guities in our Federal wiretap statutes, ensure the legality of Caller ID and establish a uniform, national privacy policy in this area.

Finally, there is one more reason to pass this legislation. Blocking already exists for the wealthy. A new 900 service allows people to make private calls for a few dollars a minute. That's wrong. Blocking is a matter of fairness as well as privacy: I believe phone companies should make blocking available to everyone—both rich and poor.

The widespread support for this proposal underscores its commonsense approach. All around the country—in the District of Columbia, California, Nevada, Arizona, Delaware, and other areas—telephone companies are opting for blocking, or State PUC's are requiring it. And here in Washington—in part due to the hearing held last year in Patrick Leahy's Judiciary Subcommittee on Technology and the Law—a consensus is developing that Caller ID with blocking strikes the proper balance between telephone callers and recipients alike. That's a powerful rationale, Mr. President, and that's why I believe my bill will soon become law.

I ask unanimous consent that the text of the Telephone Privacy Act of 1991 be printed in the RECORD.

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

S. 652

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Telephone Privacy Act of 1991".

SEC. 2. PURPOSE.

The purpose of this Act is to protect the right to privacy of telephone users by enabling them to limit the dissemination of their telephone numbers to persons of their choosing.

SEC. 3. AMENDMENTS TO TITLE 18.

Section 3121 of title 18, United States Code, is amended—

(1) In subsection (b) by—

(A) striking "or" after the semicolon at the end of paragraph (2);

(B) striking paragraph (3);

(C) adding after paragraph (2) the following:

"(3) if the nongovernmental recipient of wire or electronic communication consents and its provider enables any originator to block receipt of any individually identifying information about the originator, without charge, except that the provider is not required to enable an originator to block receipt of the individually identifying information on the emergency assistance telephone line of a State or municipal police or fire department, or on a 911 emergency line; or

"(4) on the emergency assistance telephone line of a State or municipal police or fire department, or on a 911 emergency line.";

(2) by redesignating subsection (c) as subsection (d); and

(3) by inserting after subsection (b) the following new subsection:

"(c) CIVIL ACTION.—Any user of wire or electronic communication service aggrieved by a provider's failure to enable an originator to block receipt of the individually identifying information without charge under subsection (b)(3) may recover from the provider in accordance with section 2707 of this title.".

By Mr. HEFLIN (for himself, Mr. HATCH, Mr. THURMOND, Mr. DECONCINI, Mr. SIMPSON, Mr. GRASSLEY, Mr. D'AMATO, Mr. SHELBY, Mr. COCHRAN, Mr. EXON, Mr. GORTON, and Mr. REID):

S. 653. A bill to prohibit injunctive relief, or an award of costs, including attorney's fees, against a judicial officer for action taken in a judicial capacity; to the Committee on the Judiciary.

JUDICIAL IMMUNITY

● Mr. HEFLIN. Mr. President, today I am reintroducing legislation to reverse the 1984 Supreme Court decision in *Pulliam* v. *Allen* (466 U.S. 522 (1984)). In Pulliam, a sharply divided (5-4) Court held that the doctrine of judicial immunity neither prevents injunctive relief in Federal civil rights actions challenging decisions of a State judge, nor bars attorney fee awards against the judge. In essence, Pulliam disregards four centuries of unbroken precedent and destroys an ancient doctrine that is the bedrock of the Anglo-American system of justice.

Understandably, this decision has caused a tremendous amount of concern among our Nation's judicial officers. Indeed, at the time Pulliam was handed down, the conference of Chief Justices said of the decision: "no development in recent times has aroused greater concern on the part of state judges." If anything, that concern is greater today. Judges fear that this decision will have a chilling effect on judicial independence in both State and Federal courts, and I agree with them.

The ability of a judge to decide a case, without fear, is of paramount importance to judicial effectiveness. It is a cornerstone of our judicial system. Harassing litigation brought by disappointed parties against judicial officers can only result in the increasing timidity of judges, along with a tendency to avoid close and controversial decisions whenever possible. Consequently, the threat of a potential suit alone is enough to substantially impair the exercise of independence by judges.

In addition to the chilling effect of Pulliam of judicial independence, my colleagues in the judicial branch are concerned that this decision will create a new class of Federal litigation against State decisions. State court plaintiffs are placed, in effect, in a position of appealing to the Federal courts to enjoin State court action when they should be in State courts appealing through the State judicial system. This encroachment on the doctrine of federalism destroys comity between the two separate but equal judicial systems. State judges cannot act effectively if their decisions, no matter how closely they are made in keeping with State law, are subject to immediate challenge in the Federal courts.

Mr. President, the Court in Pulliam challenged us to remedy this situation by stating, "that it is for Congress, not this Court, to determine whether and to what extent to abrogate the judiciary's common-law immunity." Congress must accept this challenge.

An identical bill passed the Judiciary Committee last Congress, and it is my hope that the full Senate will get the opportunity to debate this bill in the 102d Congress. I look forward to working with my colleagues on this legislation, and ask for their support. I request that a copy of the bill be printed in the RECORD following my remarks.

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

S. 653

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 722 of the Revised Statutes (42 U.S.C. 1988) is amended by inserting before the period at the end thereof ", except that in action brought against a judicial officer for an act or omission committed in such officer's judicial capacity—

"(1) such officer shall not be liable for costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction; and

"(2) injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable".

SEC. 2. Section 1979 of the Revised Statutes (42 U.S.C. 1983) is amended by adding before the period at the end of the first sentence: ", except that in action brought against a judicial officer for an act or omission committed in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable".

SEC. 3. Notwithstanding any other provisions of law, no judicial officer shall be held liable for any costs, including attorney's fees, in any proceeding brought against such judicial officer for an act or omission taken in a judicial capacity.●

By Mr. DECONCINI (for himself, Mr. HATCH, Mr. KOHL, Mr. LAUTENBERG, Mr. SPECTER, and Mr. GRASSLEY):

S. 654. A bill to amend title 35, United States Code, with respect to patents on certain processes; to the Committee on the Judiciary.

BIOTECHNOLOGY PATENT PROTECTION ACT OF 1991

Mr. DECONCINI. Mr. President, the President's Council on Competitiveness, which is chaired by Vice President QUAYLE, recently released a report on the administration's national biotechnology policy. The report stresses the importance of the biotechnology industry, which is projected to grow from a $2 billion domestic industry to $5 billion by the year 2000. The report states that,

Some of the most promising advances will be in new drugs and gene therapies to treat previously incurable diseases. In the next decade biotechnology also will produce healthier foods, safer pesticides, additional

energy resources, and innovative environmental clean-up techniques.

The Council recommends several steps to promote advancement in biotechnology. One of the most crucial measures is protecting the intellectual property rights of American biotechnology inventors. It is with that in mind, Mr. President, that I am introducing today with my colleagues, Senators HATCH, KOHL, LAUTENBERG, SPECTER, and GRASSLEY, the Biotechnology Patent Protection Act of 1991. This bill corrects the inadequacies in our patent laws that limit the patentability in the biotechnology field. It will ensure that U.S. biotechnology inventors will continue to lead the world in commercializing their ingenuity.

In its simplest terms, biotechnology is the study and application of genetic engineering techniques, sometimes referred to as recombinant DNA technology. Sections of DNA called genes contain chemical instructions that guide the cell's machinery in constructing proteins. Proteins give living things their unique characteristics. Through biotechnology drug research, scientists can discover beneficial substances that naturally occur in the body and duplicate these rare substances with gene-splicing techniques resulting in useful and commercial quantities. The end result is a whole new generation of lifesaving products.

Unlike some other industries, the biotechnology industry is highly dependent on patent protection. But the ability to obtain this protection has been inversely related to its need. Without process patent protection, not only does investment dwindle but U.S. biotechnology firms remain vulnerable to the unauthorized use of their patents abroad. The detrimental result of this practice was outlined last year by the Commissioner of the Patent and Trademark Office, Harry Manbeck, in testimony before the House Subcommittee on Courts, Intellectual Property and the Administration of Justice:

> They [inventors] cannot prevent importation of a product made abroad by a process which uses a material patented in the United States, unless they have patent protection for the process. Although not unique, the field of biotechnology is particularly susceptible to this problem. Take the not uncommon example of an inventor who develops a "'host cell" through genetic engineering. Such a cell can be used in a biotechnological process to produce a protein which may or may not be patentable. The inventor may obtain a patent for the host cell. However, the steps of the biotechnological process may be, and typically are conventional part from the use of that patentable host cell and under current law, may or may not be patentable.
>
> Under present U.S patent law, the holder of a patent of the host cell would be able to preclude another from using that cell *in the United States* to make the protein. However, without patent protection for the process, the inventor has no effective remedy against someone who takes the patented host cell to another country, uses it to produce the protein, and imports the protein back into the United States. Thus, our law currently provides an unfair advantage to unauthorized users abroad of technology patented in the United States.

Last year I introduced the Biotechnology Patent Protection Act of 1990, which addressed this very problem. The bill had clear objectives: correct the inadequacy in the Patent Code for biogenetic inventions; prevent the importation of infringing biotechnology products. Over the course of the past year, Representative BOUCHER and I have consulted with the Patent Office, the patent community and representatives from the biotechnology industry to refine this bill to achieve the objectives of the earlier legislation in a more limited fashion. The revised bill, which we are introducing today, adopts the language of H.R. 5664 from last Congress.

This legislation amends the Patent Code by overruling the Federal circuit decision in in re Durden. Durden involved the asserted patentability of a process for producing a novel and nonobvious compound from a novel and nonobvious starting material using a known chemical reaction. The patent applicant in Durden admitted that the nature and conduct of the chemical reaction as it related to the change made in the molecules was known for other, analogous, starting materials to make other corresponding products. The Federal circuit held that a process of using a patentable starting compound to make a patentable final compound was not patentable. The court indicated that the patentability of each process must be evaluated on a case-by-case basis. More recent Federal Circuit decisions have not resolved this problem. Exacerbating the Durden decision has been its inconsistent application by the Patent Office, leaving patent applicants uncertain whether they can obtain process patents of this nature.

The Biotechnology Protection Act of 1991 resolves the Durden dilemma by providing a proper criteria for recombinant processes. The bill provides that a process of making or using a product will not be considered nonobvious if the starting material or resulting product is novel. As Commissioner Manbeck testified in the House last year, this bill will "eliminate any need to resolve whether a particular process was one of making or of using a specific patentable machine, manufacture or composition of matter."

By overruling Durden, this act provides a solution to another deficiency in our law that has created an obstacle for the U.S. biotechnology industry. As mentioned by Commissioner Manbeck, current law permits an infringer to take a patented biogenetic host cell offshore to produce an end product and ship back into the United States. This legislation closes the loophole in our Patent Code that permits this form of infringement. It provides no more than what is already granted by the European and Japanese Patent Offices.

An important but ancillary benefit of this legislation is that it will reduce the search and examination burden before the Patent Office in biotechnology patent applications. Over the years, the Patent Office has been greatly criticized for its patent pendency period. As examined in a recent GAO report, this problem has been acute in the area of biotechnology. Reducing pendency for biotechnology patents will bring stability to this area.

This legislation is the answer to the Durden problem that has stymied the growth of our biotechnology industry. If Durden continues, so too will the Patent Office's inconsistent application of that case to biotechnology applications. The Federal circuit has passed up opportunities to resolve the Durden dilemma. It is time to end the uncertainty and litigation and provide the biotechnology industry the benefits afforded by the DeConcini-Hatch Process Patent Act of 1988.

The biotechnology industry is a vital industry to the future of America. The industry not only generates billions of dollars for the U.S. economy, but more importantly it offers potential solutions to seemingly hopeless problems. Currently, biotechnology researchers are searching for new energy sources, cures for cancer and AIDS, and new foods and food products just to name a few. Recognizing the impact this field has on our economic growth, President Bush has designated biotechnology research as a funding priority in his budget. The budget notes how the recent breakthroughs in the biotechnology field "offer unprecedented opportunities for improving the Nation's productivity, health, and well-being."

American scientists invented biotechnology and the United States continues to lead in the industry; however, without this legislation, many inventors and companies will shy away from investing their time and money into products that can be stolen from them once they reach the market. This legislation will increase the incentive to invest in biotechnology research resulting in commercial development by correcting the inadequacies in our patent laws and ending foreign infringement.

Mr. President, this legislation moves the U.S. biotechnology industry in the right direction—forward. The time has arrived to end the uncertainty in this area of the law that has hampered the essential progress of this dynamic scientific area; an area that is driven by U.S. firms who are constantly seeking to improve their products and transform their discoveries into commercial products.

Time and time again we hear of a U.S. industry losing its global lead to another country that is willing to provide that industry with the tools to succeed. Time and time again, we have been forced to look back in retrospect lamenting what little needed to be

done to maintain U.S. dominance in a particular high-technology industry. This bill is an essential tool to ensure the continued success of the U.S. biotechnology industry. If we act now on this legislation, we will never have to lose the U.S. lead in biotechnology.

We expect wide support from the patent community on this legislation because it provides them with what they constantly request from Congress—greater protection for intellectual property. They more than anyone believe that the Patent Code should serve as an incentive, not an impediment, to the commercialization of biotechnology research.

In light of the input we have received since I first introduced S. 2326 last Congress and the urgent need for the protection this bill provides, we plan to move quickly on this legislation in this Congress. With the hope of resolving any concerns with the particular language of the bill, I have sent a letter to Commissioner Manbeck, today, requesting comments on a proposed amendment that would resolve some concerns raised by the Industrial Biotechnology Association.

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

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

S. 654

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Biotechnology Patent Protection Act of 1991".

SEC. 2. PATENTABILITY OF CERTAIN PROCESSES.

Section 103 of title 35, United States Code, is amended by adding at the end the following new paragraph:

"When a process of making or using a machine, manufacture, or composition of matter is sought to be patented in the same application as such machine, manufacture, or composition of matter, such process shall not be considered as obvious under this section if such machine, manufacture, or composition of matter is novel under section 102 and nonobvious under this section. If the patentability of such process depends upon such machine, manufacture, or composition of matter, then a single patent shall issue on the application.".

SEC. 3. EFFECTIVE DATE.

The amendment made by section 2 shall apply to all United States patents granted on or after the date of the enactment of this Act and to all applications for United States patents pending on or filed after such date of enactment, including any application for the reissuance of a patent.

Mr. HATCH. Mr. President, today I am pleased to cosponsor the Biotechnology Patent Protection Act of 1991 with my colleague, Senator DECONCINI.

This legislation is the result of a great deal of work by numerous Members of Congress over the past 2 years. The Vice President's Council on Competitiveness is also to be commended for its activity in this area. In a report issued recently, the Council said:

The uncertainties in intellectual property rights for innovations in the biotechnology area continue to hamper the industry. Changes in U.S. law have been suggested as a way of improving patent protection. Legislation has been introduced to overturn a court case (In re Durden) that suggests that use of a novel starting material in combination with a known chemical process is not eligible for a process patent. The application of Durden in the biotechnology area could deny protection to innovations that only can be protected through process patents. If Durden were overturned, patenting these processes would permit the patent holder to exclude the importation into this country of a product produced by using a patented biotechnological material.

The Administration should support passage of legislation to provide necessary process patent protection for products, such as those in the biotechnology area, that can be protected only through process patents.

The key elements of this legislation are the protection of major scientific breakthroughs involved in the methods of making and using new products. The best examples of the types of processes that will benefit from this legislation are those that arise in the biotechnology industry.

As noted by the Council on Competitiveness, for a variety of reasons, the patent position of the biotechnology industry is not as strong as that available to traditional pharmaceuticals. This means that under current law it is possible for a major innovation, such as creation of the first commercially effective process for making a recombinant human therapeutic, to be without adequate patent protection. In some instances there may be no product patent protection available for the end product, no process protection for the method of making the product, and no ability to prevent foreign manufacture of the end product using the patented intermediate or host cell. In biotechnology, the use of an intermediate—most frequently a host cell or organism—is the modern equivalent of creating a miniature factory for the production of a product. Thus, the inability to prevent the transportation of a patented host cell offshore and the subsequent importation of an end product is a serious defect in our current patent system. Our bill addresses this problem directly by extending process patent protection to cover the inventor's process of making the product. Such process patents may be enforced under current law to stop importation of a product made by a patented process. Thus, this bill will give inventors the full promise of the process patent amendments Senator DECONCINI and I authored in the 1988 omnibus trade bill.

The other important reason that this bill makes sense is that it will produce an international patent norm that no longer leaves our inventors at a competitive disadvantage. Under current law, it is possible for innovators to face unfair foreign competition from parties who would be barred from using a patented host call in the United States. This legislation will correct that anomaly by granting process patent protection. In my view, this approach is preferable to attempting the creation of a new set of remedies for the making, using, or selling of products of host cells. This bill removes a court-created barrier resulting from an anomalous interpretation of the patent laws. Removal of this barrier will result in: First, process patent allowance; and second, application of existing process patent laws to enforce the newly allowed process patents to stop the importation into the United States of products made outside the United States by the patented process.

By Mr. WALLOP:

S. 655. A bill to establish the National Park System Visitor Facilities Trust Fund; to the Committee on Energy and Natural Resources.

NATIONAL PARK SYSTEM VISITOR FACILITIES TRUST FUND

● Mr. WALLOP. Mr. President, I am pleased to introduce today legislation which will amend the National Park System Visitor Facilities Fund Act—Public Law 97-433.

The National Park System Visitor Facilities Fund Act of January 8, 1983, established a fund in the Treasury into which were credited all fees received by the Government from private concessioners in the National Park System. These funds were then available for appropriation back to the National Park Service for reconstruction and improvement of facilities used to provide food, lodging, and other services to park visitors. The 1983 act provided that improvement projects were to be accomplished by the National Park Foundation with grants from the fund. A total of $54 million was credited to the fund, of which $28 million was appropriated for improvement projects.

Authorities contained in the 1983 act expired on September 30, 1989. Concession fees thereafter were covered into the Treasury as miscellaneous receipts, and $26 million, which represents the unappropriated balance of the fund, was transferred to miscellaneous receipts at that time.

This legislation would reestablish the fund and require that it be programmed, expended, and accounted for directly by the Secretary of the Interior, rather than by the National Park Foundation as was the 1983 fund.

The need for a predictable source of funds to improve and maintain the commercial service facilities in the parks is greater now than in 1983. Nationwide there are 540 concession operations in 130 units of the National Park System. These parks account for 78 percent of total annual visitation to the System. Park visitors spend a significant portion of their time in concession facilities and they must be modern and safe. I estimate that the cost of reconditioning all concession facilities, both Government-owned and

39)