By Mr. BENGTSEN:
S. 4017. A bill to authorize an exchange of lands for an entrance road at Guadalupe Mountains National Park, Tex., and for other purposes. Referred to the Committee on Interior and Insular Affairs.

Mr. BENGTSEN. Mr. President, Guadalupe Mountains National Park, located in west Texas, was authorized in 1966 and formally established September 30, 1972. This national park preserves, protects, and provides public enjoyment the most extensive exposed fossil reef complex on record. It also presents a unique ecological association of plant and animal life. It stands like an ancient reef of the past.

The park idea was initiated with a generous donation of land from Mr. Wallace Pratt in 1958, which included the outstanding McKittrick Canyon. This canyon is exquisite in that the biotic assemblage of plant and animal life, supported by a cold water mountain stream, contrasting sharply with the surrounding dry desert. It presents the park visitor with a Mind-boggling wilderness hike between colorful rock walls and cliffs. It provides a spectacular setting for an outstanding interpretive story, telling of ancient reef geology, and remnant biotic communities which are a holdover from early Paleozoic times.

A right-of-way for public access to the mouth of the canyon was included in the donation. However, subsequent surveys revealed that construction of a road along this route would be very costly and difficult.

At the present time visitor traffic is utilizing a private 5-mile road to gain access to the mouth of the canyon. Additionally, access to the Government residence near the canyon is now private land. Visitor travel, although light at the present time, is expected to increase significantly when master plan development proposals for the park are initiated.

Fletcher Pratt, present owner of the private land between McKittrick Canyon and U.S. Highway 62-180, has graciously consented to an exchange of land which would permit the public and administrative access road to be located essentially along the present private primitive road route to the canyon. This would provide a feasible route for a public access road to be constructed and be preferable from an environmental point of view.

Mr. President, the legislation I introduce today authorizes the National Park Service to negotiate the proposed land exchange with the private landowner. I urge the House to give careful and favorable consideration of this bill.

By Mr. MONDALE:
S.J. Res. 241. Joint resolution proposing an amendment to the Constitution of the United States with respect to congressional disapproval of Presidential pardons. Referred to the Committee on the Judiciary.

Mr. MONDALE. Mr. President, the events of the past several days have dramatically called the attention of the American public to a little-known, little-used, but very potent Presidential power. Article II, section 2 of the Constitution gives the President the power to "grant reprieves and pardons for offenses against the United States."

As we have seen, the pardon power may be the "Catch 22" of our Constitution. The Congress can investigate, the courts can pursue the guilty, the American people can speak—but it can all be overturned by a Presidential pardon.

I believe, Mr. President, that the time has come for serious consideration of the pardon power and its role within our system of checks and balances. Because I believe that the pardon power must be restrained—to prevent its abuse and its questionable use—by the checks which control almost all the powers granted to the three branches of Government by our Constitution, I am today introducing a resolution offering a constitutional amendment to the one that the Senate has under consideration today. It provides that a two-thirds vote of both Houses of Congress may overrule the grant of a Presidential pardon.

When the framers of the Constitution assembled in Philadelphia in 1787, they were no strangers to the pardon. They were familiar with the English practice, had witnessed the power cross the Atlantic embodied in colonial charters, and had enshrined the power in numerous State constitutions.

Surprisingly, however, neither of the principal plans presented to the Convention charged with drafting the Constitution contained a provision granting the pardon power.

This omission was soon rectified, when the Committee on Detail responded to a suggestion scribbled on the margin of the Virginia plan by John Rutledge and added a pardon provision. Although much debate ensued over the form of the power and where it should reside, the framers eventually adopted the language we know today.

During their debates, the framers argued several reasons for inclusion of the pardon power in the Constitution. For instance, noted that a pardon—particularly a pardon before trial—might be necessary in order to obtain the testimony of accomplices.

The framers also apparently concerned that there be a way to save a spy serving the Executive in time of war, when only the Executive knew of his services.

Hamilton, in the Federalist Papers, expressed the concern that there be a method, "in seasons of insurrection or rebellion," for putting a prompt end to domestic instability through a prompt offer of a pardon.

Above all else, Mr. President, the pardon is an indispensable element of even the most perfect system of law. The pardon is the instrument of mercy and the way to correct those grave injustices—either on their facts or by an anticipated operation of the criminal law—which seem to have been remedied.

In Hamilton's words—"(T)he criminal code of every country parcel so much of necessary severity that without an easy access to exceptions in favor of unfortunate guilt, justice would wear a contenance too sanguinary and cruel.
In modern times, the pardon power has evolved into a seldom-used means for overcoming technical impediments to review of convictions and for removing civil disabilities resulting from convictions.

But, the pardon power was really intended to be another "check" in our balanced system of checks. It checks the abuses of the judiciary and the oversights of the legislature, while, hopefully, acting according to the best instincts of the American people. It is with that history in mind, Mr. President, that we must view the events of the past several days. Many, myself, have objected to President Ford's pardon of former President Nixon. For me, this action—coming as it does before trial—represented the ultimate coverup of Watergate, largely eliminating the possibility that we will ever know the truth behind that sordid scandal. It also represented the ultimate injustice—telling the American people that some are more equal than others under equal justice under law.

The suggestion that all Watergate defendants might receive similar pardons merely serves to compound an already serious mistake. The possibility of uncovering the truth would totally disappear, and our system of justice would be dealt another blow.

This is not, however, the time to debate those issues. Suffice it to say that we have been awakened to the possibilities of abuse inherent in the pardon power. Consequently, the framers of the Constitution were not without foresight about the context in which we find ourselves discussing the pardon power in 1974.

Returning to the constitutional language, we find that the pardon power is qualified by one exception—"except in cases of impeachment." The President cannot pardon an impeachment. Why? Mr. Justice Story tells us in his commentaries on the Constitution.

The power of pardon, that it shall not extend to cases of impeachment, which takes from the President every temptation to abuse it in cases of political and official misconduct, by persons in the public service. . . . It is of great consequence, that the President should not have the power of preventing a thorough investigation of (high government official's) conduct, or of securing them against the disgrace of a public conviction by impeachment, if they should deserve it. . . . (It) cannot, by any corrupt coalition with favorites, or dependents, screen them from punishment.

The framers saw the possibility that the truth about corruption in high office might escape via the pardon power. Unfortunately, they did not foresee the sequence of preimpeachment events of 1974. They knew that the pardon power could be used in such a way that the truth behind political scandal could be suppressed and the guilty escape punishment—presumably Presidential otherwise. However, because former President Nixon was not impeached, but resigned instead, the pardon power was able to be used to accomplish precisely the result the framers sought to avoid.

To prevent the possibility and other possible abuses of the pardon power in the future, I am introducing today a constitutional amendment which, I believe, provide a much-needed check on the exercise of that power.

My amendment provides that a two-thirds vote of both Houses of Congress may, within 180 days of its issuance, override President Ford's Presidential pardon. Our system is carefully designed with numerous checks and balances to keep power controlled. In my opinion, the pardon power needs a check.

Much as the Executive is allowed to veto legislation passed by Congress, Congress would be allowed to veto a Presidential pardon. This is a limitation on power, but it also provides a means for more careful consideration. Hamilton, speaking of the veto power, clearly articulated the reasons for a second review.

(It would) increase the chances in favor of the meeting of both houses, through haste, inadvertence, or design. The oftener a measure is brought under examination, the greater the diversity of the situations to which it is to be applied, the less must be the danger of those errors which flow from want of due deliberation, or of those missteps which proceed from the contagion of some common passion or interest.

The framers considered giving the legislative branch a role in the pardon power. It is true that they rejected the idea, but it is important to remember that they rejected the notion of giving the legislative branch the power to grant the pardon, not the power to review such a grant.

Moreover, an examination of their reasons reveals that they have not survived the passing time. They feared delays in the pardon process, and lengthy sessions remove that fear. They feared that the Congress would not be in session when a prompt pardon was granted. As we know, the Congress could easily be called back into session due to modern communications. Finally, the close public scrutiny of our every action surely would prevent the safety-in-numbers or corruption which the framers hinted at.

Mr. President, in proposing this amendment, I do not believe I am ignoring the late Chief Justice Warren's warning that we not, in the frenzy of preimpeachment, tamper with the recommendation of the joint resolution proposing a constitutional amendment be printed in the RECORD at this point.

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

**ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS**

**S. 277**

At the request of Mr. Cranston, the Senator from Delaware (Mr. Biden) was added as a cosponsor of S. 277, a bill to amend the Immigration and Nationality Act with respect to a waiver by the Attorney General, of certain grounds for exclusion and deportation, for an offense in connection with possession only of marihuana.

**S. 2554**

At the request of Mr. Cranston, the Senator from Massachusetts (Mr. Kennedy) was added as a cosponsor of S. 2554, a bill to amend the Public Health Service Act to expand the authority of the National Institute of Arthritis, Metabolic and Digestive Diseases in order to advance a national attack on arthritis.

At his own request, the Senator from Louisiana (Mr. Johnston) was added as a cosponsor of S. 2554, the Energy Supply Act of 1974.

**S. 3418**

At the request of Mr. Exon, the Senator from Washington (Mr. Jackson) was added as a cosponsor of S. 3418, a bill to establish a Federal Privacy Board to oversee the gathering and disclosure of information concerning individuals, to provide management systems in Federal agencies, State and local governments, and other organizations regarding such information, and for other purposes.

**S. 3052**

At the request of Mr. Pell, the Senator from New Mexico (Mr. Dominguez) was added as a cosponsor of S. 3052, the Social Security Recipients Fairness Act of 1974.