—

We concluded that overriding considerations of public policy nonetheless demanded that the official be given a measure of protection from personal liability.

The Court's justification for individual immunity was—

That the threat of personal monetary liability will introduce an unwarranted and unconscionable consideration into the decision making process, thus paralyzing the governing official's decisiveness and distorting his judgment on matters of public policy.

Justice Harlan also listed reasons for granting immunity to Government officials:

Officials of government should be free to exercise their duties unembarrassed by the fear of damage suits in respect of acts done in the course of those duties—suits which would consume time and energies which would otherwise be devoted to government service . . . *Barr* v. *Matteo*, 360 U.S. 564.

The Court stated that these considerations did not apply when the damage award comes from the public treasury instead of the official's pocket.

With such reasoning, the Court must assume that our State and local governments are guided by irresponsible individuals who would be prudent with their own money but would not flinch at the risk of depleting the public treasury. This type of official is not characteristic of the men and women I have associated with, in Utah and throughout the country, who take seriously their trust over the taxpayer's money. State and local leaders like these will be forced to continually look over their shoulder and into the mind of the Federal judiciary to determine future decisions—lest ruinous judgments threaten municipal solvency. Each decision must be made with constant consideration of section 1983 liability, and the officials will no doubt feel the pressure of accountability to citizens and colleagues for costly judgments. Also, small towns, were retained counsel is an unaffordable luxury, will now be forced to cut back on some service to try to protect themselves by retaining counsel. Do all these concerns not represent, "an unwarranted and unconscionable consideration into the decisionmaking process?" Since a municipality's actions are essentially the actions of its chief officials and since most of our local officials are conscientious in their stewardship over public funds, I see little logic in distinguishing between the actions of the municipality and the acts of the individual officials; therefore, the dire effects that the Court sees in a lack of immunity for an individual official also apply to the lack of municipal immunity.

The Court also reasoned that the municipality's liability for constitutional violations is a proper concern of its officials. I certainly agree that the constitutional rights of individuals should be of the utmost concern in the decisions of municipalities and that they should be liable for violations of existing constitutional rights, but I do not agree that municipalities should be immobilized by rights that have not been invented yet. I do not think that the Supreme Court itself could predict future constitutional rights—in the Owen case, for example, four justices found no constitutional violation while five found that there was a violation. Local governments will need more than counsel, they will need a crystal ball.

Furthermore, the doctrine of separation of powers provides that some government decisions should be insulated from review by the courts. A costly damage judgment or court-ordered spending, where officials have acted in good faith, represents a needless intrusion into municipal decisionmaking. As Justice Powell noted in Owen:

The allocation of public resources and the operational policies of the government itself are activities that lie peculiarly within the competence of the executive and legislative bodies. When charting those policies, a local official should not have to gauge his employer's possible liability under section 1983 if he incorrectly—though reasonably and in good faith—forecasts the course of constitutional law. Excessive judicial intrusion into such decisions can only distort municipal decision-making and discredit the courts. Qualified immunity would provide presumptive protection for discretionary acts, while still leaving the municipality liable for bad faith or unreasonable constitutional deprivations.

Another problem, as Justice Powell pointed out, is that the Court's decision in this case is completely out of step with the prevailing situation of the law of municipal immunity in the States. Most States have some form of immunity, the most common being a qualified immunity. Only five States practice the form of blanket immunity introduced by the Court in Owen.

Finally, Judge Learned Hand once observed:

To submit all officials, the innocent as well as the guilty to the burden of a trial and to the inevitable danger of its outcome, would dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties. Again and again, the public interest calls for action which may turn out to be founded on a mistake, in the face of which an official may later find himself hard put to it to satisfy a jury of his good faith. There must indeed be a means of punishing public officers who have been truant at their duties; but that is quite another matter from exposing such as have been honestly mistaken to suit by anyone who has suffered from their errors. As is so often the case, the answer must be found in a balance between the evils inevitable in either alternative. In this instance it has been thought in the end better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation. *Gegoire* v. *Biddle*, 177F. 2d 579, 581. Quoted in *Barr* v. *Matteo*.

PROPOSED AMENDMENT

In its Owen decision, the Court provides for municipal liability because Congress had not provided for municipal immunity. The second amendment which I propose today will provide that municipalities and other political subdivisions of States shall have a good faith defense in section 1983 actions. This new section on the liability of political subdivisions will read:

No civil action may be brought against a political subdivision of a State under this section if the political subdivision acted in good faith with a reasonable belief that the actions of the political subdivision were not in violation of any rights, privileges, or immunities secured by the Constitution or by laws providing for equal rights of citizens or persons.

Section 1983 will continue to allow recovery when there has been an intentional or bad faith violation by the municipality, or, in other words, when officials "knew or should have known that their conduct violated the constitutional norm." (*Procunier* v. *Navarette*, 434 U.S., a 562.) Municipalities will be protected when they have acted in good faith. This amendment strikes an equitable balance between two very important considerations—the constitutional rights of individuals and the ability of local governments to serve all the people.

CONCLUSION

Evidently tired of waiting for Congress to break its silence on the intended scope of 42 U.S.C. 1983, the Supreme Court has rendered decisions in Maine against Thiboutot and Owens against City of Independence which will severely impair the ability of our local governments to serve the people, while doing little for individual constitutional rights. These rulings require that Congress let its voice be heard. Justice Rehnquist foresaw such a need in his dissenting opinion in Monell against City of New York Department of Social Services:

> Only Congress, which has the benefit of the advice of every segment of this diverse nation, is equipped to consider the results of such a drastic change in the law. It seems all but inevitable that it will find it necessary to do so after today's decision. *Monell v. City of New York Department of Social Services*, 436 U.S. 658, 715 (1978) (dissenting opinion).

I therefore urge immediate action to avoid the onerous consequences of the rulings in Thiboutot and Owen by the adoption of these two important amendments to section 1983.

I ask unanimous consent that the text of these bills be printed in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 584

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1979 of the Revised Statutes (42 U.S.C. 1983) is amended by striking out "and laws" and inserting in lieu thereof the following: "and by any law providing for equal rights of citizens or of all persons within the jurisdiction of the United States".

S. 585

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1979 of the Revised Statutes (42 U.S.C. 1983) is amended by inserting "(a)" before "Every" and by adding at the end thereof the following new subsection:

"(b) No civil action may be brought against a political subdivision of a State under this section if the political subdivision acted in good faith with a reasonable belief that the actions of the political subdivision were not in violation of any rights, privileges, or immunities secured by the Constitution or by laws providing for equal rights of citizens or persons.".

By Mr. HATCH:

S. 586. A bill to amend the Privacy Act of 1974; to the Committee on Governmental Affairs.

S. 587. A bill to amend the Freedom of Information Act and to effect other changes in the law for the purpose of increasing the ability of law enforcement agencies to protect the public security; to the Committee on the Judiciary.

FREEDOM OF INFORMATION ACT AND PRIVACY ACT AMENDMENTS

Mr. HATCH. Mr. President, today I am re-introducing two pieces of legislation from the 96th Congress. First, the Law Enforcement and Public Security Act—would amend the Freedom of Information Act, and the other would amend the Privacy Act. Both bills are designed to enhance the ability of law enforcement agencies to protect the public security.

Over the course of 1977 and 1978, I participated in a series of hearings dealing with the erosion of law enforcement intelligence and the impact that this erosion has had on all aspects of public security—from the physical security of the patient in a hospital to the security of nuclear powerplants. The hearings were held under the auspices, first, of the Senate Subcommittee on Internal Security and, later, under the auspices of the Senate Subcommittee on Criminal Laws and Procedures. In these hearings, we took the testimony of scores of law enforcement officials at the Federal, State, and local levels. A good deal of the testimony had to do with the impact of the Freedom of Information Act and the Privacy Act.

I want to emphasize that I strongly support the basic purposes of these acts. But, it is in the nature of new legislation such as these measures that it is often impossible to predict all future consequences. As often as not, even prudent legislation must be reexamined after a trial period of several years. I believe that the time has come for a reexamination of the privacy legislation now on the books, particularly as it relates to the issue of security in our society.

The law enforcement witnesses whose testimony we took largely agreed on the point that the Freedom of Information Act and Privacy Act had brought important benefits. Among other things, they said that this legislation had assisted in the restoration of public confidence in Government and in criminal justice law enforcement. Witness after witness, however, testified that the Freedom of Information and Privacy Acts have also impaired legitimate law enforcement and intelligence activities. They all recommended that these laws be amended with a view toward striking a better balance between legitimate rights of privacy and equally legitimate ones of law enforcement. Last year, FBI Director Webster formally submitted a carefully drawn set of amendments which he felt were essential to more effective law enforcement.

No one proposes the abolition of the Freedom of Information or Privacy Acts. As Prof. Charles Rice of the Notre Dame Law School observed before the subcommittee:

> What is necessary now is not a dismantling of those statutes but rather corrective surgery to bring them more into line with their original and laudable purpose.

Mr. President, I would like to briefly describe the major provisions of these pieces of legislation.

SECTION 2

As matters now stand, Government agencies are required to respond within 10 days to freedom of information requests. It is universally recognized that this time limit is arbitrary and unachievable with the best of intent. Government agencies today will in most instances acknowledge the receipt of request within 10 days of its arrival. In the very great majority of cases, however, requests take substantially more than 10 days to process. In part, this is because of the serious backlog of requests in most Government agencies; in part, it is due to the fact that those responsible for writing the laws simply failed to take into account the enormous amount of time that would be required to go through files containing sensitive information on a page by page, paragraph by paragraph, word by word basis.

All of the witnesses from Government agencies who testified before the Senate Subcommittee on Internal Security (later the Subcommittee on Criminal Laws and Procedures) were agreed on the point that the 10-day time limit was completely unworkable. The amendment to FOIA suggested in section 2—which closely parallels the recommendations of the FBI on this point—is designed to provide agencies with more realistic time limits in which to respond. The time limit in the case of each request would be prorated against the number of record pages encompassed by the request.

SECTION 4

FOIA exempts certain categories of information from the requirement of release. The purpose of this section is to expand the list of exemptions to cover areas not now exempted by FOIA.

Testimony taken by the Subcommittee on Internal Security established that the U.S. Customs had been obliged to release a roster of women custom inspectors, in response to a request from the Women's Division of the ACLU. DEA also testified that they were concerned that they might have to release rosters of law enforcement personnel—although they said that they would bitterly resist such a release.

The proposed amendment would put a blanket exemption on the release of rosters of law enforcement personnel and the personnel of national intelligence agencies.

Witnesses before the subcommittee also testified that they would favor a blanket prohibition on the release of confidential law enforcement training manuals, investigative handbooks, and manuals dealing with confidential investigative technologies. This is an area where FOIA is ambiguous and subject to varying interpretations. DEA, for example, testified that they had been obliged to release to a felon, serving time in prison on a drug offense, a copy of a confidential DEA manual dealing with methods used by drug traffickers to manufacture liquid hashish.

The proposed amendment provides for a blanket exemption covering all confidential law enforcement training manuals, investigative handbooks, and manuals dealing with confidential investigative technologies.

The subcommittee took much testimony relating to the increasing reluctance of State and local government agencies and of foreign governments to share law enforcement intelligence with the U.S. agencies because of the fear that this information might be disclosed pursuant to a Freedom of Information or Privacy Act request. The proposed amendment seeks to deal with this situation by exempting from disclosure all information received from foreign governments or from State and local government agencies on a confidential basis.