most cases, an independent commission can function without a full complement of members. A member whose term has expired can stay on to help with the administrative burden.

I do not mean to say that a President should never use his recess-appointment power or that there is never a circumstance in which a recess appointment is necessary—even when the Senate may be out for less than 30 days. For instance, I joined with a number of my colleagues to urge the President to move expeditiously—including the possibility of recess appointments—to fill longstanding vacancies on the Synthetic Fuels Corporation Board. It was a case where the Board did not have a quorum and was in danger of destroying a substantial amount of private investment that had been made in anticipation of board action. In effect, we felt that failure to form a quorum of the Board would endanger the entire synthetic fuels program.

That is an example, I think, of what the Founding Fathers had in mind. It was an emergency situation which I have already explained and in those situations I think the President certainly has good reason to make a recess appointment.

But Mr. President, the recess appointment power is one to be used sparingly and then only with thought to the intent of the Constitution.

The framers of the Constitution have passed on to us an enduring document of great simplicity and power. They quite consciously used general language to outline the various powers of the Government of the United States. They expected the Government and the Constitution would flourish if their successors were equally able to combine principle and pragmatism. And it is with that in mind that my colleagues and I are offering this resolution today to help draw a line between senatorial and Executive power that is true to both the spirit of the Constitution and the realities of our own time and place.

Mr. President, the following Senators are cosponsors: Messrs. BAUCUS, BIDEN, BINGAMAN, BRADLEY, BUMPERS, CHILES, LAUTENBERG, LEAHY, LEVIN, MATSUNAGA, MELCHER, METZENBAUM, CRANSTON, DECONCINI, DIXON, DODD, EAGLETON, EXON, FORD, GLENN, HART, HOLLINGS, HUDDLESTON, INOUYE, JOHNSTON, KENNEDY, MITCHELL, MOYNIHAN, NUNN, PELL, PROXMIRE, PRYOR, RANDOLPH, RIEGLE, SARBANES, SASSER, STENNIS, TSONGAS, and ZORINSKY. These names have been presented in alphabetical order.

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

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

S. RES. 430

Whereas, the United States Constitution in Article II, Section 2, Clause 2, vests in the Senate the power to give its advice and consent to presidential appointments,

Whereas, the Appointments Clause specifies the method clearly preferred by the Framers for the regular appointment of Officers of the United States;

Whereas, the Appointments Clause has been judicially determined to be an aspect of the principle of separation of powers woven into the United States Constitution (*Buckley* v. *Valeo*, 424 U.S. 1 (1976)),

Whereas, the reasons behind the Recess Appointment Clause, Article II, Section 2, Clause 3, like those supporting the pocket veto power, have been largely superseded by modern methods of instantaneous communication and the modern practice of Congress with respect to abbreviated intrasession adjournments (*Kennedy* v. *Sampson*, 511 F. 2d 430 (D.C. Cir. 1974)),

Whereas, the adherence to Appointment Clause procedures, unlike a recess appointment that thereafter may be rejected by the Senate, precludes subsequent challenges with respect to the appointee's rightful exercise of significant authority pursuant to the laws of the United States, Therefore be it

Resolved, That it is the sense of the Senate that the exercise of the power to make recess appointments should be confined to a formal termination of a session of the Senate, or to a recess of the Senate, protracted enough to prevent it from discharging its constitutional function of advising and consenting to executive nominations. As the President as well as the heads of Executive and military departments are authorized to detail officers of the United States to fill vacancies in offices at all levels of the Federal Government, Chapter 33, Title 5, United States Code, which details are valid for at least thirty days, no recess appointment should be made when the Senate stands adjourned or recessed within a session for a period of less than thirty days.

Mr. SARBANES. Mr. President, I commend the distinguished Senator from West Virginia, the minority leader, for addressing the problem of the recess appointment. It reflects the minority leader's longstanding concern with the Constitution, his knowledge of its provisions, and his consistently reflecting the determination that the agencies of our Government ought to work within the content of the Constitution and its requirements and the intention of the framers.

There is a developing tendency, which I find of great concern, the willingness to distort, undermine, and even destroy the process in order to achieve a particular result, in this instance placing certain people on boards in order to be in decisionmaking positions.

The process which has been so carefully established over the history of this republic is going to be destroyed and in the course of doing that, we are all going to be the losers. It seems to me the minority leader in his statement, and with reference to the bill or resolution he intends to propose, is addressing a problem which is of particular concern at the moment because of what occurred during the last recess of the Congress, where we had 17 recess appointments in an intrasession break for a very limited period of time.

I think that constitutes a circumvention of the confirmation power of the U.S. Senate. I think if allowed to go unchallenged and unremedied, it is moving us down the path of undercutting the proper duties and responsibilities of this body and, therefore, weakening the constitutional system.

I want to thank the minority leader for addressing this question and hope that all Members of the Senate will recognize that their responsibility to uphold the Constitution and their responsibilities as Members of this body are at stake in terms of this erosion of what I believe to be a clearly constitutional requirement with respect to the role of the Senate.

Mr. BYRD. Mr. President, I thank my distinguished colleague, the Senator from Maryland, for his remarks.

RECESS NOMINATIONS

Mr. MITCHELL. Mr. President, our constitutional system of government gives to the President the right and authority to nominate individuals to serve in the executive branch. But it gives to the legislative branch—more specifically, to the Senate, the right and authority to confirm those nominations.

Thus, the policy prerogatives of a President—the right to appoint individuals who share Presidential priorities—is balanced with a degree of accountability through the confirmation process.

It is a carefully crafted system which has, in the main, served our Nation well. Our National Government, despite inevitable lapses, has earned a reputation for probity and integrity in its public officials that ranks with the highest in the world. Our citizens have enjoyed the benefits of a Government in which bribery and corruption are the exception, not the rule. And our society has been strengthened by the secure knowledge that a change at the head of government does not invariably mean the virtual dismantling of all existing policies and practices. No society or government can function in an ever-changing chaos; even if an election changes the fundamental philosophic outlook in the White House, a sudden change in one branch of government cannot and should not sweep away all that has gone before.

In the past several years, however, we have seen several attempts to achieve such an outcome. Beginning with the nominations of individuals to run the environmental and natural resource operations of our Government, we have seen those whose duty it is to carry out the laws instead try to undermine and weaken those laws. We have seen individuals who were con-

firmed on the verbal claim that they would follow policies laid down by the legislative branch—the elected representatives of the American people—then proceed to systematically ignore those policies in practice.

That experience has generated, naturally enough, substantial concern about the need for a more thorough confirmatory process, in which the verbal intentions of nominees can be judged against their records, their past actions and their off-the-record statements.

This is as it should be. An overreaching by one branch of government, under our system, automatically provokes a reaction and response from the other branches. That is the purpose and intention of the separation of powers; to make sure that no overweening executive or overly aggressive legislature successfully gathers to itself all the powers of government.

Our Constitution recognizes that Government power, in order to be controlled, must be dispersed. It also recognizes that the effective dispersal of power is best achieved by intentionally creating and maintaining tensions between the demands of one government branch as against the demands of another.

The purpose of controlling governmental power is straightforward: It preserves the freedoms of our people. Our constitutional liberties are meaningless if the legislative branch can rewrite or redefine them. Our constitutional rights are empty if the executive branch can deny their exercise in practice.

And in order to inject a degree of accountability into the executive branch—a huge institution with but one directly elected individual—the Constitution grants to the Senate the right to confirm to office those unelected individuals chosen to run our Government.

Without that element of accountability, an important aspect of the balance of powers is weakened. And when one part of that structure is weakened, the entire structure risks further failure.

The confirmation process is no less important to the structure of our Government than any of the other checks and balances which maintain its stability and strength.

Yet in this administration, we have seen a systematic effort to bypass the confirmation process wherever true controversy exists between the policy preferences of the administration and the policy written into law by the Congress.

The Legal Services Corporation is one such example. The administration's hostility toward legal service for the poor is demonstrated by its continuing efforts to terminate the program. But the congressional support for the role of the Legal Services Program has been just as effectively demonstrated by the continuation of funding for it.

In this impasse, rather than seeking accommodation or recognizing the constitutional directive that the executive carry out the laws rather than rewrite them, the administration has instead attempted to dismantle the program by appointing individuals to operate it who are opposed to its existence.

And it has chosen to achieve that goal by simply bypassing the confirmation process and appointing recess nominees to operate the Corporation. The fact that its preferred nominees would face extensive Senate questioning has undoubtedly contributed to that choice. But the point of the confirmation process is precisely that: To permit the elected representatives of the people to raise the kinds of questions that may concern the people.

The resolution being proposed, therefore, seeks to reaffirm the traditional and constitutional limits to the recess appointment power. It seeks to reinvigorate the spirit of comity between the branches without which our system cannot function. And it seeks to preserve the right of the Senate to examine, debate and vote upon the unelected individuals who are nominated by the President to operate our Government.

I am pleased to cosponsor this resolution. It does not impinge on any of the constitutional powers of the President. It does not seek to impose a rigid and unworkable limit to the operations of the executive branch. But it does seek to reestablish firmly that the confirmatory role of the Senate is as constitutionally significant as the appointive power of the President. And it does seek to regain the balance between the legitimate demand of the President to be served by people who share his philosophy and the equally compelling claim of the Senate to assure that the laws will be carried out, not changed, by the executive branch.

I believe that we owe it to the Senate institution to clearly and definitively express our sense, as a body, that the constitutional balance must be preseved in the area of nominations as in others. The Congress has been castigated in the press and by the administration in the past year for overstepping its legitimate reach in trying to write the foreign policy. The Congress has been advised by the Supreme Court that its oversight responsibilities do not include an unlimited right to override executive branch actions. These criticisms and restraints upon the legislative branch are a legitimate and necessary counterbalance; they are part of our system.

A strong reaffirmation of the limits and responsibilities of the executive branch is no less important and necessary.

Support for this resolution would send the clear message that the Congress expects the laws to be carried out and that it expects administration policy to be informed by congressional directive, not to be bent to the administration's will. And it will help restore that essential element of constitutional comity which, like civility in debate, is fundamental to the operation of our National Government.

AN APPEAL TO SRI LANKAN EXPATRIATES

Mr. CRANSTON. Mr. President, I have spoken before in this Chamber of my deep concern over the communal violence in Sri Lanka that has taken the lives of innocent Tamil and Sinhalese citizens. These acts of terror in Sri Lanka are continuing. Press reports indicate that more than 40 people have been killed since August 4, in the latest outbreak of fighting.

The All Party Conference—which the President of Sri Lanka has organized to address the grievances of the Tamils and other communities—reconvened on July 23. I believe that this peaceful process of accommodation must be given every chance to bring about constructive solutions to the communal tensions that have been so tragically divisive. A constructive climate in Sri Lanka must be provided so that a political, negotiated settlement of the issues separating the Sinhalese and Tamil communities can be achieved.

Further bloodshed can only serve to deepen the rift between the communities. I am concerned about reports that money is being sent from the United States to support elements in Sri Lanka that resort to force as an instrument of policy to attain their ends. We must condemn the cycle of terror that blocks the road to peace. Violence will cease only when it is clear that it has not ally nor any constituency. And only then will peace be possible. I call on my Senate colleagues to join me in an urgent appeal to all Americans to reject those who support, promote or condone the cause of violence in Sri Lanka.

DRUG ABUSE IN NEW YORK CITY

Mrs. HAWKINS. Mr. President, the task of achieving the eradication of our Nation's No. 1 problem, drug abuse, can seem overwhelming.

In this second, third, and fourth in a series of articles on drug abuse in New York City, the problem of drug abuse is discussed from just about every aspect: The smuggling, the dealing, law enforcement from the local and Federal vantage points, the various re-