Administration, an agency that is in the middle of a severe management crisis.

The Farmers Home Administration has been in business for about 50 years, providing essential credit of last resort to farmers and others in rural America.

Yet in recent years we have been piling program after new program upon the agency, without appreciably increasing its staff. As a result, half of the money the agency has ever loaned out in the past 50 years has been loaned in the past 3 years.

The Farmers Home Administration was built upon the principle of supervised credit. Since the agency largely deals with borrowers who would be considered marginal by commercial lenders, Farmers Home employees are expected to sit down with borrowers to develop farm operating plans so that there can be reasonable assurance that farmers can pay back their loans.

As a result of the growth of FmHA lending, loan supervision has all but gone out the window.

This has resulted in two problems, it seems to me:

First of all, marginal borrowers have not had the benefit of professional advice that they need so badly; and

Second, I believe loans have been made to large operations that should not be a part of Farmers Home's ordinary clientele.

I am convinced that the Farmers Home Administration needs a major overhaul. The regular loan programs and the disaster loans are in too many cases going to less deserving and less needy farmers.

I think we need to begin planning now for a joint review and reconstruction of the programs of FmHA by both the Congress and the administration.

Just 12 years ago, the Farmers Home Administration was carrying $6 billion in outstanding debt of all kinds. Now the agency is holding more than $50 billion in debt, and in the past 3 years, most of its money has gone to farmers in trouble.

Because of limitations in personnel and other problems imposed on the agency by various administrations, it seems to me that Farmers Home is going to be in trouble, just as our producers are, if we don't sit down and map out a new course for it.

Mr. President, I ask unanimous consent that S. 3112 be printed in the RECORD.

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

S. 3112

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a), during the two-year period beginning on the date of the enactment of this Act, the Secretary of Agriculture shall suspend, at the request of the borrower, the payment of principal and interest on the balance of any operating or emergency loan made to a farmer or rancher under the Consolidated Farm and Rural Development Act and held by the Secretary, or on the balance of any emergency loan made to a farmer or rancher under the Emergency Agricultural Credit Adjustment Act of 1978 and held by the Secretary, and shall forego pursuit to final collection of any such loan for nonpayment of principal or interest during such period.

(b) No interest shall accrue on any loan described in subsection (a) during any period that the payment of principal and interest has been suspended under such subsection.

(c) Payment of principal and interest on the balance of any loan described in subsection (a) shall recommence after the suspension period has expired, and the repayment period on such loan shall be extended to provide for payments that would have been due and payable during the suspension period.●

By Mr. HATCH:

S. 3114. 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. 3115. 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 CIVIL LIABILITY

● Mr. HATCH. Mr. President, I note that yet another drain on public funds and a stumbling block to efficient performance of public services has been created by the Supreme Court. As a result of two recent rulings, State and local officials will find themselves forced to perform their duties with the constant fear of costly damage suits which will cut into their ability to spend their time and efforts in the performance of important services to the public at large.

Municipalities will not be able to function without the threat of an action against them for the bad-faith conduct of some misguided public servant. Cities and towns are now saddled with the almost impossible task of second-guessing the Supreme Court's future interpretations of constitutional law. If they should happen to guess incorrectly in enacting ordinances, local governments may be held strictly liable to anyone who cares to bring suit against them. 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. Any statute may now be the basis for such an action. Our crowded courts will no doubt be burdened even further. Our tax dollars will be spent in costly defenses against damage suits involving local governments and officials.

Mr. President, because the court's recent rulings in the cases Maine against Thiboutot and Owen against the 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 very important amendments to 42 U.S.C. 1983.

Section 1983 provides that persons responsible for the deprivation of another's constitutional rights shall be liable to that person for redress in a civil action. The exact language of the section as it currently reads, protects those rights "secured by the Constituion and laws" of the United States. 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. This is a broad interpretation of an act enacted for the express purpose of providing a Federal remedy for impingements, made under color of State law, upon 14th amendment rights. The Court's broad reading of the law now greatly expands the liability of State and local officials charged with the task of administering the laws of the land.

Providing for a "cause of action for the infringement, under color of State law, of any Federal right" means that "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 (1978), (concurring opinion, Powell J.). Such a judicially created statutory liability is "at war with the intent of Congress" in its enacting of section 1983 and with the historical purpose and application of the section. Together with the holding of the Court in *Owen* v. *City of Independence*, — U.S. —, 100 S.Ct. 1398 (1980), the Thiboutot holding imposes a formidable burden upon State and local governments and officials.

In Owen, 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. The Court has stepped into an area best reserved to Congress in creating this new realm of liability which can have only adverse consequences for States and localities.

MAINE AGAINST 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.2d 230 (Me. 1979) on appeal the Supreme Court of the United States affirmed.

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.

OWEN AGAINST 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. The district court had therefore, 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.

Until the Owen case, the Court had avoided defining the exact limit of municipal liability in section 1983 actions. It had established some limitations, though. In 1921, for example, in the case of *Harris* v. *District of Columbia*, 256 U.S. 650 (1921), the Court noted that a municipal corporation, when acting in good faith, is not liable for the manner in which it exercises discretionary powers of a public or legisltaive character.

Later, in a section 1983 case, the Court held that cities were not persons within the ambit of section 1983 and were therefor immune from liability in such actions. See *Monroe* v. *Pape*, 356 U.S. 167 (1961). This immunity was affirmed in later cases, such as city of *Kenosha* v. *Bruno*, 412 U.S. 507 (1973) and *Moore* v. *County of Alameda*, 411 U.S. 693 (1973). The Court reversed the absolute immunity rule of its Monroe holding in 1978 and began the erosion of municipal immunity with its holding in *Monell* v. *City of New York Department of Social Services*, 436 U.S. 658 (1978).

In this Monell case, the Court expressly reserved the question of a qualified immunity for municipalities. It did note that municipalities cannot be held liable on a respondent superior theory and further that it must "reverse the judgment below."

In so doing, we have no occasion to address, and do not address, what the full contours of municipal liability under section 1983 may be. We have attempted only to sketch so much of the section 1983 cause of action against a local government as is apparent from the history of the 1871 act and our prior cases.—Monell, at 695.

With the Owen decision, however, the Court milks the legislative history of section 1983 again and this time comes up with the decision that municipalities shall be strictly liable in 1983 actions.

Add to this holding the broad doctrine of Thiboutot, another stretching of section 1983's history, and the result is that the Court now allows a local government to be held strictly liable under a section 1983 action based on a violation of any statute.

Justice Powell authored dissenting opinions for the justices in the minority in both the Owen and Thiboutot decisions. The major flaws in each of those holdings are, as Justice Powell sees them, the Court's inconsistent and incorrect interpretation of the history of section 1983 as well as the Court's inconsistent treatment of section 1983 claims. Most important, he feels, these decisions depart from the established law in this area. He notes in his Owen dissent:

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

Again, in Thiboutot, Justice Powell voices concern:

Until today this court never had held that section 1983 encompasses all purely statutory claims. Past treatment of the subject has been incidental and far from consistent....

In Owen and Thiboutot the Court felt, and the law now reads, that a broader interpretation of the "and laws" language of section 1983 is mandated by the section's legislative history and the Court's prior treatment of section 1983 claims. Cities should not enjoy any form of immunity from liability, in its opinion, because Congress had not expressly provided for any. The dissenting justices, including the Chief Justice and Justices Powell and Rehnquist—Justice Stewart joined in Justice Powell's dissent in the Owen case—noted that the legislative history does not mandate the Court's rulings in these two cases and that the holdings in Owen and Thiboutot actually fly in the face of the established law and the public policy associated with section 1983.

Though much has been said about these decisions and their departure from prior decisions, I must mention one other important aspect. Justice Powell points out, in his dissent in Owen, that the court's decision in that 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.

In addition, the States and the Supreme Court have allowed most State executive officials some kind of good faith defense in 1983 actions. Now, however, when an official is sued under section 1983, Owen and Thiboutot seem to say that the government of the locality is strictly liable even though the official may have acted in good faith. It does not matter under such as doctrine, whether the official has acted in good faith or bad faith. Either way, the municipality inevitably bears the burden of judgment. Also, though the States have granted municipalities immunity, the Federal Government does not. With such a rule, a Federal forum becomes even more desirable. That age-old spectre that such a decision will cause a race to the courthouse and open floodgates of litigation to overload an already burdened Federal judiciary raises its ugly head again. It cannot be ignored.

CONSEQUENCES

Any time the scope of liability is extended—here it is extended to include State officials and local governments—it is likely to cause an increase in litigation. Justice Powell notes in his Thiboutot dissent that—

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.

In addition, 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.

The statutes Justice Powell lists fall into three general categories which he entitles (a) joint regulatory endeavors; (b) resource management; (c) grant programs. The Court's holding will allow cases under section 1983 based on any deprivation by a State official administering such programs.

Note the wide range of programs included in the list:

(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 U.S.C. 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(a).

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, 16 U.S.C. 1361–1407; see 16 U.S.C. 1379.

8. Wagner-Peyser National Employment System Act, 48 Stat. 113 (1935), 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. 549, 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, section 6, 79 Stat. 111, 16 U.S.C. 281e (Nez Perce National Historical Park); act of Sept. 21, 1959, section 3, 73 stat. 501, 16 U.S.C. 410u (Minute Man National Historical Park); act of Oct. 20, 1972, section 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, section 2, 36 stat. 961, 16 U.S.C. 563; act of Aug. 29, 1935, ch. 808, 49 stat. 936, 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, sections 4, 8, 45 stat. 1058, 1062 (1928), as amended, 43 U.S.C. 617c, 617g; Rivers and Harbors Act of 1899, section 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, section 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. 2011–1025; see e.g., 7 U.S.C. 2020e–2020(g).

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

3. Education Amendments of 1978, 92 U.S.C. 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 States 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., sections 6011, 6063.

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

Also of concern is the added burden in time and public funds which inevitably accompanies such litigation. Many cities already face heavy fiscal problems, high taxes and rising inflation in providing necessary community services. Now the Court will add to these problems the costs of defending against section 1983 actions based purely upon some statutory claim and paying judgments as a result of the Owen strict liability doctrine. These judgments become even more onerous when the Court decides that attorney's fees may also be awarded under section 1988, the Civil Rights Attorney's Fees Awards Act of 1976, as it did in Thiboutot.

Such an unjust rule does not allow municipalities to act with the degree of latitude needed to meet their obligations to the public. Writing of immunity for government officials, Justice Harlan listed some important reasons for granting immunity which I feel apply just as strongly to municipalities as well.

It has been thought important, he wrote: that 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 municipality's actions are essentially those of its chief officials. Its immunity should be at least as extensive as that of those who act in its behalf and who enforce and make its laws. The same concerns mentioned above by Justice Harlan apply to both the municipalities and the officials. The importance of freedom to pursue official duties without threat of suit, the savings in time, energies, and dollars which would allow better service to the public at large. Judge Learned Hand once wrote:

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 to 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. *Gregoire* v. *Biddle*, 177 F. 2d 579, 581. Quoted in *Barr* v. *Matteo*.

In the case of municipalities, charged by law with protecting the welfare of the public and providing necessary services, it is certainly unfair to expose to suit such as have been honestly mistaken. This is precisely what the Court has done in the Owen case, by holding the city of Independence strictly liable for an honest mistake, a good faith reliance on the validity of a law which was not made unconstitutional until after the incident giving rise to Mr. Owen's suit had taken place.

PROPOSED AMENDMENTS

The erosion of municipal immunity begun with the Court's Monell decision and taken to its maximum extent in Owen is an indication of the need for action on the part of Congress. The court had declared in Monell that it had come as far as possible from the "apparent" history of the act in declaring that cities were not entitled to an absolute immunity from liability under section 1983. The Court left undecided the question of qualified immunity. The Court has blamed the difficulty of construing section 1983, in part, on the "scanty" legislative history of the act of 1871, section 1983's predecessor.

The Court has also 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. The Court has evidently grown tired of waiting for Congress to act on the matter, and has gone ahead and forged its own limits—or, rather, abolished any limits—of liability under section 1983.

The intrusion of the judiciary into an area best reserved for the legislative branch of Government is unfortunate. Nor is it wise for Congress to leave the language of section 1983 in such a state of ambiguity as to result in further confusion like that involved in the Owen and Thiboutot cases. The pitfalls associated with finding "legislative intent" in the history of an act, or in the "plain language" of an act, are widely recognized. That the Court had nothing better to work with in the case of section 1983 is not entirely its fault. But one cannot saddle Congress with the responsibility for the Court's "evolving" interpretation of section 1983's "scanty" history. It is the Court that has taken silence on a phrase to mean one thing at one point in time and another thing years later—as it did in Monroe (1961) and Monell (1978).

The fact that Congress had not expressly mentioned municipal liability under section 1983, or that Congress never defined them as "persons" under that section, gave the Court reason enough to hold in Monroe that cities are not persons for purposes of the act. That interpretation lasted until the Court read congressional silence again in Monell and held that Congress had not set out the exact limitations of liability or immunity for municipalities under section 1983 and, therefor, Congress did not intend for municipalities to be absolutely immune from liability.

The Supreme Court has been far from unimaginative in its interpretation of legislative history touching section 1983. It has managed to pin a couple of very different rules of law on the same legislative history of section 1983 in a period of less than 20 years.

It is time that Congress step in and correct the Court's statutory interpretation. The Thiboutot decision does not involve a departure from the treatment of constitutional claims. My amendments would not affect constitutional claims. Instead, the first of the proposed amendments is limited to the decision of the Court in Thiboutot. It makes literal the intended meaning of the language of section 1983 by adding the missing modifiers which permitted Justice Brennan and the Court to make the holding they

did. The section would then 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. The text of the section would be changed by adding the words "and by any law providing for equal rights" in the place of the ambiguous and broad "and laws" language to 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.

The Civil Rights Act of 1871 had been enacted by the 42d Congress to provide a Federal remedy for persons seeking redress for violations of 14th amendment rights and related rights secured by statute. The Court has now stretched the statute beyond those bounds to cover any statutory claim, not just those claims relating to equal rights or 14th amendment rights, because Congress has included no modifiers in the phrase "and laws." That problem is solved with the adoption of this amendment.

My amendment will give effect to Justice Powell's suggested solution to the problem. Anticipating the statutory-based claim of the type contested in Thiboutot, Justice Powell suggested the problem would be "avoided if section 1983 is read, as it should be, as encompassing only rights secured by the Constitution and laws providing for equal rights." Chapman, supra at 645, 646. This language included in the act by the proposed amendment will give a more clear and definitive indication of the scope of section 1983 claims.

In its Owen decision, the Court provides for municipal liability because Congress had not provided for municipal immunity. This decision comes now even though the Court had decided almost 20 years ago that Congress had intended, by its silence on the question of immunities under section 1983, not to provide liability to municipalities. The second amendment which I propose today will remedy this confusion by providing that municipalities and other political subdivisions of the States shall have a good faith defense in 1983 actions. This new section on 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.

Thus section 1983 will continue to allow recovery when there has been an intentional or bad faith violation by the municipality, but will provide protection for the municipality that has acted in good faith.

CONCLUSION

As the city of Independence learned, attempting to second-guess the future interpretation of constitutional law by the Supreme Court is difficult if not impossible. The law has always provided that where the acts of an individual cause injury, such individual should be responsible. It is difficult, however, to find a logical reason to hold a city responsible for violating a right which first came into existence after the city had acted.

It is in the best interests of the States and the public as a whole to provide meaningful guidelines in the area of municipal and official liability. Cities and other political subdivisions must be able to enact ordinances and laws without the constant threat of a subsequent change in the law which could subject them to costly damage suits and judicial intrusion into their decisionmaking. State and local officials should be able to carry out programs and policies, even in a Federal-State cooperative situation, without the fear that a section 1983 action based on something other than a deprivation of equal rights may be brought against them.

This threat of judicial intrusion into the policymaking, practices, and decisionmaking of governments defeats the purpose and thwarts the theory of the doctrine of separation of powers.

It is important, in order to maintain balance in our Government and stability in the law, that some officials and local governments be allowed to exercise their discretionary duties with a degree of protection from unwarranted judicial review and costly and time-consuming litigation. Causes of action are provided for by many statutes, when necessary. Such remedies for deprivations of specific statutory rights should be created by Congress, not the Court. 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.

I therefore urge immediate action to avoid the onerous consequences of the Court's decisions in Maine against Thiboutot and Owen against city of Independence by the adoption of these two amendments. It is the responsibility of this body to prevent the unnecessary and costly litigation involving local governmental officials and entities that will follow in the wake of these decisions and reach every member of the public. Adoption of the proposed amendments is the proper way to solve such controversy. 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.

To keep this problem on the back burner may result in another 17-year wait for the Court to decide to correct its own mistakes of statutory construction. It is our prerogative to make such corrections in statutory law whenever we see fit. Now is the time, if the consequences are to be effectively avoided.●

ADDITIONAL COSPONSORS

S. 1411

At the request of Mr. CHILES, the Senator from Tennessee (Mr. SASSER) was added as a cosponsor of S. 1411, a bill to improve the economy and efficiency of the Government and the private sector by improving Federal information management, and for other purposes.

S. 1530

At the request of Mr. RIBICOFF, the Senator from Wisconsin (Mr. NELSON) was added as a cosponsor of S. 1530, a bill to change the method of medicare reimbursement for health maintenance organizations.

S. 1942

At the request of Mr. MCGOVERN, the Senator from North Carolina (Mr. MORGAN), and the Senator from West Virginia (Mr. RANDOLPH) were added as cosponsors of S. 1942, a bill to provide for a resource conservation and development program in the Department of Agriculture, and for other purposes.

S. 2639

At the request of Mr. MCGOVERN, the Senator from Texas (Mr. BENTSEN) was added as a cosponsor of S. 2639, a bill to mitigate the adverse effects of the suspension of trade with the Union of Soviet Socialist Republics on U.S. agricultural producers, and for other purposes.

S. 2906

At the request of Mr. DANFORTH, the Senator from Massachusetts (Mr. TSONGAS), and the Senator from Pennsylvania (Mr. HEINZ) were added as cosponsors of S. 2906, a bill to amend the Internal Revenue Code of 1954 to provide a credit against tax for certain research and experimental expenditures, and for other purposes.

S. 2979

At the request of Mr. METZENBAUM, the Senator from New Hampshire (Mr. DURKIN), and the Senator from New York (Mr. MOYNIHAN) were added as cosponsors of S. 2979, a bill to amend the Railroad Retirement Act of 1974 and the Internal Revenue Code of 1954 to assure sufficient resources to pay current and future benefits and to extend certain cost-of-living increases.

SENATE JOINT RESOLUTION 202

At the request of Mr. DOMENICI, the Senator from Arizona (Mr. DECONCINI), and the Senator from West Virginia (Mr. RANDOLPH) were added as cosponsors of Senate Joint Resolution 202, a joint resolution to authorize and request the President to issue a proclamation desig-