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House of Representatives

The House was not in session today. Its next meeting will be held on Friday, October 24, 2003, at 10 a.m.

Senate

WEDNESDAY, OCTOBER 22, 2003

The Senate met at 9:30 a.m. and was called to order by the Honorable SAMUEL D. BROWNBACK, a Senator from the State of Kansas.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

O God, Great Lover of our souls, You are our glory, our hope, and our refuge in the day of trouble. Nothing is sweeter than Your love.

Lord, may we remember that Your love can cast out fear, and release us from chains of selfishness. Help us to live to please You.

May we remember that we are only pilgrims on Earth, made for eternity, not for time alone. Give the light of Your truth to our Senators so that they will remain ethically fit. May they not rest their trust in only what humans can accomplish, but in the power of Your Spirit. Let their mouths speak wisdom and make them forces for unity.

Teach us to depend on You so that our joy may be full. We pray this in Your strong name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable SAMUEL D. BROWNBACK led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 22, 2003.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable SAMUEL D. BROWNBACK, a Senator from the State of Kansas, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. BROWNBACK thereupon assumed the Chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, under the order from last night, the Senate will conduct a period of morning business until 11:30 this morning. During morning business, the first 30 minutes will be under the control of Senator HUTCHISON, the second block of 30 minutes will be under the control of the Democratic leader or his designee, and the final 60 minutes will be equally divided for Senators to speak.

Following this time, at 11:30 the Senate will resume debate on the motion to proceed to S. 1751, the class action fairness bill. At 12:30 p.m., the Senate will proceed to the vote on the motion to invoke cloture on the motion to proceed to S. 1751. This cloture vote will be the first vote of today's session. I am hopeful that cloture will be invoked today and that we are able to proceed to the legislation for debate and amendments.

If we are to begin consideration of the class action measure, I also hope to reach an agreement on amendments to the bill which would allow us to finish the bill this week. I will be talking to the Democratic leadership about an agreement for later today, if the cloture vote is successful.

Again, I remind Members that we continue to work on time agreements for the consideration of a number of issues—the fair education credit reporting legislation, the anti-spam bill, the Internet tax moratorium measure, the Healthy Forests bill, the CARE Act, as well as nominations that are available on the Executive Calendar.

This is not an exclusive list, and we continue to process legislation each day as legislative items are cleared for floor action.

We have a lot of work to do in the few remaining weeks left in the session. It will require some give on both sides of the aisle. I hope Members will allow us to reach agreements to consider legislation so that we can use the remaining floor time in an efficient manner.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

RECOGNITION OF THE ACTING MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Nevada is recognized.

Mr. REID. Mr. President, as we discussed yesterday on the floor, there is a need to do appropriations bills. As the leader knows, he has spoken to the Democratic leader and there is an opportunity I believe in the next week or so to move a couple of appropriations bills. If there is anything we can do to narrow the size of the omnibus package, the country will be well served. I hope the distinguished Senator from Tennessee will continue to work to see if we can move some of these appropriations bills.

As has been indicated, I think we can do that with a reasonable number of amendments and in a reasonable period of time. It would surely be helpful to the country.

Mr. FRIST. Mr. President, in response, through the Chair, the appropriations bills are critical and we continue to work aggressively. I am in wholehearted agreement. Bringing these bills to the floor one by one is a much preferred route to take. We continue to work aggressively in that regard.

WOMEN'S RIGHTS CENTER IN IRAQ

Mr. FRIST. Mr. President, I wish to take 2 or 3 minutes to make a comment on another issue.

Earlier this month, the Fatima Zehran Center for Women's Rights opened in Hillah in the Babil Province in Iraq. This center is the first of its kind to be established since the liberation of Iraq. It is also one of the many such planned across the country in Iraq. It oversees classes and workshops on women's issues and even broader issues in nutrition, in health, democracy, empowerment and leadership, literacy, computer and Internet skills, and entrepreneurship in local markets.

As we all know, the last 35 years in Iraq have been a period of injustice for and oppression of Iraqi women. They were deprived of their civil and political rights.

This is just another example of tremendous progress being made in Iraq. New programs are being developed and implemented throughout the country to raise the educational standard of Iraqi women. A few employment opportunities are occurring throughout the country. The Baghdad City Council has begun a major project to establish women's institutes throughout the city.

It is clear that the time has come for Iraqi women to occupy their natural position in society and in leading their nation. Now they have the opportunity to play an active role in the decision-making processes of the political and economic development of a free Iraq. I am delighted that such progress is being made, and I look forward to the full participation of Iraqi women who have been oppressed for so long—for almost three decades now.

I yield the floor.

RESERVATION OF LEADERSHIP TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business until 11:30 a.m., with the time equally divided between the two leaders or their designees. The first 30 minutes will be under the control of the Senator from Texas, Mrs. HUTCHISON, or her designee, and the second 30 minutes will be under the control of the Democratic leader or his designee.

ORDER OF PROCEDURE

Mr. REID. Mr. President, I have spoken to the Senator from Utah, the Senator from Pennsylvania, and the Senator from Alaska. They have been gracious enough to allow Senator KENNEDY to follow Senator SANTORUM out of order for 5 minutes. We understand that. Senator KENNEDY has no other time. I ask unanimous consent that the Senator from Pennsylvania be recognized for 5 minutes, followed by the Senator from Massachusetts for 5 minutes. I express my appreciation especially to the Senator from Alaska for allowing this to take place.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

The Senator from the great State of Pennsylvania.

NOMINATION OF WILLIAM H. PRYOR, JR.

Mr. SANTORUM. Mr. President, thank you.

I rise today to voice my support for the nominee who is before this body. There was debate on this nomination last night by many Members on our side of the aisle who are concerned about the treatment of this qualified individual for the circuit court, Attorney General Bill Pryor of Alabama.

I wish to make three points with respect to Attorney General Pryor.

No. 1, his qualifications.

As we heard last night and have heard repeatedly both in the Judiciary Committee and here, there is no question as to the man's qualification, his skills, his experience, his record of accomplishment, his educational background. They are all exemplary, extraordinary. This man, without question, is qualified for this position. I daresay that most, even those who oppose him, have not questioned his innate qualifications for the job.

We set aside the issue of qualifications and take it as a given that he is surely qualified for this position.

The question that has been raised is whether General Pryor would follow the law. That is a question that Members on both sides of the aisle ask of judicial nominees from both parties: Will you follow the law? Will you exercise your own judgment and be creative on the bench?

I daresay if you look at the history—certainly recent history—of the courts, many who have come through this Chamber who said they would follow the law have not done so. I argue that the vast preponderance of those have been nominees of Democratic Presidents who have taken an activist approach on the bench, as well as, unfortunately, some Republican nominees who have taken an activist approach on the bench, an activist approach in the direction that would be contrary to where I would like to see the judiciary go. We have not seen that evidence as much by nominees taking a more conservative approach as opposed to the liberal court approach we have seen in the courts over the years.

Nevertheless, it is a legitimate question for Members on the other side of the aisle to ask if a conservative would adopt their own agenda—probably given the experience of so many liberals adopting their agenda, and they want to make sure, while they are comfortable with that, they would be uncomfortable with conservatives doing the same thing.

In the case of Attorney General Pryor, we have someone who has shown at least on two high profile occasions, most recently just a few months ago, that he would strictly adhere to the law even when he disagrees with the rulings of the court.

In the most famous case of the Ten Commandments in the courthouse in Alabama, Supreme Court Justice Moore wanted a display of the Ten Commandments in the middle of the courthouse, and Attorney General Pryor complied with the removal order even though it is fairly clear he had no problem with this display. Nevertheless, he showed his integrity and followed the law.

In previous cases, in an abortion-related partial-birth abortion decision—we just had a vote on the issue—he followed the law. The Alabama courts, the Supreme Court, issued a ruling and he followed that ruling. This is a man who has integrity and has a record of following the law.

What is the third issue? The third issue has to do with ''deeply held beliefs.'' This was a question asked by several members on the Democratic side at the hearing about his deeply held beliefs. Attorney General Pryor happens to be Catholic. His deeply held religious beliefs dictate to him a position on issues which happen to be antithetical to some on the Democratic side on the Judiciary Committee. I frankly took offense to the question

being asked about his deeply held religious beliefs as somehow a disqualifier; somehow if you hold beliefs deeply you are no longer eligible to hold a position of public trust in the judiciary.

I argue this country was founded on religious pluralism; that is, people with shallowly held religious beliefs, deeply held religious beliefs, no religious beliefs, all are eligible and welcome to serve in this country in positions of importance, whether it is in the judiciary, whether in the legislature, or in the Executive Office.

We are finding a litmus test that should be very disturbing to people of faith, to people of no faith. It has no place in the Senate.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from the great State of Massachusetts.

Mr. KENNEDY. I thank the Republican leader and Senator MURKOWSKI and Senator BENNETT as well for their courtesy this morning.

CLOTURE VOTE ON CLASS ACTION

Mr. KENNEDY. Mr. President, what we are being asked to do on this class action bill is a travesty. We are not only being asked to throw the baby out with the bathwater; we are being asked to throw out the bathtub and buy a new one that no sensible parents would even want to put the baby in.

We all know what is going on here. Corporate giants and giant insurance companies do not want to be held accountable in class action cases, and they want to make it as hard as possible for injured citizens to obtain relief. They are powerful special interests. They know that the heavier the burden they impose on the courts, on consumers, and on those with legitimate civil rights and environmental claims, the less likely they are to be held accountable.

All of us agree that class action procedures are far from satisfactory, especially in large nationwide cases, and reasonable reforms are long overdue.

If we vote for cloture today we are giving a blank check to those who would like class actions to disappear entirely, so that injured citizens do not have to be paid at all. If we vote against cloture, we will give new leverage and needed time to those who are serious about reforming class actions and just as serious about protecting citizens' rights.

Today we are presented, virtually on a take it or leave it basis, with what can only be called a radical shift in Federal law, a bill that calls itself the Class Action Reform Act. If we want truth in labeling, we should call it the Class Action Destruction and Federal Court Disruption Act.

In its present form, this bill is a shoddy patchwork of different ideas and different approaches grafted together with no concern for its overall impact, as long as it shields defendants. Key provisions have never been the subject of any hearings or any careful analysis by impartial experts in the field.

Yet the bill makes massive changes in the basic rules of the road on jurisdiction of the courts.

It suddenly abandons 200 years of evolutionary change in Federal jurisdiction and substitutes a totally new road that no one has traveled and no one can map. It does so in the interest of purported problems that, if they exist at all, are not emergencies and certainly are not so urgent that we need to move ahead so blindly.

If we enact this bill, we will have confusion and conflict in the Nation's courts for years, as they wrestle to untangle the mess which this law produces. Its most visible initial impact will be to add an entire new layer of legal jousting, litigation burden and higher costs to already complex cases.

If the hopes of its sponsors are realized at all, the law will force a very large number of complex and important cases off the dockets of tens of thousands of State judges and onto the dockets of less than 2,000 Federal judges, who already face massive backlogs.

We can also expect that the law as now proposed will do serious harm to the ability of citizens in civil rights cases to obtain the relief they are entitled to under State law.

There are no legitimate complaints about class actions on civil rights. Yet this bill would severely and adversely affect such cases.

The bill will make the most pressing and legitimate class action cases more burdensome and more expensive. It will reduce the ability of courts to improve the efficiency of justice by dealing with large numbers of small but similar cases in groups, instead of one at a time.

To the extent that plaintiffs need additional safeguards for the class plaintiffs in class actions, this legislation promises a ''Bill of Rights,'' but it does not produce what it promises. It does not seriously address the problem of worthless and collusive settlements, which produce substantial benefits for attorneys and defendants, but little or nothing for injured plaintiffs.

The basic purpose of court actions in general, and class actions in particular, is to enable injured people to get relief—sometimes monetary relief and sometimes other relief such as injunctions against discrimination or restoration of employment.

If citizens know that reliable relief is possible at reasonable expense and within a reasonable time, they will initiate the court actions that our judicial system allows them to bring.

That kind of relief tells those who might discriminate: don't discriminate. It tells those who might bring hazardous products to markets: don't hurt consumers. It tells those who might harm the environment: even if no individual person is harmed enough to be able to sue, you will be brought to justice, so stop polluting.

The Chief Justice of the United States has told us not to pass this bill. The National Association of State Chief Justices has told us not to pass this bill. Dozens of organizations with no interest to protect except the right of people to obtain a remedy when they are wronged, have pleaded with us not to pass this bill.

A vote for cloture is a vote to deprive our constituents of an important and realistic remedy for the vindication of their rights. When we deprive the people of remedies, we deprive them of their rights.

That is not what they sent us here to do. That is not what the founders created the Senate to do. We offend our people and we offend our history if we fail them today.

The ACTING PRESIDENT pro tempore. The Senator from the great State of Utah.

IRAQ

Mr. BENNETT. Mr. President, we have a continual drumbeat going on in this Chamber. It came to a crescendo during the debate over the Iraq supplemental, but it goes on even when there is no legislation on the floor dealing with Iraq. There are several themes of this drumbeat that I would like to address this morning.

The first theme we hear over and over and over again is the theme of faulty intelligence. How could the President have been so stupid as to have acted on faulty intelligence? Occasionally, the enthusiasm for this theme gets carried away to levels that are inappropriate, as we have the accusation that the President was not just misled by faulty intelligence, he deliberately lied. We hear this again and again, particularly in the media: The President is a liar; he deliberately misled the country.

I would like to address that theme for a moment and then another theme we hear over and over which is that the President has made a terrible mistake when he has endorsed the concept of preemptive war. We have these two themes: No. 1, the President is either stupid or a liar because he mishandled the intelligence; and No. 2, he has embraced a historically repugnant doctrine, the doctrine of preemptive war.

On the issue of intelligence, let us understand something about intelligence. It is never hard and fast. It is always an estimate. It is also a guess. It is also the best view of the people who are making intelligence decisions and assessments. And it is often wrong.

Let me give you an example of a President who acted on intelligence that turned out to be wrong. No, let me back away from that, not necessarily a President who acted, a commander who acted on intelligence that turned out to be wrong that had significant international effect.

I was traveling in China with the then-senior Senator from Texas, Phil Gramm, and we met with the Prime

Minister of China, not long after the Americans, under the command of GEN Wesley Clark, had bombed the Chinese Embassy in Serbia. The Chinese were understandably very concerned about that.

We said: It was a mistake. It was an error. And the Chinese Ambassador, with whom we were talking at the time, said: You have the best intelligence in the world. You must have known that was the Chinese Embassy. That was not a hidden fact. That was not a secret. You have the most accurate military in the world. You did that deliberately.

Then he pointed out to us that was not just the Chinese Embassy; that was, in fact, the headquarters of the Chinese intelligence operation throughout Central Europe. So we bombed an embassy and we took out their intelligence capability. They said: You did that deliberately. We said: No; it was a mistake.

I remember Senator SHELBY saying: The proof of the fact that it is a mistake is that nobody would have been stupid enough to do that deliberately. Then the Chinese Ambassador said: If it was a mistake, why hasn't somebody been fired? And for that, we had no particular answer.

Checking into it, we found the reason that happened is because GEN Wesley Clark, the commander of NATO, was demanding targets: I need more targets. I'm running out of targets. And under the pressure of those demands from that commanding general, the CIA came up with targets, and they came up with an old target with bad information, under the pressure from a commander who was anxious to keep bombing even though he had run out of legitimate targets. In that pressure, a tragic mistake was made, and America's relationship with China was seriously damaged in that situation.

So intelligence is not always perfect. But in the postmortem of 9/11, we have seen how people want to have it both ways. They look at the intelligence that was available pre-9/11, and they say: How can you have missed this clue? You should have taken action, Bush administration, on the basis of this clue.

Then, when we have information with respect to Iraq that turns out not to be exactly accurate, we are told: How could you have been so misled? How could you have interpreted this way?

One CIA official said: If we had not acted on the basis of the information that we had prior to the war in Iraq, if we had not warned the President in the way we did, we would have been held in violation of our duty, particularly if something had happened.

Then the naysayers, who are saying, ''How could you be misled by this intelligence,'' would be saying, ''How could you have missed this clue?'' They attempt to put the President and this administration in a no-win situation. No matter what the President does, he is attacked by the people on the other side of the aisle.

Now, finally, this issue of preemptive war. I will not take the time to go into a full discussion, but I say, particularly to those Senators who pride themselves on their sense of history, let us look back in history and ask ourselves, what would have happened if Neville Chamberlain, Prime Minister of Great Britain, had adopted the attitude of preemptive war when he went to Munich? What would have happened if he had sat down with Adolph Hitler and done what Winston Churchill was urging him to do, which is the same doctrine that George W. Bush had put forward, and said to Hitler: If you attack Czechoslovakia, there will be war. If you move ahead, there will be war?

Neville Chamberlain and some of the people around him said: Hitler does not represent an imminent threat. Hitler is not talking about bombing London now. If we give him Czechoslovakia, he will feel nice towards us. We need to worry about international opinion. We need to see to it that everybody gets together in the international community. And Czechoslovakia does not affect us.

Chamberlain said: Those are people far away from us with whom we have nothing to do, a speech that could have been made on the floor of this Senate as people talk about Iraq: They are far away from us, people with whom we have nothing to do. And the threat is not imminent.

Churchill was long-headed enough to know that if Hitler got control of Czechoslovakia, he would get control of the finest machine shops in Europe, he would add to his military machine, and he would be prepared to wage world war. If Hitler were denied Czechoslovakia, we now know in history, his own generals would have deposed him for being too risky.

But Neville Chamberlain said: No. We can't wage any kind of preemptive war. We have to wait until he attacks us before we can justify it. And 6 million Jews went to the concentration camps and into the ovens, and countless millions were killed in the Second World War because we did not take preemptive action when we could have. I say ''we''—the Western World did not.

Chamberlain was hailed as a hero when he came home, and the motion to support the action that he had taken went through the House of Commons by huge margins. When Winston Churchill stood up and said: We have suffered defeat of the first magnitude, he got only a handful of votes. But history has not been kind to Mr. Chamberlain. History has validated the position that Winston Churchill took, a position which George W. Bush is applying to modern conditions.

Those who value history should read all of history before they stand on the Senate floor and attack the President of the United States for a doctrine that they say is repugnant.

I yield the floor.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The Senator from Alaska is recognized under a previous order of the body. There was a previous agreement that was entered into that grants her this slot of time.

The Senator from Alaska.

ENERGY FROM ALASKA: JOBS FOR AMERICA

Ms. MURKOWSKI. Mr. President, I rise this morning to speak about a topic of great importance to our Nation; that is, the subject of jobs.

I know this subject is on the minds of my colleagues, and certainly on the minds of my constituents back home in Alaska, but really Americans throughout the country.

Since 2000, the American economy has been in a slump. In 2000, we were headed toward a recession. The stock market declined and the technology bubble burst. Then came September 11.

When terrorists struck the World Trade Center and the Pentagon, our economy suffered. And as we, as a country, mourned the loss of 3,000 innocent Americans, we again watched that stock market tumble and, really, the economy grind to a halt.

This administration has been working very hard not only to protect American people from terrorism but to revive, to reinvigorate our economy.

The approach that has been taken to cut Federal taxes, as we have done in Congress, the move the Federal Reserve Board has taken in cutting interest rates, those were the right things to do. But we can do so much more. We can and we must take positive steps to create good paying jobs for Americans.

On the floor recently many of my colleagues have been talking about the loss of jobs we have sustained over the last few years. The truth is, we have lost a lot of jobs. But I do not want to talk this morning about those jobs that we have lost. I want to look forward. I want to talk about the many jobs we can and should create for Americans who are out of work.

Currently, we have a House-Senate conference committee crafting a comprehensive Energy bill. In late July, in a show of great bipartisanship, the Senate passed an Energy bill to conference. There were 83 of my colleagues who supported me in this measure. Fourteen Senators voted against the bill.

Attempts have been made by both Republicans and Democrats to enact a national energy policy to reduce our country's dependence on fossil fuels, much of which comes from foreign countries, and to improve the existing energy infrastructure in the U.S.

Most people would agree we need a national energy policy to address our concerns, but there is widespread division as to how we go about it. These divisions can be partisan, they can be ideological, or they can be regional. I encourage the conferees working on

the Energy bill to put these differences aside and reach an agreement that meets the energy needs of Americans. Of course, as we know, that is easier said than done. Developing a national energy policy is, to say the very least, difficult. It means many things to different people. Therein lies the problem with passage of a national energy policy.

My colleagues in the House represent diverse opposing interests. We all have diverse interests. We come to it from a different perspective, as we approach a national energy policy. So while it may be easy to get Members interested in talking about a national energy policy, when it actually comes to putting the pen to paper, it is much more difficult to garner support.

As part of a national energy policy, I have been advocating opening the Arctic National Wildlife Refuge to oil and gas exploration, as well as enacting a fiscal package to build a natural gas pipeline from Alaska to the lower 48. My constituents are eager to offer our State's natural resources to the Nation to meet our shared energy needs.

I will continue to fight, as I have been, to get these provisions in an Energy bill. I do not apologize or make any excuses for what I have to do for my State. It is my job. But developing Alaska's energy resources not only benefits Alaskans but it benefits Americans.

I will explain how developing Alaska's resources will benefit all Americans. Before I do so, I will discuss what a comprehensive energy policy must contain, in my opinion. Some of my colleagues think the only thing I want in an Energy bill is ANWR and a natural gas pipeline. From my perspective, an energy policy that does not utilize the vast domestic energy reserves in Alaska is not comprehensive. We must provide for increased oil and gas production in order to meet the country's demand for energy. In my mind that is very clear. But there is more to an energy policy than that. The policy must address our renewable energy reserves.

At the same time we encourage domestic production of energy, we must promote energy efficiency and energy conservation. We cannot have a comprehensive policy by doing just one or the other. We have to have both.

I am not going to talk this morning about energy dependence, technically recoverable barrels of oil, known cubic feet of gas, or the minimal impact that energy development in Alaska would have on the environment. My colleagues have heard those arguments time and time again. This morning I want to talk about jobs. I want to talk about how we can create good paying jobs for all Americans. I don't want a single man or woman in America who is willing to work and looking for work to be locked out of finding a job. Americans can't enjoy the American dream without a job. It is as simple as that.

We have passed legislation to stimulate the economy. We have passed legislation to cut taxes. But our work is not done until Americans have work.

In my State, traditionally we have had the highest unemployment among the States. According to the September 2003 seasonally adjusted unemployment rates, Alaska's unemployment rate overall is 7.8 percent. In many parts of my State, it is in the double digits, something that is hard for many of my colleagues to imagine. In our neighboring State of Washington, the unemployment rate is 7.6 percent. When Americans can't find work, our job in Congress is not done. We have to get to work to get people to work.

I don't know how much more clear I can be on this point. I want the men and women of this country who are searching for a job to be able to find them—good paying jobs, jobs with benefits such as retirement and health care, and jobs that can sustain a family.

How do we create these jobs? It is through the Energy bill. We ought to call this legislation the national jobs bill because that is what the Energy bill can be. If we do it right, this Energy bill can be the jobs bill.

I have said before that developing the energy resources in Alaska will create jobs. No one can deny that. If we open ANWR, if we build a natural gas pipeline, we create jobs. They are good paying jobs for Alaskans.

I have heard the reasons from Democrats and Republicans in both the House and the Senate of why we should not open ANWR or why we cannot produce a fiscal package that would ensure construction of a natural gas pipeline. But I have to ask: Are they saying we can't create jobs or we should not create jobs? Are they saying we should not create good paying jobs for Americans? I don't think there is a Member of this body or the other body who would state that they oppose job creation.

So I say to my colleagues: Let's do the right thing. Let's protect our energy security, our economic security.

Let's create good paying jobs for Americans.

I direct my colleagues' attention to a report recently completed by the National Defense Council Foundation. This report is current. It is scheduled to go to print on October 30. The NDCF is a nonprofit think tank that studies defense and foreign affairs issues facing the United States. The experts at NDCF specialize in the study of low-intensity conflict, the drug war, and energy concerns. It is not affiliated with DOD or any part of the Federal Government. This report is entitled ''Eliminating America's Achilles Heel, Our Addiction to Foreign Oil and How To Overcome It.''

This report estimates the direct and indirect jobs that would be created by the development of the oil in ANWR and Alaska's natural gas reserves.

The NDCF estimates that opening ANWR would create 1,074,640 jobs throughout America. It is important to repeat that number: 1,074,640 jobs throughout America. That is opening ANWR. The NDCF also looked at how many jobs would be created by the construction of an Alaska natural gas pipeline.

They estimate that it would create 1,135,778 direct and indirect jobs throughout the Nation. Again, 1,135,778 direct and indirect jobs would be created through the construction of an Alaskan natural gas pipeline.

So if we do both, that is 2.2 million jobs—good paying jobs—throughout the country. The estimate, according to the NDCF, is 2,210,418. If you were to ask anybody, certainly in this body, if you could pass a bill to create 2.2 million jobs, would you do it? Of course you would.

The Energy bill is not just an answer to our energy problem; it is an answer to our economic problems. It is a jobs bill.

I need to talk numbers a little bit more because I am sure you are thinking, well, of course, Senator MURKOWSKI is advocating this because it means good jobs for her constituents in the State of Alaska. That is absolutely true; there are going to be good jobs in my State of Alaska. In Alaska, according to the NDCF, Alaska resource development would generate 202,464 direct jobs and 131,917 indirect jobs. That is about 330,000 out of 2.2 million jobs.

So where are the rest of these jobs? They are spread literally throughout the country, all throughout the lower 48 States, and Hawaii and the District of Columbia. So Alaska is not the only State that benefits. There will be 315,435 direct and indirect jobs generated in California.

Let's look at what we might have in South Carolina for the Presiding Officer's edification. If both ANWR and the gas line were opened, there would be 12,115 direct and indirect jobs in the State of South Carolina. New York would see 93,356 jobs. Washington State would see 139,089 jobs.

Now, I am sure somebody is going to ask me—or perhaps target this study in an attempt to poke holes in the methodology—but the interesting news here is that many of the people who approve of the methodology for this study represent some of the largest environmental groups in the country. So this means that the environmental groups have signed off on the methodology used for this study that shows that more than 2.2 million new jobs would be created from ANWR and the natural gas pipeline.

I conclude that by adding that through the opening of Alaska's natural resources, we not only provide the energy that this country needs but again we provide jobs throughout the country—good paying jobs. I ask my colleagues, as we move forward with the Energy bill, to keep this in mind for the good of the country.

The PRESIDING OFFICER. The time of the Senator has expired.

The Senator from Wisconsin is recognized.

Mr. FEINGOLD. I yield myself as much of our time as I require.

The PRESIDING OFFICER. The Senator may proceed.

THE USA PATRIOT ACT

Mr. FEINGOLD. October 26 will mark the second anniversary of the USA PATRIOT Act. I wish to speak today about the continuing and growing controversy surrounding that law, which was passed just 6 weeks after the September 11 terrorist attack.

I was the only Senator to vote against the PATRIOT Act. As I said during the debate in the fall of 2001, the act contained many provisions that were necessary and appropriate to help protect our Nation against terrorism. I still believe that. But I also argue that the PATRIOT Act went too far; that it threatened our citizens' constitutional rights and liberties. That is why I could not support it and why I insisted on offering amendments to the bill on the floor.

Today, 2 years later, I still believe that as well. An increasing number of Americans have agreed and have expressed their concerns that certain provisions of the PATRIOT Act threaten the rights and liberties guaranteed by our Constitution for over 200 years. The chorus of voices of doubt has grown so loud that the Bush administration has responded but not, I am sorry to say, by addressing these concerns in a constructive and open way. Rather, the administration has initiated what seems to be a public relations campaign in recent weeks to simply defend the PATRIOT Act in its entirety.

The Attorney General has gone on the road and on the Internet to extol the virtues of the law. Speaking before hand-picked audiences of law enforcement personnel, he has ridiculed and dismissed those who have raised concerns about the law. A few weeks ago he denounced ''the charges of the hysterics'' as ''castles in the air, built on misrepresentation, supported by unfounded fear, held aloft by hysteria.''

I think these words are unfortunate, and in its zeal to defend the act the administration appears unwilling to even acknowledge the legitimate concerns of many Americans; and it objects to commonsense proposals to protect privacy and civil liberties that would not in any way undermine the fight against terrorism—proposals such as my bill, the Library, Bookseller, and Personal Records Privacy Act, and Senator CRAIG's bill, the SAFE Act, which I also strongly support, which would protect the constitutional rights of innocent citizens, while still allowing the FBI to do its job to protect our Nation from another terrorist attack.

As Members of Congress, we have taken a solemn oath to uphold the Constitution of the United States. The President and the executive branch officials, of course, take this same oath. The burden is on the administration, which sought the powers included in the PATRIOT Act and which now seeks even more powers, to show that the current law and proposed new laws are consistent with the Constitution.

Let me take a moment to remind my colleagues how a commitment to individual rights became part of the founding principles of our Nation and enshrined as the Bill of Rights.

In 1787, in the halls of the State House of Pennsylvania in Philadelphia, GEN George Washington, who led our Nation to victory during the Revolution, convened the Constitutional Convention. A number of great political figures were delegates to that convention. Joining Washington were other distinguished Americans such as James Madison, Benjamin Franklin, Alexander Hamilton, and George Mason. Mason participated in the Convention, but he was concerned that the deliberations would result in a Constitution creating a central government with too much power over the States and individuals.

Mason, a patriotic American, who loved his newly found freedom from British rule, had reservations when he made the trip to Philadelphia. Prior to the Convention, he had written a bill of rights for the State Constitution of Virginia. He urged delegates to the Convention to include a bill of rights also in the national Constitution.

But a majority of delegates initially disagreed with Mason. When the draft of the Constitution was released, it failed to contain a bill of rights or any other explicit protection for the rights of individuals. Mason was bitterly disappointed.

Mason was concerned that, without any explicit protection for individual liberties, the Constitution would open the doors to tyranny by a central government. Why? Because our experience with British rule, in which the colonial power was able to infringe on individual rights, was still very much on his mind. So after the Constitutional Convention adjourned, Mason continued to push for a bill of rights.

During the next 2 years, as the Constitution made its way to the States for consideration and ratification, the American people came to agree with Mason, and he prevailed.

Thomas Jefferson wrote to Madison that a bill of rights was ''what the people are entitled to against every government on earth.''

Another statesman, Richard Henry Lee, who was one of the signers of the Declaration of Independence, said provisions were needed to protect ''those essential rights of mankind without which liberty cannot exist.''

Madison, who was initially opposed to including a bill of rights, was persuaded. An explicit protection for the rights of people or a bill of rights was needed in our Nation's governing document.

So, Mr. President, on September 25, 1789—almost exactly 214 years ago—the First Congress of the United States proposed 12 amendments to the Constitution. Ten of these amendments were ratified 2 years later by the legislatures of at least three-fourths of the States. The remaining two amendments relating to compensation for Members of Congress and the number of constituents per Representative were not ratified at that time.

The first 10 amendments to the Constitution, of course, are what Americans now know as the Bill of Rights. The first amendment guarantees freedom of speech, freedom of religion, and freedom of association.

The second amendment guarantees the right to bear arms.

The fourth amendment protects against unreasonable search and seizures.

The fifth amendment ensures that no person shall be deprived of life, liberty, or property without due process of law.

The sixth amendment guarantees a right to counsel and a right to trial by jury to those charged with crimes.

During the debate on our Constitution, our Nation was at a critical juncture: Do we follow a path toward a highly centralized government with the potential for tyranny or do we follow a path toward a government with checks and balances, respect for States in a Federal system, and protections of individual rights and liberties?

The decisions made in the first days of the Republic have stood the test of time. They, of course, created the greatest democracy on Earth and a governmental structure that is most protective of individual freedom and liberty in history.

Today we stand at another critical crossroads. As our Nation faces new terrorist threats, we must respond to those threats without compromising the civil liberties that are the bedrock of our country. We must balance the legitimate needs of law enforcement against the privacy and freedom of all Americans, and that is not an easy task.

One thing I know, the solution is not simply to grant the Federal Government more and more power to conduct surveillance, eavesdrop, and collect information on law-abiding Americans.

The debate about the PATRIOT Act echoes the debate over two centuries ago in the halls of the statehouse in Philadelphia. Today, as then, we must take from our experience as a nation. We must remember the critical role the Constitution and, in particular, the Bill of Rights, has had in guiding our country through national crises, war, and armed conflicts at home and abroad, including the War of 1812, the Civil War, the two World Wars, and the cold war.

The Constitution has survived and flourished throughout our history, and respect for individual freedom and privacy has steadily advanced.

In the immediate aftermath of the September 11, 2001, terrorist attacks, there was, understandably, a great desire to give the administration the tools it said it needed to fight terrorism and prevent another terrorist

attack. But with time to study and reflect after enactment of the PATRIOT Act 2 years ago, many Americans have now paused and come to see a very real potential for abuse of power and infringement of privacy and civil liberties unleashed by this law.

There is strong and growing bipartisan support for changes to the act to protect our rights and liberties. I am confident that this right-left and moderate coalition of support will continue to grow and eventually occupy the center as more and more Americans learn what the law means.

The coalition includes Americans for Tax Reform, the American Conservative Union, and the Free Congress Foundation, as well as the ACLU and the Open Society Policy Center.

At the State and local level, 3 States and over 180 cities and counties have enacted provisions and resolutions expressing concern with the PATRIOT Act. These States and communities represent over 25 million residents, and these localities are not just left-leaning college towns, such as Madison and Berkeley, but also right-leaning, libertarian regions of the country such as Flagstaff, AZ, Boise, ID, and the State of Alaska.

Here in Congress several legislative proposals have now been introduced proposing changes to the PATRIOT Act to protect privacy and civil liberties. During its consideration of the Commerce-State-Justice appropriations legislation, the House adopted an amendment by Representative OTTER to restrict the FBI's use of the ''sneak and peak'' power granted by the PATRIOT Act. The Otter amendment received overwhelming support, including 113 votes from Republican Members of the House.

In the Senate, Senator MURKOWSKI of Alaska and Senator WYDEN of Oregon have introduced a bill, S. 1552, proposing to modify a number of the provisions of the PATRIOT Act. As I mentioned earlier, I have introduced the Library, Bookseller, and Personal Records Privacy Act, S. 1507, and now there is the SAFE Act, S. 1709, which I also mentioned earlier. I am pleased to join my colleagues Senators CRAIG, DURBIN, CRAPO, SUNUNU, WYDEN, and BINGAMAN in supporting this bill.

The SAFE Act does not repeal the PATRIOT Act. It simply proposes reasonable modifications to four particularly troubling PATRIOT Act provisions. These modifications will help to protect civil liberties and privacy by strengthening the role of judges in approving certain kinds of search and surveillance authority expanded by the PATRIOT Act.

Specifically, the SAFE Act would strengthen the role of the courts in approving delayed notice searches, requests for access to library, medical, and other records containing sensitive personal information, and roving wiretaps in FISA cases.

These are the issues I first raised in the fall of 2001 as the main reasons why I believe the PATRIOT Act was flawed and threatened fundamental constitutional rights and protections. For me and those few of my colleagues who supported my business records and roving wiretap amendments to the PATRIOT Act, it sure was a lonely feeling in October 2001. I must say, I did not imagine at that time that reasonable minds would begin to prevail so soon. Now 2 years later, we have a strong bipartisan effort to change these provisions, and I am pleased to see that. I look forward to working with Senator CRAIG and my other colleagues on both sides of the aisle to get the bill passed.

I am still very troubled by the administration's response to legislative efforts, such as those I just mentioned, and to the public's outcry to repeal or modify the PATRIOT Act. The administration has launched an effort to defend the PATRIOT Act, but its defense only tells the American people half the story at best. Its PR campaign eagerly describes the new powers the PATRIOT Act gives to law enforcement, but it doesn't say anything about what the law potentially takes away from the American people: our liberty and our privacy.

Perhaps most disturbing, the administration's campaign fails to seriously address section 215, which I have long seen as the act's most troubling provision. Both my bill and the Craig bill contain the same proposal to modify this provision. Section 215 allows the FBI access to the private details of the lives of law-abiding Americans—which books we have checked out from the library, what our medical records reveal, and what charges we have made on our credit cards. Americans reasonably expect the details of their private lives, from what they read to what drugs they have been prescribed, to remain just that—private. The PATRIOT Act undermines that expectation.

Under section 215, all the FBI has to do is assert that the records are ''sought for'' an international terrorism or foreign intelligence investigation. As long as the FBI makes such an assertion—and it is just an assertion—the secret foreign intelligence court is required to issue an order allowing access to those records. The courts cannot review the merits of the subpoena request.

Both my bill and the Craig bill would simply require the FBI to set forth specific facts showing that the records sought relate to a suspected terrorist or spy. Thus, the Government could not ask, say, Amazon.com or e-Bay to turn over the records of law-abiding customers. It could, however, obtain records of those customers who are actually suspected terrorists. My bill would allow the FBI to follow up on legitimate leads by also respecting the privacy and civil liberties of law-abiding Americans.

The administration has recently asserted that the criticism of section 215 is baseless because this section has not yet been used since it was enacted. The administration says that librarians concerned about access to Americans' reading records are hysterics and have been duped by civil rights advocates and Members of Congress.

I am disappointed that the administration would use such rhetoric. No one has been duped, and the people concerned about their privacy are not in hysterics. They are simply worried, as I am, about the Government possessing a power that has the potential to intrude on their civil liberties, particularly since the statute itself prohibits a library, bookseller, or anyone else who has been served a subpoena from making that information public.

What I said before the PATRIOT Act was passed, and continue to maintain now, is that section 215 presents the potential for abuse.

I will say it again, because I cannot emphasize this enough, section 215 presents the potential for abuse. Regardless of whether the provision has not yet been used, that potential still exists, and the public has a reason to be concerned. No amount of ridicule or spin can change that.

The recent disclosure that section 215 has never been used does not address the concern that it could be used in a way that would violate the privacy of innocent Americans. But it does raise another question: If the section has never been used in the 2 years since the bill was passed, the 2 years immediately following the September 11 attacks, when concern over terrorism has been at its peak, including numerous periods of orange alert status, then whey is this provision even on the books? Or at the least, what possible objection could there be to modifying it so that the potential for abuse is eliminated?

Both my bill and the Craig bill would protect the rights of law-abiding citizens by limiting the FBI's access only to information that pertains to suspected terrorists or spies. Our legislation recognizes the legitimate uses of section 215 and would not interfere with the use of the provision to investigate and prevent terrorism.

I urge the administration to open an honest dialogue with Congress and the American people to address the PATRIOT Act's specific problems instead of continuing to try to sell it. We do not need a government that forces its authority on the people and rejects and ridicules legitimate, heartfelt, and principled criticism of its actions and its laws. That is what our Founding Fathers strived to ensure would never happen again. The Federal Government should be responsive and accountable to the people. But most importantly, the Federal Government should respect and uphold the Constitution.

Unfortunately, the administration has not only failed to engage in an honest dialogue about the PATRIOT Act, but it now proposes that Congress grant to it even more power. The American people have expressed very legitimate and sincerely-held concerns

about the PATRIOT Act. The administration should answer those concerns honestly and forthrightly before seeking more power.

The administration has announced its support for three legislative proposals to expand executive branch power and diminish the role of judges, an essential part of our Nation's system of checks and balances. One proposal grants the Attorney General significant power to compel people to testify or the production of documents, all without prior court approval. A second proposal broadens the presumption of pretrial detention to cases that may not even involve terrorism. Finally, the third proposal expands the Federal death penalty.

Criticism of the PATRIOT Act appears to have had the effect of influencing the administration's strategy to secure this new power, but not the substance of its effort. Rather than proposing a single bill with various provisions to expand the PATRIOT Act, the administration instead appears to have given its blessing to many little ''PATRIOT IIs.''

The administration is apparently reluctant to allow these proposals to be linked to the PATRIOT Act. In fact, the Justice Department has even tried to suggest that they are unrelated. No one is fooled, however, least of all the American people. The fact is that these proposals did appear in the draft ''Patriot II'' leaked earlier this year and entitled the Domestic Security Enhancement Act.

''Patriot II,'' whether contained in one bill or a series of bills, is the wrong response at the wrong time. An increasing number of Americans want to know exactly how this administration is using the powers it already has and want the PATRIOT Act to be amended to protect privacy and civil liberties.

The burden is on the administration to show Congress and the American people why current law is inadequate, why it needs even more power, and how the powers it already has and the new powers it seeks are consistent with the Constitution and Bill of Rights.

That would be the patriotic thing to do.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Would the Chair announce, under the additional time we have until 11:30, how much time the minority has remaining?

The PRESIDING OFFICER. The minority has 7 minutes 17 seconds remaining.

Mr. REID. How about if we add in the time for the second hour? Is it 32 minutes or something like that?

The PRESIDING OFFICER. After this, there will be 50 minutes equally divided.

Mr. REID. So it would be about 32 minutes. I ask unanimous consent that during our time the Senator from Michigan, Ms. STABENOW, be recognized for 9 minutes; Senator HARKIN for 9 minutes; Senator CORZINE for 9 minutes; and Senator BINGAMAN for 4 minutes. That will basically use up all of our time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. I ask unanimous consent that we alternate back and forth if, in fact, there are people from the majority; otherwise, it would be in the order that I have mentioned.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Michigan is recognized for 9 minutes.

MEDICARE AND PRESCRIPTION DRUGS

Ms. STABENOW. Mr. President, I rise today to speak about the issue of Medicare and prescription drugs and where we are as we have been working to develop a prescription drug benefit for seniors and put in place plans that would lower prices on prescription drugs for everyone: Businesses, individuals, workers, families.

We are at a crossroads. We have been working many hours in a bipartisan way in this body, trying to come to a positive conclusion on the question of Medicare and prescription drugs. There are wide differences in philosophy and approach, particularly with our colleagues on the Republican side of the aisle in the House of Representatives. I am deeply concerned about the direction that the conference committee appears to be going as it relates to the fundamental issue of whether we will continue to have Medicare as we know it in the future.

We all know that Medicare was put into place in 1965 because at least half of our seniors could not find or could not afford prescription drug coverage and health care in the private sector. They could not find or afford health care in the private sector. So this Congress and the President at that time came together and did something I think is one of the most significant actions of modern age for the people of the country, and that is to create health care for seniors, for those over age 65, and for the disabled of this country, a guarantee that we would make a commitment together and fund a system for older Americans and the disabled to have access to health care in this country. It has made all the difference in terms of quality of life for our citizens.

We now are at a juncture where we have seen a proposal passed as part of the House package that would essentially do away with Medicare as we know it. Instead of it being a defined benefit, meaning it does not matter where a person goes, whether they are going to New Jersey, Iowa, or Michigan, or what part of Michigan they live in, whether they live in the Upper Peninsula, Detroit, Benton Harbor, or Lansing, they could count on Medicare. They know what it will cost. Their provider knows what they will be paid for the service. It is a system that is universal, and it works.

What we are hearing now is that there is a great desire, unfortunately, among, again, predominately our colleagues in the House, in the majority, who are saying that system should be radically changed. Instead of having Medicare, which is dependable, affordable, reliable—we know what it is; seniors can choose their own doctors; providers know what the payment will be—they want to change it to what is called premium support.

Now, what does that mean? Essentially, it is like a voucher. They want Medicare to essentially say a person has X amount of dollars for their health care, and if it costs more than that, they pay that. If, in fact, they want to take that and go to an HMO or PPO, that is what would be encouraged. People would be pushed more and more into an HMO or a PPO in order to save dollars, but for most of our citizens that would not be available.

The House basically wants to say that Medicare, as we know it, will no longer be available, and it will be privatized. Folks will be given a lump sum of dollars, and then they are on their own. If they are sicker, if they need more help, they would not be covered for that additional health care they need. There would only be a set amount of dollars or essentially the equivalent of a voucher. This completely undermines what we have put in place for Medicare. The idea that we would say to our seniors, You have health care; you can rely on it; you can count on it; you don't have to worry about it, that would all be taken away with this proposal to undermine Medicare and to essentially turn it back to the private sector.

This is something I find absolutely unacceptable and I will do whatever I can to stop it, and I know on our side of the aisle there is overwhelming opposition to this notion of doing anything that would undermine and weaken Medicare for our seniors.

We know, according to a study that was just done, this proposal could increase the costs for the majority of our seniors who are in traditional Medicare by as much as 25 percent or more. I should mention the majority of seniors, when given the choice between a private plan—in this case Medicare+Choice—or staying in traditional Medicare, they have overwhelmingly chosen to stay in traditional Medicare. In fact, 89 percent of our seniors already voted. If we just want to look at who is covered and who we are trying to help for the future, we should look at what they are saying.

Mr. President, 89 percent of our seniors have chosen to stay in traditional Medicare. Only 11 percent have chosen to go into the private sector. Yet we are seeing an overwhelming push to force people to go into the private sector through a scheme that would privatize Medicare, even though it will cost them more money, even though it is not dependable.

We now know, according to the Medicare actuary in Health and Human Services, that in fact there could be sharp differences in cost among individual people or individual regions, depending on the private sector plans and how this would work. The study that was done by the Medicare actuary studied the proposals calling for private plans to compete against one another and against Medicare's traditional Government-run program. It shows that those in Medicare fee-for-service—traditional Medicare—in States such as North Carolina or Oregon would pay as little as $58 a month, well below the projected national average of $107. So they would pay $58 instead of $107. But in high-cost States such as New York or Florida—my good friend from New Jersey is here, I would guess New Jersey would fall in that category as well—they would be paying more like $175 a month for the same benefit. So on one side of the country you would have people paying $58, on the other side you would have people paying $175, for the same coverage, for the same kind of care. That is not fair. That is certainly not what we have now.

They went on to indicate that we would even see parts of States where there would be one payment, one cost, versus other parts of the State. So if you live in Marquette, MI, or Ironwood, MI, in the Upper Peninsula, you could pay a very different price for your health care than if you lived in Detroit or Lansing or Grand Rapids. That is not fair. It does not make sense. Why in the world would we go back to that kind of system?

It is for these reasons I urge my colleagues not to agree to any plan that changes Medicare as we know it, that privatizes Medicare, that takes away what overwhelmingly seniors have told us they want. They want prescription drug coverage—yes. But don't take away their Medicare. That is not a good tradeoff. We need to strengthen Medicare, provide a real benefit for prescription drugs, and do it right.

The PRESIDING OFFICER. The Senator from Iowa is recognized for 9 minutes.

INTELLIGENCE LEAK INVESTIGATION

Mr. HARKIN. Mr. President, more than 83 days have passed since the Central Intelligence Agency filed a report and inquiry to the FBI in July regarding a leak by senior administration officials of an undercover CIA agent. This investigation was originally stymied by foot-dragging and delay and has continued to be stymied by foot-dragging and delay.

It took at least 53 days for the Justice Department to officially launch an investigation. It took 4 days after that for Justice to officially notify the White House about the investigation and tell them to preserve any and all materials related to it.

More recently, the investigation has been stymied by kind of a ''don't ask, don't tell'' approach by the President and by the appearance of a conflict of interest by the Attorney General. Attorney General Ashcroft, a good friend of the Bush administration and its senior advisers, a very partisan Republican for most of his life, is still overseeing the investigation. In fact, one of his top aides said yesterday that Ashcroft has been regularly briefed on key details in the investigation, including the identities of those being questioned by the FBI.

Talk about a chilling effect. President Bush has joked and made light about it.

I would like to bring to the attention of Senators an article by Knight Ridder, published in the newspaper, the Milwaukee Journal Sentinel on Sunday. The headline was ''CIA Leak May Have Caused More Damage. Work of Others Using Front Company Name May Be at Risk.'' This revealed why this leak is no laughing matter; it is a deadly serious matter of national security. This is what the article said:

> Training agents . . . costs millions of dollars and requires the time-consuming establishment of elaborate fictions, called ''legends,'' including in this case the creation of a CIA front company that helped lend plausibility to her trips overseas. . . . Compounding the damage, the front company, Brewster-Jennings & Associates . . . apparently was also used by other CIA officers whose works could now be at risk, according to Vince Cannistraro, former CIA chief of counterterrorism operations and analysis. . . . Now, [Valerie] Plame's career as a covert operations officer in the CIA's Directorate of Operations is over. Those she dealt with—on business or not—may be in danger . . . and Plame's exposure may make it harder for American spies to persuade foreigners to share important secrets with them, U.S. intelligence officials said.

Other former CIA officials agree—including Larry Johnson, a former classmate of Plame's and former CIA and State Department official. He predicted that when the internal damage assessment is finished:

> . . . at the end of the day, the [harm] will be huge and some people potentially may have lost their lives.

Another former CIA officer, Jim Marcinkowski said:

> This is not just another leak. This is a unprecedented exposing of an agent's identity.

So, again, this is no laughing matter. The President should not treat it as such.

Here are some quotes from some in his own administration. Attorney General Ashcroft said:

> Leaks of classified information do substantial damage to the security interests of the nation.

Secretary of Defense Rumsfeld earlier this year, March—February of this year:

> I think leaks are disgraceful, they are unprofessional, they are dangerous. They put people's lives at risk.

Ari Fleischer, White House spokesman, in June:

> The President does have very deep concerns about anything that would be inappropriately leaked that could in any way endanger America's ability to gather intelligence information.

From his own administration, people say how bad it is to have these kinds of leaks to endanger national security.

Let me give a quick recap of the timeline. It started with the President's deception in his State of the Union Address in January. In his remarks, Mr. Bush stated Iraq tried to buy uranium from Niger. A few months later, in July, former Ambassador Joseph Wilson's op-ed appears in the New York Times, questioning the President's assertion.

Then in order to discredit Wilson and ''seek revenge'' on Wilson, senior administration officials leaked to the press the identity of Wilson's wife and the fact she was a CIA operative, thereby undercutting our national security and clearly violating Federal law.

This happened in early July. Let's see what happened since.

On July 24, Senator SCHUMER calls on the FBI Director to open a criminal investigation into the leak of a CIA operative based on that column.

In late July, the FBI notified Senator SCHUMER that they had done an inquiry into the CIA.

Then it appears nothing happened for 2 months.

On September 23, the Attorney General says he and CIA Director Tenet sent a memo to the FBI requesting an investigation.

On September 26, the Department of Justice officially launches its investigation.

Interestingly, it took 4 days after that ''official'' launch for the Justice Department to call White House Counsel Gonzales and notify him of the official investigation. Gonzalez then asked for an extra day before the Justice Department gave the White House the official notice, which means all documents and records must be preserved.

A recent letter was sent to the President from Senators DASCHLE, SCHUMER, LEVIN, and BIDEN which also expresses concern about this break from regular procedure.

They wrote:

> Every former prosecutor with whom we have spoken has said that the first step in such an investigation would be to ensure all potentially relevant evidence is preserved, yet the Justice Department waited four days before making a formal request for documents.

Interestingly, the letter goes on:

> When the Justice Department finally asked the White House to order employees to preserve documents, White House Counsel Alberto Gonzales asked for permission to delay transmitting the order to preserve evidence until morning. The request for a delay was granted. Again, every former prosecutor with whom we have spoken has said that such a delay is a significant departure from standard practice.

That is what has been happening—departure from standard practice.

I am also troubled that the White House Counsel's Office is serving as

''gatekeeper'' for all the documents the Justice Department has requested from the White House. Mr. Gonzales' office said he would not rule out seeking to withhold documents under a claim of executive privilege or national security.

What kind of a zoo is this outfit?

Mr. Gonzales says he can withhold these documents from this investigation on the basis of national security.

Wait a minute. It is our national security that has been breached by this leak. Now we are going to have an invocation of protecting national security to protect who leaked it, I guess.

I believe this matter could have been resolved very quickly. President Bush could have called his senior staff members into the Oval Office and asked them one by one if they were involved. He could have them sign a document stating they were not involved in this leak. He could have each of them sign a release to any reporter to release anything they have ever said to a reporter thereby exempting the reporters.

There has been coverup after coverup after coverup on this CIA leak, and it is not going to go away. People of America will demand that we get to the bottom of it.

The PRESIDING OFFICER. The Senator from Georgia.

UNDERCOVER AGENT INVESTIGATION

Mr. CHAMBLISS. Mr. President, as I sat here and listened to my friend from Iowa once again bring up an issue to which we are all very sensitive, I can't help but respond that I have an entirely different outlook and opinion about what is going on with respect to this issue. Those of us who have been involved in the intelligence community, and as a member of the Intelligence Committee, I, too, am somewhat outraged that we have the so-called ''leak'' or disclosure of a CIA individual that occurred not too long ago. We have a process whereby this is to be handled. That process is working the way the process is designed to work.

The White House was outraged about this, and the White House is moving very favorably and very aggressively towards resolving this issue. They are going to resolve the issue. The Justice Department is moving independent of the White House to get to the bottom of this. At some point in time a report is going to be made back to the Congress and to the American people, and we will find out what did happen.

Again, there is a process to be followed under law. That process is going to allow us to get to the bottom of this in the way it should be. We don't need to be here banging political heads against the wall when the legal heads are the ones that need to be banged against the wall, and that is taking place.

CLASS ACTION FAIRNESS ACT OF 2003

Mr. CHAMBLISS. Mr. President, I rise in support of the Class Action Fairness Act of 2003. Today we are going to have a cloture vote to determine whether or not we move forward with this bill. I hope we obtain the 60 votes to move forward.

To a great extent, the bulk of the tort reform—that is needed in this country needs to be handled at the State level. States have their own ideas about what kind of tort reform ought to take place. I hope that is where tort reform—that each State decides it needs in and of itself—does take place. However, as the tort system now stands, there are about a handful of State court jurisdictions in the United States where a tremendously disproportionate number of class action lawsuits are filed. That is just not right. People have referred to these jurisdictions as ''magnet courts'' because they draw in class action suits with their soft juries and pro-plaintiff judges.

Under the Class Action Fairness Act, businesses can break loose from these magnet State courts and get a fair trial in Federal court.

Over the last 2 days of debate on class action reform, my colleagues have been dispelling a lot of myths about the Class Action Fairness Act that have been spread around by the opponents of the bill. I would like to take some time to address one of these myths about which I feel very strongly; that is, that some critics of the Class Action Fairness Act have argued that the bill is an affront to federalism because it would move more cases involving State law claims to Federal court.

But when it comes to federalism, this bill is actually the solution and not the problem. Right now, magnet State courts are trampling over the laws of other States in their zeal to certify nationwide class actions and help enrich, frankly, the plaintiffs' trial bar. The Class Action Fairness Act actually promotes federalism concerns by helping ensure that magnet State court judges stop dictating national policies from their local courthouse steps. It will allow those cases that are truly justified class action lawsuits filed by trial lawyers who are filing them with the right intention to move forward and to obtain justice for their clients.

This is why, when it comes to federalism, critics of this bill have it backwards.

First, the bill does not change State substantive law. If an interstate class action based on violations of State law is removed to Federal court, the Federal court will simply apply the State law to resolve the case, just as the Federal courts do today in all ''diversity'' cases in the Federal court system. Critics attempting to argue that the bill is an affront to federalism are doing nothing more than attacking the fundamental concept of diversity jurisdiction, a concept enshrined in article II of the Constitution.

Second, the cases that would be affected by the legislation are truly interstate in nature. They have a real Federal implication. When the Framers of the Constitution created the Federal courts, they thought that large interstate cases should be heard in Federal court. Interstate class actions often involve thousands of plaintiffs nationwide and multiple defendants from many States. They require the application of the laws of several States and seek hundreds of millions or even billions of dollars. It is hard to imagine a better case for diversity jurisdiction.

Third, this legislation has a narrow scope. Smaller cases that are truly local and cases involving State government defendants will all remain in State court.

Fourth, the bill will stop magnet State courts from trampling on federalism principles by trying to dictate the substantive laws of other States in nationwide class actions. Too often magnet State courts take it upon themselves to decide important commercial issues for the entire country regardless of whether other States have reached different conclusions on the same issue. By allowing these cases to be heard in Federal court where the judges have been much more sensitive to differences in State laws and the need to balance various States' interests in a controversy, the Class Action Fairness Act will put an end to this troubling practice.

Is this a perfect bill? It certainly isn't. It is not perfect but it does deal with a very complex issue. That is why it is difficult to reach out and obtain a perfect bill.

However, by allowing this to move forward, the amendments that have now been filed, and other amendments that are being contemplated—and I have a couple of amendments myself that I may file to try to improve this bill—at the end of the day we need to make sure that lawyers representing individuals who have been damaged and are part of a class have the opportunity to seek justice; they have the opportunity to seek a fair result in their particular claim, whatever that claim may have arisen from.

By the same token, the business community should have the opportunity also to expect fairness and to expect that at the end of the day their particular defense to the cause that has been filed will be justly dealt with.

In sum, we have a bill with bipartisan support. Despite the misinformation being spread around, actually this bill will promote the proper assignment of class action cases between State court and Federal court dockets as was originally intended by the Framers.

There is one other issue that has been raised that needs to be addressed. That is the issue relative to the potential this bill has to clog the Federal judicial system. That may be the case in some jurisdictions. As a member of the Judiciary Committee, if we see that

does happen, it is our obligation as legislators to remove that backlog and to make sure we have enough judges in place to handle any volume of cases that may be filed in respective jurisdictions. We have always done that. We will continue to do that.

I ask my colleagues to review this bill very carefully and to allow us to move forward today by voting in favor of the cloture motion, which will allow us to get the bill on the floor and have the debate, talk about the issues of fairness, and talk about the issues necessary to ensure that plaintiffs do get justice in cases where justice is deserved; but, by the same token, that there is some stability on the part of the business community where unjust cases are being filed against them.

I ask my colleagues to vote in favor of the cloture motion. Let's move forward, have the debate. I will be one who agrees with a lot that is in the act and will probably have some questions about the act. I look forward to the debate and look forward to moving forward and to coming out with a good, fair, and just class action reform bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. CORZINE. Mr. President, how much time is available?

The PRESIDING OFFICER. The Senator is recognized for 9 minutes.

Mr. CORZINE. If the Chair would notify me when I have used 8 minutes please.

The PRESIDING OFFICER. Yes, sir.

CHEMICAL PLANT SECURITY

Mr. CORZINE. Mr. President, the primary topic I will talk about today is the markup tomorrow with regard to chemical plant security. The Environmental and Public Works Committee will take up legislation dealing with one of the most serious security threats to our Nation. According to statistics by EPA, there are 123 facilities in 24 States where a chemical release could expose more than a million people to a toxic chemical, and nearly 3,000 facilities spread across 49 States where 10,000 people could be exposed.

This is a serious issue that can create real health and safety hazards to our community, particularly in a time when we know we are under potential terrorist attack at home.

This is an issue that has been identified by the Department of Homeland Security and by almost every security expert as one of the most serious exposures we have in our infrastructure. When we go from code yellow to code orange, chemical plants are identified as part of the infrastructure that needs to be hardened in those events.

It seems to me we need to be addressing this matter. I am pleased Chairman INHOFE, EPW, and others are taking up this challenge to address this issue. I have been pushing on this for the last 2 years, actually got a vote in EPW on a bill that had 100-percent support of everyone in the committee a year and a half ago. Until the lobbyists went to work, we thought we had a real response that would work on a bipartisan basis. We have adjusted that bill, made changes, offered economic incentives to the industry to move forward. We have a roadblock to dealing with one of the most important risks we have in our infrastructure.

I commend Senator INHOFE and other members of the committee for addressing the issue. Unfortunately, I do not think the bill meets the needs of what we are trying to accomplish. Constructively, the committee has moved to require chemical plants to develop security plans and submit them to the Department of Homeland Security. The administration had not asked them to submit the plans. Unfortunately, DHS will not have to review them according to the bill, as I understand it. They would not have to evaluate them. They would not have to approve them. They would not have to do anything to assure the public is protected. That is a problem. The Department could simply let the plans sit on a back shelf and let dust accumulate.

Furthermore, it would tighten all 15,000 chemical plants without any kind of prioritization in the country, which is also a big mistake. We need to make sure these plans are actually reviewed, that there is real accountability. That is my major concern with the mark that will be coming through tomorrow.

There are other problems also. It is not strong enough on one of the fundamental issues with regard to my original bill, inherently safer technologies. There are alternative approaches. We cannot build fences high enough and put enough guards to make sure that every possible terrorist attack or criminal attack on a chemical plant could actually be accomplished. We need to make sure if there is a successful attack, that it has minimal exposure. We ought to do everything we can to have inherently safer technologies within economic feasibility. That is practical.

While there is a step forward in recognizing this is immediate, and there is necessary evaluation that is being asked for from chemical producers, I don't think we are going far enough in requiring the use of inherently safer approaches if they are economically feasible and practical. That should be a requirement of the law. This is one of the major issues I have.

Finally, there is a gaping loophole in this legislation as I understand it, and I hope others will challenge it tomorrow in the committee mark. I certainly will if it gets to the floor; that is, if the chemical industry or any particular private sector approach has a substantially equivalent standard as opposed to what DHS puts out as a standard, that will be acceptable to the Department of Homeland Security. They have already embraced a private standard that they have suggested is very good. It does not include inherently safer technologies. It does not require accountability in that other standard being established by the chemical industry.

As a consequence, we are actually moving back to a completely voluntary approach. I don't get it. I don't understand it. I don't think it is the direction we should be taking. It is a loophole that erases all the good things that have been included in the mark if you go to a substantially equivalent standard.

There are serious shortfalls in the mark, at least as I understand them. I hope they will be debated seriously in the committee tomorrow. I want folks to know this is not an issue that will die down. We have eight of these plants in New Jersey. They are located right smack dab in the middle of some of the highest concentrations of population in our country. We have had accidents over the years in my community that have taken lives in the community and evacuated the surrounding citizens. This is a vulnerability that everyone acknowledges is real, it is present, and it needs to be addressed. That is why I feel so strongly about it.

This should be a bipartisan issue. I am glad Senator CHAFEE has been working to push the issue in committee this year. But we need to move it.

By the way, just finally, there is something I have a problem with also in the bill in the sense that if somebody turns loose one of the plans that is filed by an individual plant, that will be subject to criminal penalties. But if a chemical producer does not comply with the standards they set down in the plan, that is a civil liability. It sounds right to me there would be criminal penalties for people who leak information into the public that could be dangerous and used against the public. But it strikes me as unequal treatment; it sort of does not jibe with regard to parity that those people who are actually not complying with the law are going to be treated on a civil basis.

Where is the parity? It seems to me we are listening to industry more than we are listening to the needs of the American people. If September 11 taught us anything, it is that America can no longer avoid thinking about the unthinkable. We have to face up to the Nation's most serious vulnerabilities. We have to focus on them. And we have to confront them head on.

That is why I have long advocated the adoption of legislation to create meaningful and enforceable security standards for chemical facilities. Under my proposal, the Federal Government would identify ''high priority'' chemical facilities—those that potentially put a larger number of people at risk. It then would require those facilities to assess their vulnerabilities and implement plans to improve security. These plans would have to be submitted for review. And changes could be required if deficiencies are identified.

In the last Congress, my legislation was approved on a unanimous vote by the Environment and Public Works Committee. But after the committee acted, the bill was killed after some in industry lobbied against it.

This year, the committee apparently is planning to take up a different bill. And let me say, first, that I commend the chairman, Senator INHOFE, and the other members of the committee for addressing this matter. Unfortunately, while I no longer serve on the committee and have not been privy to all of its discussions, it appears that the bill currently under discussion has at least one glaring weakness.

The committee is considering requiring chemical plants to develop security plans and submit them to the Department of Homeland Security. But—and here is the problem—the bill doesn't require the Department to do anything with them. DHS wouldn't have to review them. It wouldn't have to evaluate them. It wouldn't have to approve them. It wouldn't have to audit them. It wouldn't have to do a thing to ensure the public is protected. Instead, the Department could simply let these plans sit on a back room shelf, collecting dust.

Some might ask: Would the Bush administration really do that? Would it really just let security plans sit on the shelf, and not even review them? Well, for those who think that is unrealistic, consider this: The administration's own plan didn't require companies to submit their security plans to the Government at all. And that would certainly be the preference of many of their friends in industry. So, yes, there is every reason to be concerned that, unless forced to do so, the administration will take a hands-off approach and simply ignore these security plans. And the end result would be a lax security system with no real teeth.

Beyond the failure of the bill to require review of security plans, the legislation under development in the Environment and Public Works Committee has other problems, as well. First, it fails to require industry to adopt alternative technologies—such as the use of safer chemicals—if those alternative approaches are cost effective. I think that is a mistake. After all, no matter how many security personnel are hired, and no matter how high a security fence, no security scheme is impenetrable. And we need to prepare for the possibility that terrorists will be successful in attacking a chemical plant and releasing toxic materials. That is why it is important for facilities to implement inherently safer technologies, where practicable, to reduce the resulting death and destruction in the event of an attack.

Thanks largely to the involvement of Senator CHAFEE, the Inhofe mark has made real progress in this area. As I understand it, the chairman has agreed to require detailed consideration of safer technologies. And I think that's a step forward. In my view, though, it still falls short. Given the number of lives that are at stake, I think companies should be required to implement safer technologies if they are cost effective.

Unfortunately, the requirement that facility owners consider safer technologies could be undermined because of a huge loophole in the bill that may allow industry to sidestep many Federal security requirements. Under this provision, DHS's security standards could be waived for any facility that participates in an industry program that is, ''substantially equivalent.''

At first, that may sound like a reasonable approach. But the term ''substantially equivalent'' is so broad that it could well allow the Bush administration to simply rubberstamp an existing chemical industry program that is grossly inadequate. For example, the chemical industry's program has no requirement that industry evaluate safer technologies in any detail. Yet it seems very possible that the Bush administration would exploit the bill's loophole to rubberstamp this industry program, and exempt participating plants even from the bill's limited requirement for consideration of safer alternative approaches.

The last point I want to make about the bill apparently being discussed relates to enforcement. Under the legislation, as I understand it, if a Government employee wrongly discloses a chemical plant's security plan, that employee would be subject to criminal penalties. That sounds right. Yet, if the owner of a chemical plant knowingly violated Federal security standards, the only remedies prescribed in the legislation are civil. That sounds wrong.

That disparate treatment of Government employees and chemical industry officials doesn't seem fair. Nor does it seem appropriate, given the nature of the threats are now confronting. After all, criminal penalties are available for violations of certain anti-pollution laws. Surely violations of a new chemical plant security law—a law designed to save lives—should be punished with an equal degree of severity.

Before I conclude, let me step back for a moment and again remind my colleagues that should terrorists attack one of 123 chemical facilities around the country, at least a million American lives could be at risk. These are real people—mothers, fathers, sisters, and brothers—all innocent Americans who have no choice but to rely on their Government leaders to protect them.

We, in Congress, have an obligation to do everything we can to protect these Americans, and to prevent what really could be a tragedy of catastrophic proportions. We should not be satisfied with a largely toothless plan that leaves industry free to design security plans to their own choosing, with no requirement that those plans even be reviewed. That is just unacceptable.

I hope my colleagues on the Environment and Public Works Committee will reconsider this approach. And, if not, I intend to pursue this matter aggressively if, and when, the bill ever reaches the Senator floor.

We need to address chemical plant security. But we need to do so in an enforceable way that will really make Americans safer. The lives of many thousands of Americans may well hang in the balance.

The PRESIDING OFFICER. The Senator has 1 minute remaining.

Mr. CORZINE. Thank you, Mr. President.

CLASS ACTION FAIRNESS ACT

Mr. CORZINE. Lastly, Mr. President, I want to say something about the bill that we are going to be debating in the next hour or so, class action fairness.

I am not a lawyer, so I am not as sharp on all of the terminology and all the other issues, but it is very clear to me that we are taking the small ''d'' democratic processes out of access to our courts with the legislation that is underlying the motion to proceed.

I think it is absolutely essential that we maintain the checks and balances in our present Federal constitutional system. That does not mean there are not abuses, and it does not mean we should not move to correct some of the things with regard to venue shopping, with regard to coupon procedures, which, by the way, are not even dealt with in this bill.

I think this is a radical move. I am very much in favor of Senator BREAUX's proposal, a modified approach, that will deal with some of the flaws. His bill would preserve state class actions while sending truly national class actions to Federal court. At the same time, it addresses the problem of abusive coupon settlements, which is something that the bill before us does not touch.

But instead, at a time when we are fighting a war in Iraq, when we are fighting a war on terrorism worldwide, and we are facing historic budget deficits and job losses, we are debating a radical bill that would legislate away the legal rights of American families. This legislation would dramatically alter the constitutional distribution of judicial power. It would: remove most State law class actions into Federal court; clog the Federal courts with State law cases and make it more difficult to have Federal civil rights cases heard; deter people from bringing class actions; and impose barriers and burdenson settlement of class actions.

I am not a lawyer, but I can appreciate that class actions are critical tools for ordinary citizens who want to hold wrongdoers accountable. For many people who can't afford lawyers, class actions are the only way to vindicate their rights. For consumers victimized by negligence, fraud and reckless misconduct, it is their opportunity to exercise their democratic rights.

Simply put, class actions promote efficiency and level the playing field,

giving persons who are injured in the same manner by the same defendants the ability to hold the wrongdoers accountable. This sort of collective action gives ordinary citizens the ability to level the playing field with powerful defendants. For example, by allowing groups of citizens to band together and demand a safe and healthy environment, class actions often result in courts requiring companies to stop poisoning our neighborhoods and our water. Without the class action tool, it would often be impossible for ordinary citizens to take on powerful defendants when they damage the environment and cause illness.

Class actions are also essential to the enforcement of our Nation's civil rights law. They are, in fact, often the only means by which individuals can challenge and obtain relief from systemic discrimination. Class actions have on important occasions served as a primary vehicle for civil rights litigation seeking broad equitable relief.

In far too many cases, justice delayed is justice denied. No one recognizes this better than the manufacturers and the polluters, who would prefer these cases to be in the Federal court system, where there is a tremendous judicial backlog.

Overloading these courts will inevitably delay the resolution of all cases in Federal courts. Indeed, the Judicial Conference of the United States, headed by Chief Justice Rehnquist—not someone with whom I often agree, I might add—has told Congress that the Federal courts are not equipped to handle all these cases. That is why he opposes this bill.

The delays caused by clogged courts would be particularly damaging in cases where civil rights plaintiffs are seeking immediate injunctive relief to prohibit discriminatory practices—such as racial profiling or predatory lending.

In addition to the above concerns, I was very distressed to learn that the manager's amendment slips mass torts back into this bill, greatly expanding the scope of the bill. This change makes the bill even more extreme, and, by federalizing individual tort suits, will flood the Federal courts with cases involving questions of State tort law.

By sending a majority of mass tort actions—cases involving products liability and environmental damages—to Federal courts, the bill would completely jam the already overburdened Federal courts and delay justice to hundreds, perhaps thousands, of people injured by defective drugs and medical devices, like the Dalkon Shield, and environmental contamination.

Class actions are an important tool for ordinary citizens to level the playing field and vindicate their rights. They promote safety, protect our health and environment, and are essential to enforcement of our civil rights laws.

The legislation before us would impose new and substantial limitations on access to the courts for victims of discrimination, mass torts, consumer fraud, and other misconduct. This is not a balanced, fair approach. I urge my colleagues to reject it.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. CORZINE. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

HEALTHY FORESTS

Mr. BINGAMAN. Mr. President, I rise to speak for just a few minutes about the need for the so-called Healthy Forests initiative that was discussed earlier this week.

Earlier this week, there was a unanimous consent request made to proceed to H.R. 1904, the so-called Healthy Forests initiative. The unanimous consent request sought to limit debate on the bill to a specified list of amendments to be offered by particular Senators.

Included in that list were two amendments that were purported to be offered or suggested to be offered by me. I have never spoken to anybody about my intent with regard to offering amendments. And I certainly have not agreed to any particular amendments that I wanted to offer. Therefore, I have real concerns with that unanimous consent request because the proposed unanimous consent request would have limited me to offering certain amendments that I had not previously heard about. Obviously, I would have objected had not other Senators done so.

This is an important issue that the Senate needs to try to address this year. I do not favor delaying that consideration. There is always a threat that we have seen in the West, particularly in recent years, of unnatural, intense, catastrophic wildfire. That is a threat to many of our communities, to millions of acres of public land and forests in the West.

It was alleged early this week by some who were supporting moving ahead with that unanimous consent request that those who did not favor the unanimous consent request did not favor active management of the national forests. I want to be clear in my statement this morning that I certainly do not fall in that category.

I do not think we should just let nature take its course. I do think we should pursue active management. What I want to be sure of is that the bill we finally enact provides meaningful new authority to our land managers; that it is focused on the communities that are most threatened by wildfire; and that it does not unduly restrict the public's right to participate and have oversight in the management of these lands.

I am aware that a deal of some sort has been developed by certain of the Senators who are concerned on the issue. I was not involved in that set of negotiations that led to that deal. The provisions, as I understand them, that have come out of that are complicated, complex.

I have a number of questions about the ramifications of some of those provisions, especially the ones dealing with administrative appeals, judicial review, and such issues.

I think there should be a hearing. That would be the right way to proceed. We have new legislative language. The right way to proceed would be to have a hearing where we can get testimony on these provisions and better understand them. I have asked for such a hearing. I hope that will occur.

I believe having a clearer understanding of what the amendment means and encouraging constructive suggestions would be a preferable course for us to pursue.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that I be given an additional 2 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BINGAMAN. Mr. President, to conclude my statement, I do think there are serious questions regarding this new language. It differs substantially from the bill that was reported by the Agriculture Committee. Some of the major issues raised by the amendment include a lack of any new funding to reduce hazardous fuels; failure to eliminate the harmful agency policy of borrowing from proactive forest restoration accounts to pay for firefighting; the curtailment of public participation in the management and oversight of public lands, including the establishment of a new so-called predecisional review process, which I do not, frankly, understand; and also, of course, as I mentioned before, limitations on judicial review.

It also appears to create some new standards for injunctions that might be issued by the Federal court, both preliminary and permanent injunctions. There is no protection that I can see for national monuments and roadless areas and other environmentally sensitive areas in the bill.

I am not aware how some of these issues have been adequately addressed in the proposed amendment. For that reason I think we need to have an opportunity to offer amendments.

I hope the Senate can consider this forest health legislation this year. As do many Senators, especially those from Western States who have suffered in recent years from catastrophic wildfire, I very much want to see us resolve these issues as best we can. But we should do so under conditions that allow for amendments and allow for full debate. And that is my purpose at this stage.

So I hope we can proceed and do so in a way that all of us get to participate in the process.

With that, Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. McCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

REGULATION BY LITIGATION

Mr. McCONNELL. Mr. President, I rise to speak in support of the class action bill that will be before the Senate later this morning.

A few years ago during the debate on lawsuits against tobacco companies, gun manufacturers, and lead paint companies, the satirical publication, the Onion, wrote a spoof piece entitled ''Hershey's Ordered to Pay Obese Americans $135 billion.'' This was a tongue-in-cheek article which everyone found quite amusing at that time.

It began:

In one of the largest product-liability rulings in U.S. history, the Hershey Foods Corporation was ordered by a Pennsylvania jury to pay $135 billion in restitution to 900,000 obese Americans who for years consumed the company's fattening snack foods.

The spoof went on:

''Let this verdict send a clear message to 'Big Chocolate,''' said Pennsylvania['s] Attorney General . . . addressing reporters following the historic ruling. ''If you knowingly sell products that cause obesity, you will pay.''

The article continued:

The five-state class action suit accused Hershey's of ''knowingly and willfully marketing rich, fatty candy bars containing chocolate and other ingredients of negligible nutritional value.'' The company was also charged with publishing nutritional information only under pressure from the government, marketing products to children, and artificially ''spiking'' their products with such substances as peanuts, crisped rice, and caramel to increase consumer appeal.

The article went on to discuss the use of class action litigation to force chocolate manufacturers to adopt policies preferred by the plaintiffs.

It concluded by saying:

Whatever the outcome of Hershey's appeal, the chocolate industry has been irrevocably changed as a result of [the] verdict.

When I read this piece in the Onion a few years ago, I thought it was quite creative. I thought it illustrated the disturbing misuse of class actions, using class actions to circumvent legislative decisions with respect to setting policy. I was not the only one who thought so. Former Secretary of Labor under President Clinton, Robert Reich, wrote that:

The era of big government may be over, but the era of regulation through litigation has just begun.

It turns out that the Onion was not merely creative, it was, in fact, prescient. A few months ago, I read another article, this one a real news story, not a spoof, entitled ''Ailing Man Sues Fast Food Firms.'' The article began:

Want a class action lawsuit with that burger?

It reports that a lawyer ''has filed suit against the four big fast-food corporations, saying their fatty foods are responsible for his client's obesity and health-related problems.''

The lawyer filed his lawsuit in State court in the Bronx, ''alleging that McDonald's, Burger King, Wendy's and [Louisville-based] KFC Corporation are irresponsible and deceptive in the posting of their nutritional information, that they need to offer other options on their menus, and that they created a de facto addiction in their consumers, particularly the poor and children.''

The lawyer said:

You don't need nicotine or an illegal drug to create an addiction, you're creating a craving.

The lead plaintiff, a 56-year-old maintenance supervisor, said he ''traced it all back to high fat, grease and salt, all back to McDonald's, Wendy's, Burger King.'' He said:

There was no fast food I didn't eat, and I ate it more often than not because I was single, it was quick, and I'm not a very good cook. It was a necessity, and I think it was killing me, my doctor said it was killing me, and I don't want to die.

The attorney ''aimed to make his case into a class action lawsuit,'' with the ultimate goal ''to force the fast-food industry 'to offer a larger variety to the consumers, including non-meat vegetarian, less grams of fat, and a reduction'' in meal size.

Mr. President, by the way, damages in the case were unspecified. Given the horror stories we have heard of plaintiffs getting the short end of the stick in class action cases, the plaintiffs better hope that class action reform gets enacted before their case is resolved, lest their lawyer bank all the cash while they are stuck with a coupon as a result of a ''drive-by''—or should I say ''drive-through''—settlement. The coupon could probably buy a large french fry. That would be about all it would purchase.

A disturbing thing about lawsuits against ''big fast food'' is that they promote a culture of victimhood and jettison the principle of personal responsibility. I have, in fact, introduced the Commonsense Consumption Act to try to restore sanity to our legal system with respect to these types of cases against the fast food industry.

But an equally disturbing aspect that this high profile case illustrates is the use of class action lawsuits to circumvent legislative decisions and subvert the democratic process. No branch of Government should mandate that Burger King and McDonald's carry veggie burgers for portly patrons. But even if that is something Government should do, it should not be the judicial branch that does it, particularly a State court setting national culinary policy.

Let me give another example with which people might not be as familiar. A national class action lawsuit certified in an Illinois county court has resulted in a determination that car insurance companies violated their contracts by refusing to provide original manufactured parts to policyholders who were involved in accidents. This determination resulted in a $1.8 billion verdict against State Farm.

This case is noteworthy because the county court which certified the class action let the case stand, even though several State insurance commissioners testified that a ruling in favor of the nationwide case would actually contravene the laws of other States. These laws either allowed, or in fact required, the use of generic car parts as a way to keep costs down for consumers.

As the New York Times reported, the result of this State class action was to ''overturn insurance regulations or State laws in New York, Massachusetts, and Hawaii, among other places,'' and ''to make what amounts to a national rule on insurance.''

The concerns with this case were not due to the interests of ''big insurance.'' Ralph Nader's group, Public Citizen, the attorneys general of New York, Massachusetts, Pennsylvania, and Nevada, and the National Association of Insurance Commissioners all filed briefs opposing the Illinois State court's determination because this county court's new national rule on insurance would be bad for consumers—though I suspect the trial lawyers in that case have made out quite handsomely.

It is not only appropriate, but necessary, to use class actions to efficiently provide remedies to large numbers of plaintiffs. But it is inappropriate to use them to circumvent the decisions that belong to other branches of Government and to other States. Maybe Ralph Nader, New York, Massachusetts, Pennsylvania, and other States are wrong and the county judge in Illinois is right, and we should require that original manufacturer parts be used in auto repairs. But that is a decision for the people of the several States to make, not unelected judges.

Mr. President, class action reform will ensure that truly national cases are decided in a national forum, and I hope we can enact this important reform. The Democrat leadership has said their caucus recognizes the need for reform. I think the fact that they are filibustering the motion to proceed questions that notion.

But we will soon have a chance to see if our friends on the other side of the aisle are sincere about trying to solve the problem of class action litigation. If they are serious, then they should support cloture on the motion to proceed and give us a chance to go forward with this important legislation. If we get on the bill, then they can try to improve the flaws they see in it, or maybe even substitute an entirely new proposal, which I understand one of the Democratic Senators advocates. But if

we cannot even get on the bill, we cannot attempt to solve whatever problems they think might be in the bill.

I am hopeful that we won't have the situation we had a few months ago, where folks on the other side claimed to want to do something about the problems with our medical liability system, but then, to a man, filibustered the motion to proceed on medical liability reform. We will soon see if our friends on the other side of the aisle are sincerely interested in moving forward on this legislation.

Mr. President, I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

CLASS ACTION FAIRNESS ACT OF 2003—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the hour of 11:30 having arrived, the Senate will resume consideration of the motion to proceed to the consideration of S. 1751, with the time until 12:30 p.m. equally divided between the two leaders or their designees. The clerk will report.

The legislative clerk read as follows:

Motion to proceed to the consideration of S. 1751, a bill to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I ask unanimous consent that the 5 additional minutes of morning business just consumed by the distinguished assistant majority leader be charged against the Republican time for debate on the motion to proceed to S. 1751.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CORNYN. Mr. President, in a moment, I am going to ask that the Chair recognize the distinguished Senator from Nevada for comments that he may care to make on the motion to proceed and on the upcoming vote at 12:30 on cloture regarding that issue. I want to perhaps tee it up a little bit and talk about why I think this motion to proceed is so important. I am only going to do so for a few minutes, and I will talk some more after the Senator from Nevada has had a chance to speak, and perhaps someone on the other side who wishes to speak.

I worry that our system of litigation has simply become too expensive and too time-consuming to serve the needs of consumers and the public. Those of us who have represented people in court, whether they be a plaintiff or a defendant in a lawsuit, know that sometimes after the lawsuit is over, even though lawsuits invariably have winners and losers, sometimes it is hard to tell the difference between the two because the process, as I say, costs so much and takes so much time.

Unfortunately, because of that, a lot of people with valid claims, who have been dealt an injustice and should have access to our courts or some means to vindicate those claims, are simply frozen out. That is something we need to work on not just on this bill, on this day, but going forward. I hope we will.

This bill, I believe, is very important because, indeed, I think the purpose of a class action lawsuit is a good one. It does, as originally intended, serve the purpose of providing individuals with relatively small claims an opportunity to get access to the court to get justice, even though it may not be economically sustainable because, of course, they have to hire a lawyer, pay court costs, and all the like.

The purpose, I believe, is laudable, but as in a lot of areas, experience and scholarship by the Nation's leading thinkers and just plain common sense tell us that, with the circumstances that confront us today when it comes to class action lawsuits, the system is not just broken but that it is falling completely apart.

Mr. President, I reserve any remaining comments that I may have and, according to the time that has been split between the parties on this issue, recognize the Senator from Nevada for comments he may care to make at this time.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. I thank the Chair. Mr. President, I do not want to interfere with my friend from Nevada, but I understood we were going back and forth; is that correct?

Mr. CORNYN. That is certainly fine.

The PRESIDING OFFICER. There is no agreement to that effect.

Mr. LEAHY. Has there been time reserved under the order for the Senator from Vermont?

The PRESIDING OFFICER. There is time reserved.

Mr. CORNYN. Mr. President, if I may inquire of my colleague from Vermont, Senator ENSIGN was here when I started, and then Senator LEAHY came in after I started, so I apologize. May I inquire approximately how long the Senator from Vermont wishes to speak?

Mr. LEAHY. Mr. President, how much time is reserved under the order for the Senator from Vermont?

The PRESIDING OFFICER. About 30 minutes.

Mr. LEAHY. I will not use the 30 minutes. I am going to use approximately 5 minutes of my 30 minutes.

Mr. CORNYN. I certainly ask that the Senator from Vermont be recognized for that purpose.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. I thank the Chair. Mr. President, I do take my time under the order.

As I stated before, I do oppose this bill, a bill that has not had hearings, has not had a vote in the committee, but when you review it, you realize—let me be parochial for a moment—this legislation would deprive Vermonters of the right to band together to protect themselves against violations of State civil rights, consumer, health, and environmental protection laws in their own State courts.

That is unacceptable to this Vermonter. The same could be said of all the other 49 States, and it ought to be unacceptable to the Senators from each of the other 49 States.

In fact, the country might ask what it says about our priorities that we are even having this debate. Of the many pressing issues already on the Senate's plate awaiting action and awaiting time on the floor, all the appropriations bills that we are required by law to pass by September 30 and have yet to even be taken up for a vote or debate should be among our highest priorities. If we are going to tell how the laws should be made and how the courts should be run, we ought to at least demonstrate to the American people that we, in the Senate, can follow the law and do our appropriations bills at the time we are supposed to.

Instead, we set aside those issues that by law we are required to do, those issues that are the priorities of the American people, to take up another priority. We ask: Whose priority is this bill? The bill is a top priority to special interests that include big polluters and big violators of the American people's consumer rights and civil rights past, present, and future.

Class actions are one remaining tool available to the average American in seeking justice, and some special interests want nothing more than to weaken the public's hand in class action proceedings.

While the Senate is spending several days debating this bill, think of those appropriations bills that by law we should have brought up weeks ago and what is in those bills: not special interests but American interests, such as funding for the Department of Justice to provide bulletproof vests for law enforcement officers, the same law enforcement officers who protect all of us, or how about the money to put more cops on the streets and to implement the prevention programs of the Violence Against Women Act? Those are not special interests; they are American interests.

Despite the fact the fiscal year began 3 weeks ago, we are dallying with this special interest legislation that benefits large corporate interests at the expense of individuals harmed by these corporations.

At its core, this bill deprives citizens of the right to sue on State law claims in their own State courts if the principal defendant is a citizen of another State, even if that defendant has a substantial presence in the plaintiffs' home State, and even if the harm done was in the plaintiffs' home State.

Less than a week ago, with no hearings before our committee, mass tort actions were included in the bill along with true class actions, despite the fact

that when we actually did vote on it in the Judiciary Committee, both Republicans and Democrats voted to take that out. This simply amplifies the harm done to citizens' rights, and to the possibility of vindicating those rights in their own State courts.

It also shows how special interest legislation comes on the floor. Here is legislation bypassing the committee, legislation that is dumped on the floor and provisions added to it that had been voted down by a majority of the committee of jurisdiction, a majority requiring both Republicans and Democrats to vote for it.

Special interests groups are distorting the state of class action litigation by relying on a few anecdotes in an ends-oriented attempt to impede plaintiffs bringing class action cases. There are problems in class action litigation. There are ways of taking care of that. But simply shoving most suits into Federal court with new one-sided rules will not correct the real problems faced by plaintiffs and defendants.

After all, our State-based tort system remains one of the greatest and most powerful vehicles for justice anywhere in the world. I think of when the Soviet Union broke up, as I said before on the floor, and members of the new governing body came to the United States to study how we do things. I recall a group coming to my office and saying: We have heard that people in the United States in your States can sue the Government, sue the State.

I said: That's right.

They said: We have heard further that they actually could win, and the State could lose.

I said: It happens all the time.

They said: You mean, you don't fire the judges; you don't start over again?

I said: Absolutely not; this is our system. We set it up that way so people can go to their State courts and sue.

If this is passed, I would hate to have to explain to those people from the former Soviet Union that we have taken such a step backward.

One reason that our State-based tort systems are so great is that there is an availability of class action litigation that lets ordinary people band together to take on powerful corporations or even their own Government. Defrauded investors, deceived consumers, victims of defective products, and environmental torts, and thousands of other ordinary people have been able to rely on class action lawsuits in our State court systems to seek and receive justice.

If they cannot, that is what the cheaters count on. We are only cheating you $5 or $6 or $10 or $15. Why would you sue for that? But if there are millions being cheated, then you have a chance to do something. Class actions allow the little guys to band together. Whether it is to force manufacturers to recall and correct dangerous products, as we saw with the Bridgestone/Firestone tire recall, or to clean up after devastating environmental harms, as we saw with Monsanto in Alabama, or to vindicate the basic civil rights they are entitled to as citizens of our great country, they are using class actions, and they should continue to do so.

The so-called Class Action Fairness Act is something that appeared on the Senate desk with no hearings. It almost looks as if it has been drafted in the legal section of one of the major polluters of this country. It would leave injured parties who have valid claims with no effective way to seek relief.

Class action suits have helped win justice and exposed wrongdoing by corporate and Government wrongdoers. They have given average Americans at least a chance for justice. We should not take that away.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, first I inquire as to the remaining time on the Republican side.

The PRESIDING OFFICER. For the majority, there are 21½ minutes remaining.

Mr. CORNYN. I ask unanimous consent that of that time, the last 10 minutes before the vote be reserved for the Senator from Iowa, the sponsor of the bill, or his designee; that following this UC request we go to the Senator from Nevada for 5 minutes; thereafter, that the Senator from Delaware be recognized for 5 minutes for any comments he may make; and then that the remainder of the time be reserved for me or my designee.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Nevada.

Mr. ENSIGN. Mr. President, I thank the Senator from Texas for yielding.

We just heard that what class action lawsuits are really about is the little guys in our system. That may have been the way it was intended, but unfortunately trial lawyers have abused this system where now—I am from the State of Nevada where we have these megabucks jackpots—what this system has become is the megabucks jackpots for the trial lawyers. It is not about the little guys anymore.

I have several examples I will cite to show exactly how out of control this system is. Between 1997 and the year 2000, American corporations reported a 300-percent increase in Federal class actions, and a 1,000-percent increase in State class actions filed against them. Class action lawsuits were conceived as an expeditious way for people with the same grievances to join in a common suit and seek justice in instances where it would be difficult to do so individually. Unfortunately, what has evolved now is a means for a select set of trial attorneys to abuse the class action litigation system and to seek absurd financial rewards. Whether or not these lawsuits are successful, the cost of these lawsuits hurts the very people the lawyers claim to protect, the consumer.

Oftentimes, the so-called clients of these class action attorneys end up with token awards in the form of coupons or rebates, while the attorneys pocket millions of dollars.

Just a few examples: In 1997, lawyers got nearly $2 million in fees and settlement with Cheerios over a food additive where there was no evidence any consumer had been injured. There was nearly $2,000 an hour charged for this case for personal injury lawyers. Consumers received a coupon for a free box of Cheerios. That is really protecting the consumer.

Southwestern Bell customers were told they would benefit from a class action lawsuit. Instead, they ended up with three optional phone services for 3 months or a $15 credit if they already subscribed to those services. The trial lawyers received $4.5 million in fees.

In a class action lawsuit against Chase Manhattan Bank—and this one is really good—a State court awarded the plaintiffs a multimillion-dollar judgment. The trial lawyers walked away with over $4 million in attorney's fees. Each plaintiff was awarded, get this, a settlement check of 33 cents. Since the plaintiffs had to claim their check by mail at the then-cost of a 34-cent stamp, the class action ''win'' for the consumer was a net loss of one penny.

It is obvious there is a need to reform our class action system. We need to take it where we have the best jurists in the Federal system.

A couple of years ago, one of the best trial attorneys in Las Vegas came to me. He actually makes his living doing these things. He said: If you want to reform the system, take it out of the State courts where you can just select the cheapest State that there is to sue, and take it where you have the most talented jurists in the Federal system. That way the legitimate lawsuits will go forward. Those cases where the consumer really does need protection will go forward, but we will get rid of a lot of the frivolous, outrageous lawsuits that are happening at the State court level.

So I urge that this Senate would proceed to the debate. If there are amendments, let us have the amendments, but let us at least proceed to the debate on reforming our broken class action system.

I thank the Senator for yielding me the time. I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Delaware is recognized for 5 minutes.

Mr. CARPER. Mr. President, I thank the Senator for yielding. This is an important vote. I think in some ways this may be the most important vote we have cast in the 2½ years I have been here. I want to speak to Democrats first and then to Republicans. I suggest to my colleagues, my Democrat friends, why it is important for us to vote for the motion to proceed to take

up this bill and to improve this legislation before we end up voting for it and sending it to conference.

First, I say to my Democrat colleagues, the status quo is not acceptable. We cannot feel good about the system of justice which exists today. There are many who disparage the trial bar, but I will say a kind word toward the efforts of many members of the trial bar. They do important work. They make sure when the little people are damaged or hurt that there is a way for them to have their grievances addressed, and when people are harmed to be compensated. That is important. It is important we preserve that right.

The system that has evolved over the last 200 years with the class actions, and what I think everyone regards as venue shopping too often between different State courts and the Federal courts, is a system that is just out of balance today. We can do better than this. It is important that we do better than this.

I want to go back and talk about the evolution of the legislation. When this bill was first introduced and talked about in the 105th Congress, there were a lot of people who thought that class action reform ought to be tort reform; that we ought to put caps on attorney's fees, caps on pain and suffering, caps on punitive damages, dismember joint and several liability. That is what a lot of people thought we ought to do 6, 7, 8 years ago. This legislation does not look like that at all. This is a modest, measured approach to fixing what I believe is a real problem.

I am not going to get into the weeds and talk about one aspect of the bill or the other. Some concerns have been raised about it. Some are legitimate, some are not. I say to my colleagues, particularly Democrats, the bill is not perfect. This bill can be improved. If it is not perfect, make it better. We can make this bill better. In the end, in order for us to have the opportunity to make this bill better, we have to move to the bill. We have to vote affirmatively for the motion to proceed. If we do that, we will have the opportunity for me to offer amendments, as well as other colleagues to whom I have talked on our side. A number of our colleagues have very good ideas for amendments. And I invite not only Democrats to support them but our Republican friends as well.

Republican leadership has indicated in a number of these instances they will support the amendments that are being prepared to be offered.

Back to my Democrats, as the minority we have three bites out of this apple to protect our position as the minority. One, we can filibuster and not vote for the motion to proceed. That is one protection. The second protection comes when we reach cloture on the bill and the decision comes do we actually vote on the bill, do we go to cloture. That is a second bite out of the apple. The third bite out of the apple is if there is a conference report between the House and the Senate, and the conference report comes back, and the Republicans have not acted in good faith, the majority has not acted in good faith, we have a third bite out of the apple. I believe we have those protections down the road and especially the second, on the motion to proceed.

I say straight out to our Republican friends, if we approve the motion to proceed today, we actually get to the bill today, and have the opportunity in the next days and week to offer amendments, if my Republican friends do not act in good faith—and I believe they will—but if they do not act in good faith, not only will I oppose cloture on the bill, I will help lead a fight against cloture.

I want us to be able to offer our amendments. I want to see a lot of those amendments adopted. If that happens, we can improve this bill further and then go to conference further down the line.

The last thing I want to say, in my view, there is more at stake than the motion to proceed, and I have suggested this to Majority Leader FRIST. What is at stake is whether we are going to be able to work together on a difficult and contentious issue; whether or not in this instance we are going to be able to maybe take what could be a very good experience, very positive experience of walking together across party lines on a tough issue, and maybe apply that on other difficult issues we face.

So there is a responsibility on both sides: for us as Democrats to offer reasonable amendments, to join in good faith in the debate, but also for our Republican colleagues to support those good amendments and act in good faith on their own. If they and we act in good faith, we could end up with good policy, which is what makes good politics. That is the potential. It is important we all realize that.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Mr. President, I would like to pick up where the distinguished Senator from Delaware left off because I could not agree more. This is an issue that should not divide us politically or even philosophically. This is an opportunity for us to find common ground and work together. That is what many of us have sought to do from the very beginning, what we have tried to do with our colleagues on the other side and with others, because we believe there is ample opportunity to find common ground if we only seek it.

I don't know the number of times I have offered to sit down, along with many of our colleagues, with Senators on the other side in an effort to find the common ground we are looking for. For whatever reason, none of those offers have been accepted. So we find ourselves in a very difficult situation this morning. If I had the same confidence the Senator from Delaware had that we could offer amendments and they would truly be considered and perhaps some of them adopted, I would have no hesitation to support the motion to proceed. Unfortunately, on too many occasions now, especially involving tort, that has been an elusive goal, to say the least. We have not had the opportunity to have amendments offered in good faith. They have been rejected, one after the other, on a party line vote. As a result, we are left with no recourse but to simply say: Look, let's find a way to resolve this matter. Let's negotiate a bipartisan solution and let's resolve this issue.

I would even use the current circumstances as an illustration of what it is I am talking about. The Judiciary Committee passed a bill that enjoyed bipartisan support, signed by several of our colleagues on this side. They sent it to the floor. We fully expected the debate would be about that committee bill.

But that is not what the issue is this morning. The issue is whether we should support a motion to proceed to a bill that was ''rule XIVed'' onto the calendar in spite of what the Judiciary Committee did; I would say in direct conflict with what the Judiciary Committee did.

This bill is not just a class action bill. This bill is also a mass tort bill. The committee voiced its opinion on mass tort. They objected. On a unanimous vote, mass tort was excluded from the class action bill.

Lo and behold, it is right back in the legislation today. So we will be voting on the motion to proceed not only to class action but to mass tort, and mass tort for many of us is a woman's issue. It is the Dalkon shield, it is silicon breast implants, it is fen/phen. It is a lot of issues that would not have been addressed had this legislation been in law when those cases were taken up. It is that simple. Mass tort is something most of our colleagues did not bargain for, but it is in this bill.

The second issue has to do with the right of removal. Defendants now have an opportunity to remove a case from State court within a 30-day snapshot. They do that. Everyone understands that is their opportunity to move to a different venue. Under this legislation, they strip that legislation. At any time during the consideration of a case they can remove themselves from that particular court's jurisdiction. That is unprecedented. You talk about forum shopping. I can't think of a better invitation to forum shopping than the right of removal at any time up to the time the verdict is about to be announced. That is in this legislation.

This is bad legislating. It is bad legislating because it overrides the rules of the committee, because it overrides the voice, the opinion, the position of the committee on some of these key questions. Frankly, it overrides the consensus that I know we can establish together.

I have said as late as yesterday to the majority leader, I want to sit down with you. I want to negotiate some way

to resolve these issues. Do we recognize there is abuse? Absolutely. But this legislation is killing a housefly with a shotgun. There is a lot of collateral damage that is going to be done if it passes.

I am very hopeful we all recognize the distinguished Senator from Louisiana has offered a viable alternative that recognizes there are times when class actions ought to be held in State court, but there are times when class actions ought to be held at the Federal court level. We can recognize that there are those times when there is a Federal jurisdictional question.

Whether it is his language or something like it, we can work with our colleagues on the other side. But the only way that is going to happen is if we sit down and do this together. That is what I am offering. That is why I opposed the motion to proceed, because that has not happened yet. I am hopeful it will.

Whether or not we can succeed in establishing that important priority with this vote remains to be seen. I am hoping my colleagues will join me.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. How much time remains for the Republican side?

The PRESIDING OFFICER. Eleven minutes.

Mr. CORNYN. I ask unanimous consent to revise the previous unanimous consent agreement to provide for 7 minutes for Senator GRASSLEY or his designee, 3 minutes for Senator KOHL, the Senator from Wisconsin, and I reserve the remaining time for myself, such as remains.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Wisconsin.

Mr. KOHL. Mr. President, I rise in support of the Class Action Fairness bill. What those of us who are supportive of this bill are trying to do is simply get it to the floor where it can be debated, amended, and even filibustered, so I do not understand the objections of those who want to prevent the bill from even reaching the floor. Those who do not support the final bill as it would emerge can vote against it and can even filibuster it, which would require 60 votes at that time.

My fear is those people who do not even want the bill to reach the floor in fact do not want—and I will bet we will not have—any class action reform. I believe many of those on the other side on this issue want to put this whole question of class action reform to bed and not address it at all. I would be willing to bet any of them we will not have any class action reform if in fact this bill we are proposing is prevented from even reaching the floor at this time.

The bill that is being voted upon at 12:30 is a bill that has gone through the committee process in the most fair and democratic of ways. It has been years in the making. It has been amended at the committee level by Democrats as well as Republicans, and finally voted out of the committee on a bipartisan basis. This is the way bills are supposed to reach the floor for debate and amendment and final approval or disapproval. I cannot understand legitimate motivations of those who are in opposition, as they have expressed themselves, except as it may be their motivations are to kill class action reform entirely in this session of the Congress and for as long as we can look ahead and foresee.

I urge my colleagues who want to see class action reform to allow this bill to reach the floor where it can be, as I said, fully debated and fully amended. I point out to them once again if in fact there is that kind of opposition to the bill that would finally emerge for final vote, they can require 60 votes. So all of their concerns as they have been expressed in this debate can still be addressed in that final vote, which could be, in fact, a filibuster vote.

I urge my colleagues to vote yes on the motion to proceed. I hope very much that we will have a chance to debate class action reform.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. Mr. President, I yield myself 5 minutes under the time remaining.

Mr. President, my colleagues, I am for reforming the so-called class action litigation system we have in place. I think a strong majority of the Members of the Senate also favor a reform piece of legislation passing this body and ultimately being signed into law. But this is a two-way street, as everything we have to do in this body has to be. A 51-to-49 Senate means that neither side has the ability to do whatever they want without negotiating with the other half of the Senate. Either side has the potential to stop anything. That is what happens so many times in this body during this period of time we are in now where both sides can say, we are not going to do it this way, or, do it my way or don't do it at all. The clear result of that is nothing gets done. The end result is that both sides can blame the other side for failure in getting anything accomplished.

For those who truly want to get something done and worry less about who gets the credit, it is obvious that the way to do it is to sit down and negotiate and try to reach an agreement. I am absolutely convinced that an agreement that addresses the real problems dealing with class action could be reached in short order and allow us to get as many as 70 to 75 votes for a real class action reform bill. But that has not happened. It has not happened because my colleagues on the Republican side have generally said, we have what we want and we want to pass the bill that we wrote, even though they wrote much of it after it had already left the committee, as the distinguished Democratic leader talked about just a moment ago.

I have introduced a bill—S. 1769—which I think addresses all of the concerns people have raised about any potential abuses dealing with class action litigation. The idea would be for us to sit down with our colleagues and negotiate between their version and the version I have introduced to see if we can reach common ground and pass this in less than an hour with a substantial three-fourths of the Senate probably voting for it.

Many people have said the problem is forum shopping; many plaintiffs try to find the best forum they can possibly find and litigate in that forum for the best judgment they can get. My legislation says, no, we are going to follow principally the same rules the committee set out. If a third or fewer of the plaintiffs are from one single State, it belongs not in State court but in Federal court. That is the same situation that the committee has reported out. We are in agreement. If between one-third of the plaintiffs are from one State and two-thirds are from one State—if between one-third and two-thirds have been injured in Louisiana and filed suit—then Federal court decides whether it belongs in Federal court or State court.

That is principally the same finding that the committee bill has. We are in principle agreement in that regard. The Federal court makes the decision. For those who want it in Federal court, a Federal judge looking at all of the particulars of the litigation will decide whether it belongs in his or her court on the Federal level or whether the State has a greater interest in trying it on the State level. There is no disagreement.

But one area of disagreement I would like to point out is the situation of what happens if over two-thirds of the plaintiffs happen to be from one State, such as Louisiana. It is a big difference in what we do here. If two-thirds or more of the plaintiffs suffer injuries in my State, or any particular State, by the alleged defendant who is doing business in that State, who sells products in that State, and who must follow the law of that State passed by the State legislature, my proposal says that belongs in State court.

In the committee bill as drafted, they say even if every single person has been injured or has allegedly been injured in my State of Louisiana by a defendant allegedly in violation of the laws of Louisiana, passed by the State Legislature of Louisiana, if the defendant who caused the injury—even though they do business in my State and sell their products in my State, even if they have multiple stores in my State and are doing business and taking money out of my State for the things they sell, and if the defendant happens to have citizenship of Delaware, where many corporations are incorporated, or any other State, that doesn't belong in State court anymore; we are going to

put that in Federal court, which is already overburdened. The Federal judiciary says they don't want that jurisdiction.

Justice Rehnquist says he is opposed to it for that reason, among others.

This legislation says: No, we are going to put it in Federal court, even if everybody who is hurt and who is residing in the State, and the injuries were caused in violation of State law passed by the State legislature, because the defendant happens to have citizenship and is incorporated in another State, we will send it to Federal court.

People much more articulate than I have talked about this. One of the distinguished writers who has looked at this, Professor Arthur Miller from Harvard Law School, said the following:

S. 274 goes too far in broadening Federal diversity jurisdiction. S. 274 would place in Federal courts most class actions if the defendant is a citizen of a State that is different from any member of the plaintiff class. I can find no justification for denying State courts the right to hear cases primarily involving its own citizens who claim they have been harmed by a violation of their State's laws.

That is what the committee bill does. That is a principal reason their great expansion of Federal jurisdiction is so wrong.

I had a case in Louisiana. There are many crawfish farmers in Louisiana, probably the only State that has crawfish farmers—and maybe a few in the State of Texas. But they allege injuries because some chemical manufacturer had sold them pesticides and killed all of the crawfish in Louisiana. Every single plaintiff was from Louisiana. The injuries occurred in Louisiana. They sold the product in Louisiana. They were doing business in Louisiana selling the products. The State law of Louisiana said what they did was illegal and wrong and the plaintiffs deserved some compensation for the injuries they received. But no; under the committee bill, just because the defendant chemical manufacturer happens to be out of State the Federal court is going to be brought in to interpret State law that has been interpreted by the State supreme court and passed by the State legislature applying it to every State resident of my State.

That is not a legitimate way of handling cases that are uniquely a State concern, covered by State law and affecting only State injured plaintiffs in these cases. That is not what we want to do.

Our legislation also says that one of the abuses is these coupon sellers. We solved that problem in the past. Attorneys were filing on the number of coupons that may have been issued in settling a case for a defective product. You could go to the store and buy the product for a discount. The lawyers were being paid on the total number of coupons issued—not the ones actually redeemed. The attorney fees would be based only on those who exercised the right of buying the product with the use of their coupon.

As many people said, this is forum shopping, which the distinguished minority leader, Senator DASCHLE, talked about. They don't want forum shopping for plaintiffs, but they don't mind giving it to the defendant because the defendant, under this legislation, could ask that the case be removed out of State court at any time. Before the jury gets the case, if they think it may not go well, they will file a motion to move it to another court.

That is not right. How many times do they have a bite at the apple? Things aren't going very well anymore; we had better try another court. Let's go to the Federal court because we may lose in State court. If forum shopping is bad for plaintiffs—which we correct—it is no more justifiable for defendants to be able to do it, which is what this committee bill does.

I am only saying we need to say no to bringing this bill up until we have had a chance to talk about these issues in a serious form.

If I offer my amendment and the bill is brought up, they will move to table it, and, bingo, it is all over with, and we all go home. That is not the way to legislate on something as important as this. We need to negotiate. We need to talk about it.

What we are trying to say is, don't bring this bill up now. Vote against the motion to invoke cloture and let us see if we cannot sit down and talk about the differences that are not that great but hugely important—not that many but very important—between the two versions of the bill. I think we can put them together and get 75 votes, call it a day and everyone can be proud of the product we have produced.

I reserve the remaining time.

The PRESIDING OFFICER. There are 5 minutes remaining.

The Senator from Texas.

Mr. CORNYN. How much time is on the Republican side?

The PRESIDING OFFICER. Seven minutes.

Mr. CORNYN. I commend the Senator from Louisiana for his constructive efforts to get involved in class action reform. He has made a good contribution to the debate by offering some additional ideas for those that were considered in the Judiciary Committee when we voted this Class Action Fairness Act out of the committee.

It makes no sense to me to say vote against bringing the bill up in order to fix class action abuse. If people are serious about class action reform, then they would want us to bring up the bill. They would vote in favor of cloture and we would simply have a debate, as we do on all legislation on the merits of the bill, as voted out of committee or at least brought up for consideration here with whatever amendments may be offered.

The Senator from Louisiana has some constructive amendments, no doubt, and he has shown himself to be a master at bridging the gaps in this body and achieving consensus. He is to be commended for it. We need more people willing to look at the merits of legislation and vote on those merits. That is all we are asking.

I point out that, while there are a lot of different newspapers in the country, one that watches what happens in Washington, in particular, is the Washington Post which has observed that:

. . . ''clients'' in class action lawsuits get token payments while the lawyers get enormous fees. This is not justice. It is an extortion racket that only Congress can fix.

Very strong words. Not mine but those of the editorial board of the Washington Post.

Others who should be in a position to know a lot about this subject—for example, the Judicial Conference of the United States, chaired by the Chief Justice of the U.S. Supreme Court—have acknowledged problems with the class action system. While they are not in the business of lobbying for specific language, certainly we want to pay attention to some of the suggestions they may have about ways we can correct some of those problems. That is what this is all about.

This is some of the language I was referring to, obviously, speaking of the Judicial Conference:

. . . thanked Congress for ''working to resolve the serious problems generated by overlapping and competing class actions.''

Ultimately, I think we are all interested in the same thing; that is, that people who are hurt due to the wrongful conduct of others have a means to redress those injuries and make sure the wrongful actor pays. But we are not in the business of making sure that a few benefit at the expense of many. That is what happens now with an abusive class action system which enriches entrepreneurial class lawyers who find a so-called class representative and are then able to manufacture a huge lawsuit where they reap millions of dollars in fees and the consumer gets a coupon.

There is an old country and western song ''she gets the gold mine and he gets the shaft.'' In this instance, it is the lawyers who get the gold mine and consumers get the shaft in modern class action litigation. We ought to be about fixing that. We cannot fix it until this matter comes up on the motion to proceed and at least 60 Senators vote on the motion to proceed.

I hope my colleagues will heed the eloquent words of the Senator from Delaware, Mr. CARPER, and Senator KOHL, my colleague on the Judiciary Committee, and vote to bring the matter up.

I reserve the remainder of our time.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. Mr. President, I yield myself the time I consume.

I echo the remarks of the distinguished Democratic leader which indicate another reason why we should not be voting for cloture on this bill; that is, the changes that were made to the bill after it got out of committee. I refer to it as being the ''committee

bill,'' but the bill before the Senate is not the committee bill. A funny thing happened on the way to the forum: the committee bill was changed. You report one thing out of committee, you expect that will be the thing that comes to the floor—maybe some technical changes, a period here, a paragraph there—but they changed the substance of the bill from the time it left the committee.

If we were dealing with a committee bill, you could make a legitimate argument that you should proceed to the bill that the committee reported. But what they are asking us to do is proceed to a bill that the committee did not report. In fact, it is substantially different from the committee bill. That is not normal procedure.

That is why the Democratic leader has suggested what we ought to do is say: Time out. Put together the heads of the people interested in this and see if we cannot produce a package where we could get three-fourths of all the Senators voting for it. It has substantial changes made by the committee managers. They certainly have a legal right to do it, but from the terms of policy and how we legislate, if you have a clear vote in the committee to do one thing and then come out and do something entirely different on a key part of the bill, that is a substantial change that did not come through the committee process.

What I am saying is we ought to be talking together, both sides talking together, in order to get a substantial vote to enact this legislation.

I support class action reform. I think our bill, S. 1769, has, in fact, clearly addressed the issues of forum shopping and the coupon settlements. We clearly spelled out when cases would be in State court and when cases would be in Federal court. We do not reach out and say that even if every single injured party was from one State and was injured in violation of the State laws passed by the State legislature and previously interpreted by the State supreme court, that just because a defendant happens to be incorporated in the State of Delaware, for instance, that somehow yanks that case out of State court which is best suited for interpreting State law and brought into Federal court which the Federal Judiciary Conference already says they do not want because they have more business than they can handle, resulting in further delays. That is not what this bill should be all about.

Therefore, I suggest we say no to the cloture vote and that we sit down and work out the minor differences but important differences between S. 1769 and the bill in the Senate which has never come through the committee process. That is unfortunate. That is the main reason we should say no to cloture at this time.

Mr. GRASSLEY. Mr. President, I rise to ask my colleagues to vote in support of the motion to proceed to S. 1751, the Class Action Fairness Act of 2003. This bill is a fair and balanced solution to the growing problem of class action abuses, and it has solid bipartisan support. The process that was used to get to the floor was open and fair. The bill deserves to be debated, and my colleagues should support cloture on the motion to proceed so that we can get on the bill and consider amendments.

This modest bill will preserve class action lawsuits as an important tool that brings representation to the unrepresented. But it will also go a long way toward ending class action lawsuit abuses where the plaintiffs receive coupons of little or no value, while their lawyers receive millions. It makes you wonder who benefits from these class actions: the consumers or their lawyers? Given the trial lawyers' opposition to this bill, I think we know the answer to that question.

Both forum-shopping plaintiffs' lawyers and corporate defense lawyers are abusing the system. Lawyers are choosing plaintiff-friendly county courts to hear national class action cases, and defendants are shopping around for the best settlement deal regardless of whether it is the right thing to do. The lawyers file competing class actions, and enter into collusive settlements.

Some class action lawyers manipulate pleadings to avoid the removal of cases to the Federal courts, even if it hurts their clients. Some even name an innocent local defendant just to beat Federal jurisdiction. In the end, it is the consumer that is the big loser. This just isn't right.

The Class Action Fairness Act of 2003 tries to fix the more egregious abuses. The bill includes a number of provisions to help protect class members. It requires that notice of proposed settlements in all class actions, as well as all class notices, must be in clear, easily understood English. It requires that State attorneys general be notified of any proposed class settlement that would affect residents of their States so that they can act as watchdogs for fairness.

The bill includes provisions to help ensure that there are fair settlements. For example, it disallows cash bounty payments to lead plaintiffs so lawyers looking for victims can't promise them unwarranted payoffs to be their excuses for filing suit. It requires that judges to carefully scrutinize settlements where the plaintiffs get only coupons or noncash awards, and the lawyers get money. The bill requires a court to make a written finding that the settlement is fair and reasonable for class members.

Finally, the bill injects some rationality in terms of where large, nationwide class actions can be heard. It allows more class action lawsuits to be removed from State court to Federal court, either by a defendant or an unnamed class member. A class action would qualify for Federal jurisdiction if the total damages exceed $5,000,000 and parties included citizens from multiple states. But if a case really belongs in State court because it is a local problem or the class members and defendants are in-State, the case won't be decided in Federal court.

This is a good bill. It is fair and balanced. We have been working with Senators on both sides of the aisle to try to get it right. There is no question that there are serious problems with the current class action system and we need to deal with these abuses. So I urge all my colleagues to join me in supporting cloture on the motion to proceed so that we can finally get to the bill and debate this legislation.

Ms. CANTWELL. Mr. President, as a former business person and technology executive who has direct experience with class action litigation, I agree with the proponents of this bill that class action cases that impact Americans in every State ought to be litigated in Federal court. American business should be focused on developing innovative technologies, growing and creating jobs, and securing our economic future. American businesses should not be forced to defend themselves simultaneously in the exact same case in as many as seven different States at the same time.

I believe the current consolidation mechanism in Federal court offers both consumers and businesses a fair and efficient means of having their claims heard, and I support allowing more cases to be tried in Federal courts.

Unfortunately, I cannot support the bill before us today. While some positive changes have been made to the bill, the bill would close the State courthouse doors to almost all class action cases and move those cases to Federal court. The bill could overwhelm our Federal court system and cause delay not just in the cases that are being removed, but in the important class action matters that are already in Federal court.

I come from a State that is ranked as having the third best civil justice system in the country, according to the Chamber of Commerce. I recognize the rights of my constituents to have their claims heard in our own State courts and according to our own State laws. In 1993, hundreds of people in my State became critically ill and several died as a result of eating Jack-in-the-Box hamburgers tainted with deadly E-coli bacteria. Five hundred of those victims and family members came together and filed a class action lawsuit in State court for damages as a result of the injuries they sustained. The case was settled for $12 million. This is not frivolous litigation.

In fact, not one of the hundreds of businesses I have talked to about this bill has ever suggested that any abusive or frivolous class action litigation had occurred in Washington State. However, even though most of the plaintiffs in this class action were from Washington, and the case was about personal injury, a claim traditionally heard by State courts, if this lawsuit

were to be filed in the future, this bill would give defendants the right to remove the case to Federal court causing additional expense and grievances for the victims in this case.

I have three concerns about the bill. We need a better balance between cases being heard in State and Federal court. We need better protections for civil rights cases and a time deadline for moving cases to Federal courts.

First, we need to have the proper balance between addressing lawsuits in State and Federal courts. Currently, virtually all class actions are tried in State court. However, by moving virtually all of the lawsuits to Federal courts, this bill does not provide that balance. I support an approach that provides for keeping some cases in State courts and improving the flexibility to try more cases in Federal courts.

I have heard from many of the business leaders in my State who have expressed their concerns about the increasing challenges of defending themselves against the same claims in multiple states. I have heard their frustrations about seeing the claims dismissed in one State only to have them filed in another. I have heard from some of the oldest established businesses in my State to the newest. From Weyerhaeuser to Microsoft to AT&T Wireless, Intel, Amazon, the Madrona Group, Expedia, and Starbucks.

These employers have been forced to defend class action suits that are either dismissed or settled in a manner that provides little benefit to the class but great financial benefit to the lawyers. That isn't right, and that is why I have asked these companies in my State to analyze what the effects would be of removing any case to Federal court in which less than one third of the plaintiffs were from the State where the case was filed. I have committed to each of these businesses that I will continue to work with them to find a way to move more cases to Federal court while keeping cases that primarily affect a group of consumers in a State in that State's court.

While I believe that finding a better balance between class action lawsuits in State and Federal court is critical, I also cannot support this bill in the absence of protections that allow higher portions of settlement awards to be made to those individuals who agree to act as lead plaintiffs in class action cases. In addition, I believe that there needs to be a fixed date for defendants to seek to move a class action case to Federal court. As the bill is written now, a class action case can be proceeded all the way through trial and into jury deliberations—and defendants can still seek to remove it to Federal court even at this late date. I do not believe this serves the interests of justice. This provision should be fixed.

I have communicated my three concerns to supporters of the bill. I am disappointed that these straightforward changes, which are in the interests of both consumers and businesses, were not included in the bill. Absent these improvements to the bill, I cannot vote for the measure before us today.

Mr. FEINGOLD. Mr. President, I oppose the Class Action Fairness Act, and I will vote against the motion to proceed. The main reason for my opposition is that notwithstanding its title, I do not think this bill is fair. I do not think it is fair to citizens who are injured by corporate wrongdoers and are entitled to prompt and fair resolution of their claims in a court of law. I do not think it is fair to our State courts, which are treated by this bill as if they cannot be trusted to issue fair judgments in cases brought before them. I do not think it is fair to State legislatures, which are entitled to have the laws that they pass to protect their citizens interpreted and applied by their own courts. This bill is not only misnamed, it is bad policy. It should be defeated.

First, let me note that S. 1751 is a different bill than was reported by the Judiciary Committee. It includes a new and potentially very significant provision concerning mass torts. A provision on this topic was in the original bill, but was stricken in committee. Now it is back, but with some complicated exceptions. The ramifications of this provision are not apparent on first reading, and it certainly would have been preferable for this kind of fine tuning to have been considered by the Judiciary Committee.

Make no mistake, by loosening the requirements for Federal diversity jurisdiction over class actions, S. 1751 will result in nearly all class actions being removed to Federal court. This is a radical change in our Federal system of justice. We have 50 States in this country with their own laws and courts. State courts are an integral part of our system of justice. They have worked well for our entire history. It is hard to imagine why this Senate, which includes many ardent defenders of federalism and the prerogatives of State courts and State lawmakers, would support such a wholesale stripping of jurisdiction from the States over class actions. In my opinion, the need for such a radical step has not been demonstrated.

Yes, there are abuses in some class actions suits. Some of the most disturbing have to do with class action settlements that offer only discount coupons to the members of the class and a big payoff to the plaintiffs' lawyers. But those abuses have occurred in Federal as well as State class actions. This bill does nothing to address those problems; it just moves them all to Federal court.

I note that a substitute amendment being crafted by the senior Senator from Louisiana will include a provision to address discount coupons. It is puzzling to me that such a provision is not contained in the underlying bill. Could it be that these coupon settlements, so often held up as the poster child for what is wrong with class actions, are actually something that the defendants' bar that is promoting this bill wants to preserve? We will find out if the Senate does proceed to the bill and an amendment is offered on that issue.

Class actions are an extremely important tool in our justice system. They allow plaintiffs with very small claims to band together to seek redress. Lawsuits are expensive. Without the opportunity to pursue a class action, an individual plaintiff often simply cannot not afford his or her day in court. But through a class action, justice can be done and compensation can be obtained.

There are three possible outcomes of this bill being enacted. Either the State courts will be deluged with individual claims, since class actions can no longer be maintained there, or there will be a huge increase in the workload of the Federal courts, resulting in delays and lengthy litigation over procedural issues rather than the substance of the claims, or many injured people will never get redress for their injuries. I don't believe any of these three choices are acceptable.

Particularly troubling is the increase in the workload of the Federal courts. These courts are already overloaded. The Congress has led the way in bringing more and more litigation to the Federal courts, particularly criminal cases. Criminal cases, of course, take precedence in the Federal courts because of the Speedy Trial Act. So the net result of removing virtually all class actions to Federal court will be to delay those cases.

There is an old saying with which I am sure we are all familiar: justice delayed is justice denied. I hope my colleagues will think about that aphorism before voting for this bill. Think about the real world of Federal court litigation and the very real possibilities that long procedural delays in overloaded Federal courts will mean that legitimate claims may not ever be heard. At the very least, we should provide in this bill some priority to class certification motions brought in Federal class actions.

One little noticed provision of this bill illustrates the possibilities for delay that this bill provides, even to defendants who are not entitled to have a case removed to Federal court under the bill's relaxed diversity jurisdiction standards. Under current law, if a Federal court decides that a removed case should be remanded to State court, that decision is not appealable. The only exception is for civil rights cases removed under the special authority of 28 U.S.C. § 1443. But this bill allows defendants to immediately appeal a decision by a Federal district court that a case does not qualify for removal. That means that a plaintiff class that is entitled even under this bill to have a case heard by a State court may still have to endure years of delay while the appeal of a procedural ruling is heard. Where is the fairness in that?

Some in the business community have expressed concern about resolving nationwide class actions, like some of the tobacco litigation, in a single State court. I can understand why that might seem unfair to some. But this bill does not just address that situation. It also prevents a group of plaintiffs who are all from the same State from pursuing a class action in their own State courts if even one defendant is from another State. The proponents of this bill have chosen a remedy that goes far beyond the alleged problem. That raises questions about what the intent behind this bill really is.

It is important to remember that this debate is not about resolving questions of Federal law in the Federal courts. Federal question jurisdiction already exists for that. Any case involving a Federal statute can be removed to Federal court under current law. This bill takes cases that are brought in State court solely under State laws passed by State legislatures and throws them into Federal court. This bill is about making it more time consuming and more costly for citizens of a State to get the redress that their elected representatives have decided they are entitled to if the laws of their State are violated.

Diversity jurisdiction in cases between citizens of different States has been with us for our entire history. Article III, section 2 of the Constitution provides: ''The judicial Power shall extend . . . to Controversies between Citizens of different States.'' This is the constitutional basis for giving the Federal courts diversity jurisdiction over cases that involved only questions of State law.

The very first Judiciary Act, passed in 1789, gave the Federal courts jurisdiction over civil suits between citizens of different States where over $500 was at issue. In 1806, in the case of Strawbridge v. Curtiss, the Supreme Court held that this act required complete diversity between the parties—in all other instances, the Court said, a case based on State law should be heard by the State courts. So this bill changes a nearly 200-year-old practice in this country of preserving the Federal courts for cases involving Federal law or where no defendant is from the State of any plaintiff in a case involving only State law.

Why is such a drastic step necessary? Why do we need to prevent State courts from interpreting and applying their own State laws in cases of any size or significance? One argument we hear is that the trial lawyers are extracting huge and unjustified settlements in State courts, which has become a drag on the economy. We also hear that plaintiffs' lawyers are taking the lion's share of judgments or settlements to the detriment of consumers. But a recent empirical study contradicts these arguments. Theodore Eisenberg of Cornell Law School and Geoffrey Miller of NYU Law School recently published the first empirical study of class action settlements. Their conclusions, which are based on data from 1993–2002, may surprise some of the supporters of this bill.

First, the study found that attorneys' fees in class action settlements are significantly below the standard 33 percent contingency fee charged in personal injury cases. The average class action attorney's fee is actually 21.9 percent. In addition, the attorneys' fees awarded in class action settlements in Federal court are actually higher than in State court settlements. Attorney fees as a percent of class recovery were found to be between 1 and 6 percentage points higher in Federal court class actions than in State court class actions.

A final finding of the study is that there has been no appreciable increase in either the amount of settlements or the amount of attorneys' fees awarded in class actions over the past 10 years. The study indicates that there is no crisis here. No explosion of huge judgments. No huge fleecing of consumers by their lawyers. This bill is a solution in search of a problem. It is a great piece of legislation for wrongdoers who would like to put off their day of reckoning by moving cases to courts that are less convenient, slower, and more expensive for those who have been wronged. It is a bad bill for consumers, for State legislatures, and for State courts.

Mr. President, if the motion to proceed is adopted, I expect there will be many amendments offered. In an area like this the details matter, and if we are going to have class action reform we need a full and fair debate on the details with the opportunity to offer amendments. But the best result is for the Senate not to consider this bill at this time. I do not believe this unfair Class Action Fairness Act is ready to be considered on the floor, and I will vote no on the motion to proceed.

Mr. KYL. Mr. President, I rise today to address the Class Action Fairness Act of 2003. This legislation first was introduced and reported by a Judiciary subcommittee 5 years ago, during the 105th Congress. It is time to enact this legislation into law.

There is no need to recount the parade of horribles that makes the need for this legislation manifest. Suffice to say that even the liberal Washington Post has noted that ''national class actions can be filed just about anywhere and are disproportionately brought in a handful of State courts whose judges get elected with lawyers' money.'' And as one study has noted, ''[v]irtually every sector of the United States economy is on trial in Madison County [Illinois], Palm Beach County [Florida], and Jefferson County [Texas].''

The problem has grown much worse in recent years. Over the course of the 1990s, class-action filings increased by over 1,300 percent. What this suggests is that class-action litigation has become unhinged from actual events. These lawsuits are not being filed because businesses are injuring consumers 13 times more frequently than they did at the beginning of the last decade. Rather, these numbers reflect a breakdown in the litigation system itself. That system no longer bars frivolous suits that are brought purely for attorneys' own gain.

I would like to address several points about this year's bill. First, there has been much argument from the opponents of this bill that its sponsors are doing something sneaky by employing rule XIV to bring a modified bill to the floor. The bill that we currently are considering includes a restored, modified version of the original bill's provision governing mass actions—which provision had been stripped out of the bill by a last-minute amendment in the Judiciary Committee. Bill opponents seem to suggest that whatever damage was done by that amendment they secured fair and square, and that bill supporters have no business undoing the damage on the Senate floor.

It is true that the committee amendment stripping the mass-action provision damaged the bill. The State of Mississippi, among others, entertains actions that are class actions in all but name—these suits technically are not class actions, but they function as their equivalent. And as any lawyer who has observed patterns of class-action litigation can tell you, a reform bill that did not apply in Mississippi would hardly be much of a reform at all.

If anything is improper about the way that the mass-action provision has been handled, it is the way that the original provision was stripped from the bill in the Judiciary Committee. I know, because I was there when it happened and saw it all. The stripping amendment was not circulated to Judiciary members in advance of the Committee's executive session—in contravention of the Committee's own self-imposed rules governing additional amendments to the bill. Most of us had not even had an opportunity to read the amendment. Chairman HATCH already had shown great indulgence toward bill opponents by allowing an additional day's markup of the bill, when he could have insisted on a final vote earlier. An additional amendment nevertheless was allowed, and was adopted once it was clear that it had the support of swing voters on the Committee—as well as the support of all Members who are hostile to the bill. The rest of us who support the underlying bill were forced to accept the amendment, without an opportunity to even learn what it would do.

By contrast to the way that the original amendment was handled, everyone has been afforded ample notice of the modified mass-action provision included in the current bill. This modified provision was negotiated among the bipartisan group of supporters of the original bill—including those whose support led to the adoption of

the original amendment. When a compromise finally was reached, it was announced during an executive session of the Judiciary Committee and reported in the newspapers. And if that was not adequate notice, Chairman HATCH provided a detailed description of the modified provision in the committee report for this bill, which was published last July. Yet to hear bill opponents tell the story, you would think that the modified proposal had been hidden from all members until this bill was introduced. This is simply absurd—a stealth amendment is not one that is announced months beforehand in a committee report.

I would also note today—speaking about the bill more generally—that it is hardly a radical reform. As two Democratic cosponsors of the bill recently emphasized in a letter to all Senators, the current bill ''does not contain any tort reform whatsoever. There are no caps on damages or attorney's fees, no limits on joint and several liability, and no new pleading requirements.'' These Senators also point out that as a result of a Democratic amendment added to the bill in the Judiciary Committee, ''federal jurisdiction does not extend to cases in which the claims involved less than $5 million or in which two-thirds or more of the plaintiffs are from the same state as the defendant.''

This last provision substantially dilutes the bill. The plaintiffs' lawyers who routinely file these class actions are among the wiliest members of the profession—I expect that they will have little difficulty structuring their plaintiff class such that more than two-thirds of plaintiffs are from the state in which the principal defendants are located and the action is filed. If this loophole is exploited to the extent that I fear that it will be, the principal effect of today's bill will be not to remove cases to federal court, but rather to keep them in the courts of the state where the defendants and most plaintiffs are located. Of course, such a reform would not be without its advantages. At the very least, those states that tolerate predatory class actions in their courts would be forced to bear the consequences of such litigation, because the suits would be directed at local businesses. This change might yet alleviate the collective-action problems and indulgence of regional prejudice that underlie much of the current class-action crisis.

Finally, in closing I would remark on the strange new federalism that this bill appears to have evoked in some of its opponents. In a statement of additional views in the committee report for this bill, all seven Judiciary Committee members who voted against the bill have denounced it as a violation of the high principle of States' rights. They describe the bill as raising ''serious constitutional issues'' by ''undermin[ing] James Madison's vision of a Federal government 'limited to certain enumerated objects, which concern all the members of the republic.' '' These opponents even invoke the U.S. Supreme Court's decision in United States v. Morrison (2000), which struck down as beyond Congress's power a Federal law regulating violent crime that is unrelated to commercial activity. As bill opponents remind us, Morrison requires Congress to respect the distinction between what is truly national and what is truly local.

What may strike the casual observer as unusual is that the very members who invoke Morrison against this bill recently have denounced that very decision—and any judicial nominee suspected of harboring views in line with the Supreme Court majority in that case—in the course of the judicial-confirmation process. On this very day, the Judiciary Committee will hold a hearing for one of the President's nominees to the U.S. Court of Appeals for the District of Columbia. I would not be surprised to learn that the same Judiciary Committee members denouncing this bill on the Senate floor today will then proceed down the Capitol elevators, take the shuttle to the large Judiciary hearing room, and denounce the President's nominee as a secret supporter of United States v. Morrison.

To conclude, I would simply note that it is beyond argument that the interstate commerce clause and Article III's authorization for diversity jurisdiction were included in the Constitution in order to empower Congress to protect both interstate commerce and out-of-State defendants from local prejudice. Nothing could be a more appropriate application of these congressional powers than the legislation that we are considering today. Yet to listen to this bill's opponents, one might come away with the impression that the interstate commerce clause was designed to allow Congress to regulate all violent crime, and any other subject that touches Congress's fancy and that happens to poll well—any subject, that is, except for interstate commerce. The opponents of this bill can play at either John Paul Stevens or John Calhoun. They cannot play at both—or at the very least, they ought not do so on the same day.

I look forward to Congress's enactment of the important legislation before us today.

The PRESIDING OFFICER (Mr. SMITH). The Senator from Texas.

Mr. CORNYN. Mr. President, the Senator from Louisiana has made an eloquent plea for class action reform. Unless we have cloture, there will be no class action reform anytime in the near future. We know the Senate has a very busy calendar of conference committees working on an Energy bill, on Medicare, prescription drug reform, and many other issues. The time is ripe, and I suggest to my colleagues the time for reform is now.

Finally, this is not a matter of lawyer bashing. This is about jobs. This is about added cost to consumers. When frivolous litigation is filed which, in essence, once a class action is certified becomes legal blackmail because class action lawsuits are rarely, if ever, tried with a jury because the risks are so enormous, it literally becomes a ''bet the ranch'' or I should say ''bet the company'' lawsuit. So what happens is they are almost always settled but under unequal terms and really amount to, in too many instances, legal coercion. But what happens is, when that money is paid, that cost is not necessarily absorbed by that company, that job creator, but is passed on to consumers; and consumers pay and, ultimately, job loss occurs.

So, Mr. President, I urge my colleagues who believe we need to address this tremendous problem, we need to address job loss, we need to address consumer cost, we need to address this abuse, to vote for cloture.

The PRESIDING OFFICER. The Senator's time has expired.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to S. 1751, a bill to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

Bill Frist, Orrin G. Hatch, Charles Grassley, George Allen, Kay Bailey Hutchison, Rick Santorum, Susan M. Collins, Elizabeth Dole, Lindsey Graham of South Carolina, Wayne Allard, Pat Roberts, John Ensign, Thad Cochran, John Warner, Jon Kyl, John E. Sununu, Saxby Chambliss.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the motion to proceed to S. 1751 shall be brought to a close? The yeas and nays are mandatory under the rule. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''nay.''

The PRESIDING OFFICER (Mr. HAGEL). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 59, nays 39, as follows:

[Rollcall Vote No. 403 Leg.]

YEAS—59

Alexander	Dole	Lugar
Allard	Domenici	McCain
Allen	Ensign	McConnell
Bayh	Enzi	Miller
Bennett	Feinstein	Murkowski
Bond	Fitzgerald	Nelson (NE)
Brownback	Frist	Nickles
Bunning	Graham (SC)	Roberts
Burns	Grassley	Santorum
Campbell	Gregg	Sessions
Carper	Hagel	Smith
Chafee	Hatch	Snowe
Chambliss	Hutchison	Specter
Cochran	Inhofe	Stevens
Coleman	Jeffords	Sununu
Collins	Kohl	Talent
Cornyn	Kyl	Thomas
Craig	Lieberman	Voinovich
Crapo	Lincoln	Warner
DeWine	Lott	

NAYS—39

Akaka	Dodd	Levin
Baucus	Dorgan	Mikulski
Biden	Durbin	Murray
Bingaman	Feingold	Nelson (FL)
Boxer	Graham (FL)	Pryor
Breaux	Harkin	Reed
Byrd	Hollings	Reid
Cantwell	Inouye	Rockefeller
Clinton	Johnson	Sarbanes
Conrad	Kennedy	Schumer
Corzine	Landrieu	Shelby
Daschle	Lautenberg	Stabenow
Dayton	Leahy	Wyden

NOT VOTING—2

Edwards	Kerry

The PRESIDING OFFICER. On this vote, the yeas are 59, the nays are 39. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The majority leader.

Mr. FRIST. Mr. President, I am clearly disappointed we have been denied the opportunity to proceed to this very important legislation, a bill we very much want to discuss, to debate, and to appropriately amend. It is important to the American people. Thus, I believe we just witnessed a missed opportunity to address a critically and vitally important issue.

With that, for my colleagues, let me say we are making some progress on other issues in terms of how the afternoon will be spent. We are in discussion with regard to the antispam legislation, and I believe we will be able to proceed with that early this afternoon.

Again, let me state my disappointment. We are very committed to addressing this particular issue for the American people, and we will be trying, once again, to pull together and do what the American people deserve.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Mr. President, the message in this vote is that now is the time for us to sit down and negotiate. I have said on several occasions, as late as this morning, that we are prepared to work with the majority. I will certainly work with the majority leader to bring to the floor a bill that will enjoy much broader support than 59 votes. We can do that. We recognize the need for reform, but we also recognize we have to do it right. I would like to start this afternoon. I will do it tomorrow. I will do it whenever the majority is prepared to do it, but we are prepared to do it, and I look forward to further discussions on this issue in the days ahead.

After that, I hope we can move to other issues that divide us. I think there is an opportunity on asbestos as well, but it takes real negotiation. I am prepared to enter into those negotiations anytime the majority is prepared to do so as well.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, you just heard a willingness to work together. There were 59 Members who spoke just a few moments ago who said, Let's proceed and do it right now on the floor of the Senate. We were one vote short. I accept that. I think we do need to proceed directly to address this issue, and we will work in good faith to do just that.

As I mentioned earlier, I think we are very close on the antispam legislation that we talked about yesterday and today.

MORNING BUSINESS

Mr. FRIST. I ask unanimous consent that we go into morning business until 2, with the time equally divided. We should be ready to begin the spam legislation at 2.

Mr. DASCHLE. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senate minority leader.

Mr. DASCHLE. I ask the Chair whether the motion to reconsider has been propounded on the last vote.

The PRESIDING OFFICER. It has not.

Mr. DASCHLE. Mr. President, I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DASCHLE. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered. Who seeks recognition?

Mr. SANTORUM. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DODD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

VOTE ON CLASS ACTION REFORM

Mr. DODD. Mr. President, I want to express my disappointment about the outcome of the last vote. I voted not to invoke cloture. I did so with great reluctance. A number of Members called me over the last several days about the class action reform bill that was before us. I appreciate very much the comments of both the majority leader and the minority leader, my good friend from Delaware, TOM CARPER, HERB KOHL, and others who have worked very hard on this legislation. I have great respect for what they have tried to do.

I hope the majority leader will take up the offer of the Democratic leader and so we come together and work out what the provisions of this bill ought to be, at least the main provisions of it, and move forward. I am deeply committed to class action reform, but I do not want to move forward under a process where I am being told merely that I have a right to bring up amendments. I have that right anyway.

It seems to me if we are going to try to put a bill like this together, it takes meaningful cooperation, it takes sitting down. It is hard work. We have done it in the past. As the author of the securities litigation reform bill, the uniform standards legislation, terrorism insurance, the Y2K bill—all matters that brought together the trial bar and the business community trying to sort it out—I know that this can be done. It took a lot of work and a lot of hours to do it in the past. I strongly recommend on class action reform, that we make the same sort of effort.

It is not that difficult to get a good bill, but it does take work. Again, it takes meaningful cooperation. We need to have that if we are going to succeed.

I am terribly disappointed, but I must say to those who argued for cloture that there is a way of achieving the right results and the process we just went through this is not the way to go, in my view.

I can say, without invoking the names of my colleagues, there are a number of us who voted no on cloture who believe as strongly as I do about the need for reform and who would like to see a bill passed. So the majority leader and his staff, the staff of the Judiciary Committee and other interested parties—and there are not that many—if they can put something together, we can move forward. We could have another cloture vote, if we need to have one, although I doubt we will need one, with a more cooperative process there would be no need for one. I believe we can and should go forward.

The challenge is whether or not they want to do that. If they just want to have a 59-to-39 vote and move on to another issue, then that may indicate to some of us what the real intentions were here. If they are interested in getting this bill done, then there is a way to do it.

There are those of us who are willing to roll up our sleeves and get it done. In fact, many of the same people have been involved for months now in the asbestos legislation. I have an uneasy feeling we are heading in the same direction with that bill. It takes hard work. Members from both sides have to sit down, bring people together, and put in the hours it takes to finish the job.

If we allow this to sort of wander along without dealing with the intricacies and the complicated questions involved, then one can almost predict with certainty what is going to happen at the end of the day. So the offer is there. I make it to my friends and colleagues on this side of the aisle and the other. I am prepared to be a part of those efforts, if they find it fruitful and worthwhile, or to sit on the sidelines and watch it happen and be supportive of whatever they are able to produce.

Let's move forward and get this done. The American people deserve better. We are not working together as often as we should on critical questions. If we do not do it, then we do a great disservice to the American public.

So I hope the leaders would take up the offers that have been made, sit down and see if we cannot pull this bill together. For those who are interested, we ought to be prepared to start that process today—this afternoon—if people are so willing.

I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. Mr. President, I ask for 2 minutes of personal privilege to add a few remarks to the RECORD. I, too, remain firmly committed to class action reform and have stated so publicly many times and will continue to state publicly that intention.

There are two or three reasons I could not vote to move to debate on this bill because there were not clear indications given that certain language in this underlying bill would be removed.

I understand the legislative process. I am clear about the legislative process, but I am also clear about the way that arrangements can be made in this Chamber, arrangements with this White House and the House so that we can come out with a bill that is fair to the American public, that helps us to increase jobs, to remove the forum shopping, and to eliminate the abuses that are in this system, without undermining people's rights to get their day in court.

So as one of the votes that obviously could have made a difference in the outcome today, I most certainly remain open. The language, however, regarding mass torts must be removed. The coupon settlement language must be addressed. The jurisdictional question somewhere between the Feinstein and Breaux language would be acceptable, and the bounty provisions, which are very important to civil rights legislation, must be addressed.

These are four issues that I am going to be discussing, and if the side that is for reform is really interested in real reform and not just a political issue, these discussions can be had with this Senator.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I will speak briefly about this issue as well. I think as we bring this up, it is important, if we can, to move this forward and get it resolved. One of the things we need to be constantly focusing on is what can we do to grow jobs and create jobs.

We have been pressing forward. The Federal Reserve has been pressing forward, keeping interest rates low. We have been pressing forward in cutting taxes to try to stimulate. The early medicine seems to be working. We are starting to get some economic growth. We are starting to get some job creation taking place.

Another clear area of importance and need is this area of litigation reform. This is sapping a great deal of strength out of the economy and sapping strength from job creation. This is one of the areas we need to reform. I think there are ways that we can do this and still protect the rights of the individual, rights of those who are harmed in the system, but we are going to have to start to address this problem if we are going to be serious about job creation in the country and serious about what all we can do as a legislative body in creating an atmosphere and situation in the United States that can be the most growth oriented, and in a way that still protects all the rights of individuals in this country.

Those are the efforts that are taking place. That is what we are trying to do with this.

NOBEL PEACE PRIZE TO SHIRIN EBADI OF IRAN

Mr. BROWNBACK. Mr. President, I rise to draw the attention of my colleagues to a topic that is of significant importance in the world.

On October 10, the Nobel Peace Prize, the peace prize that was granted to the Dalai Lama in the past, to Martin Luther King, Jr., and to Nelson Mandela, was granted to Shirin Ebadi, not a household name. This lady is a prominent human rights activist in Iran. She was awarded the 2003 Nobel Peace Prize.

I want to draw the attention of my colleagues to her because Iran is one of those countries that is a state sponsor of terrorism. They are as a country on the very low end of recognition of human rights. The ruling clerics do not let participation in the society take place.

She has been fighting for the rights of students and activists to peacefully meet and speak out. She has done it from inside Iran. For that, she has paid for it in jail time and in harassment. She should now receive a reward from us in recognition.

Naturally, the regime in Tehran did not kindly meet upon her recognition as a Nobel Peace Prize winner. The regime actually went on to say there are other Nobel Prizes that are more important, like literature. I looked at that and I thought how would one deny their own countryman the peace prize, the highest of these? They are saying there is something else that is higher. But it is because she has been going at this regime that is illegitimate and does not recognize the people.

I want to extend my heartfelt congratulations to Ms. Ebadi and to the Iranian people for their continued struggle for freedom, for democracy, and for human rights, against the clerics who have stripped them of every ounce of human dignity.

The Economist described Ms. Ebadi as this: Assertive, severe, and frighteningly well versed in Islamic and Western law, characteristics that challenge the status quo of Iran and the religious ruling clique.

Since being barred from serving as a judge, Ms. Ebadi has fought for the rights of homeless children under the repressive regime which treats the children like common criminals. In addition, she has spent the last 4 years investigating the attacks on student protestors by Iranian security forces during the massive July 9, 1999, protest. Ezzat Ebrahim-Nejad was one of those protesters killed during the 1999 protest. Ms. Ebadi represented his family in tracking down the thugs who attacked the students and their paymasters within the Ayatollah's regime. Her devotion to this case and many others landed her a 15-month jail sentence.

This year Ms. Ebadi established a nonprofit organization, a legal defense center for the families of Iranian dissidents and activists. This is challenging work that all Iranians can celebrate, and I am confident she will use the prestige that comes with the award of the Nobel Peace Prize to continue the struggle in Iran.

There are dissidents in Iran who I think deserve highlighting, who are being held without reason. Hassan Zarezadeh, a 25-year-old student, is one. He is being held because of participation in a July 9, 1999, protest. He has been in prison since July 6, 2003, in preparation of the anniversary recognition of that protest. There are reports he is enduring torture during his detention.

Dr. Farzad Hamidi disappeared on June 18, 2003, in Tehran, barely 1 year after being released from jail. His whereabouts is unknown, but friends and family believe his disappearance is connected to his role in the student protest.

Shirin Ebadi's struggles continue for these and many other individuals and activists inside Iran, and dissidents—and all they want to do is be able to peacefully meet and to be able to communicate their message to people within Iran. All they are getting for that is jail, harassment, and, unfortunately, death.

Systematic change is needed to take place. A number of people are calling for that inside Iran. The student protesters and others are calling for an internationally monitored referendum on the Government in Iran. That is, indeed, what should take place.

I wanted to draw Shirin Ebadi's name and her recognition and her award to

the notice of my colleagues. This is an important step in the recognition and movement toward human rights in Iran. We need to celebrate it.

I yield the floor.

CLASS ACTION FAIRNESS ACT

Mr. DORGAN. Mr. President, I wanted to echo some comments made by my colleague from Connecticut, Senator DODD, on the issue of class action reform.

I believe that we need to do a class action reform bill. Some of us who voted against cloture this afternoon believe that there have been abuses in the area of class action litigation, and that reform is needed.

But class action reform has to be sensible and thoughtful, and it needs to be resolved through negotiation. I am hopeful that this will be accomplished. The minority leader indicated he is willing to negotiate. The majority leader indicated he is willing to negotiate on these issues. It is my hope that these negotiations will be fruitful.

There is no question that there have been instances of abusive forum shopping. There are cases being filed in state court in places like Madison County, Illinois, where there are thousands of plaintiffs, but only a handful are from that area. It's pretty clear to me that cases like that, when brought on behalf of nationwide classes, should be heard in federal court.

I have a long list of such cases here, which on their face involve abuses of the class action mechanism. I think I shall not go through them all today. Suffice it to say that forum shopping is a problem, and we need reforms in this area.

I also believe that there is a problem with coupon settlements. It makes no sense to have settlements where plaintiffs get meaningless coupons that are never redeemed. That, too, in my judgment, can and should be changed.

I have decided to cosponsor the class action reform proposal described by Senator JOHN BREAUX, because I think it takes care of the problems of forum shopping and also coupon settlements. I think it is superior to the bill that was the subject of today's cloture vote, because it will more effectively address the issues of coupon settlements and forum shopping.

With respect to coupon settlements, the Breaux bill is much tougher than the Grassley-Hatch bill, which was the subject of today's cloture vote. The Grassley-Hatch bill simply says that the courts should review coupon settlements for fairness. By contrast, the proposal that is offered by Senator BREAUX, that I am cosponsoring, actually ties legal fees to the rates at which coupons are actually redeemed. So in a case where plaintiffs get meaningless coupons, the lawyers get paid accordingly. That is a much preferable provision, in my judgment, in reforming the class action area.

With respect to forum shopping, let me again point out that the proposal offered by my colleague, Senator BREAUX, is preferable. It says if fewer than one-third of the plaintiffs are in a State, then it goes to Federal court. If more than two-thirds are in a State, it goes to State court. If it is in between the two, the Federal court shall make a judgment of where it is most appropriate.

The bill that was proposed to be brought to the floor today would have a very different mechanism. It would say that you could not bring a case in state court unless the defendant was a citizen of that state. So, for example, if 1,000 citizens of my State of North Dakota were cheated by a company in Houston, TX, they could not form a class and file an action in North Dakota under North Dakota law. They simply could not do that under the bill brought to the floor of the Senate.

That is not fair. That doesn't make any sense.

Now, I understand that forum shopping is a problem and we ought to deal with it. But there is a right way and a wrong way to deal with it. I think the Breaux approach is the right way. It is a thoughtful, balanced approach. It allows us to stop class action abuses, while at the same time preserving the rights of people to be able to access their own State courts in legitimate cases.

Again, I think it makes no sense to say to North Dakotans, it does not matter if there are two thousand of you who have been injured by an out-of-state company, you cannot access North Dakota State Courts and you cannot have the protection of North Dakota state law. Yet that is precisely what the bill that was the subject of today's vote would have said.

The proposal offered by my colleague, Senator BREAUX, strikes the right balance. It is the right approach. Cases that involve a lot of plaintiffs from around the country would go to federal court. But citizens of a particular state would still be able to band together if they were injured by an out-of-state defendant, and bring a lawsuit in their own state court.

I say to the majority leader, if you are interested in class action reform, then let's work out a solution to the very real problem of class action abuses—but let's do it without depriving the people of any one state of the right to access their state's court, in legitimate cases. I think we can strike that proper balance, and I hope we can do it soon. That is the reason I voted against the motion to proceed.

What we should avoid is a process in which the majority simply says: Here's where the wagon is heading. If you like it, jump on. If you don't like it, tough luck. Don't give us any advice along the way.

I am a conferee on the Energy bill, but I have not been invited to a conference. No Democrat in the Senate has been included in a conference on the Energy bill. In fact, we have been specifically excluded and prevented from being a part of the conference. If that is the way legislation will be handled in the Congress, it will pervert the legislative process. In the case of the Energy Conference, nearly one-half of the Senate, 49 Members of a body of 100 persons, are being given no voice at the conference. We are told that the majority will make all the decisions.

We are told by the majority: Just let us bring the Energy bill to the floor and we will be fair. Just take our word for it.

Well, I hope and trust that we will follow a different path on the issue of class action reform. The Breaux proposal is a good one. I suggest we begin now seriously negotiating a balanced, responsible solution, that takes care of the problem of class action abuses.

Let me also say parenthetically that there is another issue, in addition to class action reform, that requires meaningful negotiations. That is the issue of asbestos litigation. That, too, is a real problem and we ought to deal with it. It, too, in my judgment, will require negotiation. All sides are going to have to want to do this and be willing to negotiate aggressively. You have a series of stakeholders involved and those stakeholders, in my judgment, need to get together, because the system is broken. We have people who are sick and dying who are not getting help. And we have a huge cloud of uncertainty hanging over the business community.

A solution is going to require, in my judgment, that all the stakeholders be part of the negotiation. Yes, labor is a very significant part of that. So, too, is the business community and others.

I know this is a complex issue, but I hope in the concluding days of this first session of the Congress we will see a breakthrough in negotiations, and solve this asbestos issue in a way that works for everyone.

I think they have been close on a number of occasions. My hope is it finally is completed.

THE 9/11 COMMISSION

Mr. DORGAN. Mr. President, I wish to comment on the 9/11 Commission. That is the commission which has been put together by Federal law and asked to look into what happened on 9/11 and get all of the information from everybody to find out what happened leading up to the attack on this country. What did we know? What did the CIA know? What did the FBI know? What did the FAA do during the attack? What happened? Only by knowing what happened can we prevent it from happening again. Were there dots that should have been connected but weren't? Did we have information that could have perhaps prevented that attack had certain people known of it or had been told of it? Are there deficiencies in some of these agencies? Did people drop the ball?

I do not know. But we put together a panel headed by former Governor

Keane of New Jersey. It is a distinguished panel. One of our former colleagues, Senator Cleland, is on that panel. It is called the 9/11 Commission.

I want to read a couple of statements. This statement was made October 10:

In connection with the commission's second interim report issued on September 23, 2003, we discuss the commission's ongoing effort to get prompt access to some key executive branch and White House documents that the commission needs to complete its work on time. Although we can report substantial progress, the commission is continuing to press for necessary access to some key items.

I don't understand why there would be problems in getting information from the CIA, or the FBI, or the White House, or the FAA. What on Earth is happening?

This is the Federal inquiry into what happened on 9/11 and how we can prevent it from ever happening again. I would think every Federal agency would cooperate fully and immediately. But that, regrettably, has not been the case. October 15, a statement by the 9/11 Commission:

Over the past two weeks, as a result of field interviews conducted by our staff, the commission learned of serious deficiencies in one agency's production of critical documents.

The agency in question happens to be the FAA. Now they indicate they are issuing subpoenas. In fact, they say this disturbing development at one agency has led the commission to reexamine its general policy of relying on document requests rather than subpoenas. They have voted to issue a subpoena to the FAA for documents which have already been requested.

I don't understand. We have a 9/11 Commission to investigate the tragedy that occurred as a result of the terrorist attack on this country. That commission has to issue subpoenas to Federal agencies to get cooperation. I would think every single Federal agency, starting with the White House, would open its records immediately to this commission so we can understand what happened.

I am not accusing anybody of anything, nor is the 9/11 Commission. We want to understand what happened. How did it happen? What clues might we have had? What kind of failing existed with respect to our intelligence that prevented us from knowing and, therefore, preventing these terrorist attacks? When I read this, I shake my head and think it is unbelievable that a commission created by this Congress, called the 9/11 Commission, to get to the bottom of what happened on 9/11, has to issue subpoenas to anybody, or has to send out progress reports to say, Well, we have made progress now in our efforts to gain access to key White House documents. The White House has agreed to brief all commissioners on another set of highly sensitive documents. We will seek prompt resolution of the remaining issues regarding access of these documents.

Why is there a problem? Why would not every agency in every part of this Government provide this information at will and upon the request of the 9/11 Commission?

I hope we don't see these kinds of reports again. I hope the next report from this commission would tell us the President has requested every single agency to turn over every single document requested by the 9/11 Commission immediately. Let this commission do its work and finish its work, make a report to the Congress and to the American people about what happened on 9/11, about what information existed leading up to 9/11, and how we can learn from that to protect this country against future terrorist attacks.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CARPER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CARPER. Mr. President, we have just concluded what for many of us was a tough vote. I simply want to express my thanks to the 58 other Democrats and Republicans who joined me—59 in all—in voting for the motion to proceed and to take up for debate and amendment legislation that would reform the way we handle class action lawsuits in this country.

I am disappointed with the vote, that we fell one vote short, but I am encouraged by some of the conversation that took place immediately following the vote by the leaders of both sides and a number of my colleagues, including Senator DODD and Senator LANDRIEU.

I sense there is a genuine willingness on the part of Democrats and Republicans and that one Independent not to give up on this issue. It is one that we need to address and we can address satisfactorily. My own belief is it is one we can address this year.

I have talked to any number of Senators on our side of the aisle who are prepared to offer what I think are constructive perfecting amendments that would make a good bill much better.

I hope what we will do in the days ahead is to reach across the aisle—Republicans to Democrats and Democrats to Republicans—to find a common ground that I think will exist with respect to many of these amendments and to then move forward together and, hopefully, to get to the end of the day when we can vote on a bill and not have to worry about the kind of partisan divide that in some cases characterized this vote and, frankly, characterizes too many votes we cast here.

I was approached by one of my colleagues following the vote who asked if we lost the war. I said: No, no, maybe today the battle was lost but not the war. There is a realization that the way we handle class action litigation in this country is broken. It can be fixed.

As we like to say in Delaware, ''If it isn't perfect, make it better.'' This bill that came out of committee is not perfect. It can be made better. That is what we are going to do.

I yield back my time and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. INHOFE. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. DOLE). Without objection, it is so ordered.

UNANIMOUS CONSENT REQUEST—EXECUTIVE CALENDAR

Mr. INHOFE. Madam President, as in executive session, I ask unanimous consent that at a time determined by the majority leader, after consultation with the Democratic leader, the Senate proceed to executive session in consideration of Calendar No. 405, Michael Leavitt, to be Administrator of the EPA; further, that there be then 2 hours for debate equally divided in the usual form. I further ask unanimous consent that following that debate the Senate proceed to a vote on the confirmation of the nomination, with no intervening action or debate; I further ask consent that following the vote, the President be immediately notified of the Senate's action and the Senate then resume legislative session.

The PRESIDING OFFICER. Is there objection?

Mr. HOLLINGS. Madam President, on behalf of colleagues on this side of the aisle, I am compelled to object, and I do object.

The PRESIDING OFFICER. Objection is heard.

Mr. INHOFE. Madam President, I yield the floor.

Mr. MCCAIN. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MCCAIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I ask unanimous consent that I be permitted to speak for up to 3 minutes to make an announcement with reference to committee work in the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

ENERGY CONFERENCE COMMITTEE MEETING

Mr. DOMENICI. I have an announcement on behalf of myself and Chairman BILLY TAUZIN from the House of Representatives. We have scheduled a conference meeting for Tuesday morning.

The tax writers should have completed their work on tax provisions in time to meet that schedule. We will provide conference language to all House and Senate conferees, Republican and Democrat, 48 hours in advance of the conference. We plan to make the language public 48 hours before the conference.

We see no reason that final passage of this bill cannot occur soon after the conference. Members of Congress have spent the past 3 years negotiating the resolution of a difficult regional issue and many national issues that pertain to energy and America's future. We are on the verge of completing work on a comprehensive Energy bill for the first time since 1992. This Senator believes this bill is even more significant than the 1992 bill.

To repeat, Chairman BILLY TAUZIN and myself, as chairman of our committee in the Senate, are announcing we will have a meeting of the conferees on the Energy bill on October 28, Tuesday, 10 a.m., in Dirksen 106. We have scheduled this conference for Tuesday morning, but implicit in my statement is that the tax writers have not completed their work on the tax provisions, but the two chairmen are suggesting in this announcement they should have their work completed in time for us to release that with the conference report, since it is part of it, without which there is not a conference, without which we do not know whether the rest of the work is valid or has to be changed.

Everyone who is interested at the leadership level is working to get this tax provision done. I want to repeat, it is not done. We do expect it to be done in time for this announcement to be effective.

CAN–SPAM ACT OF 2003

Mr. MCCAIN. Madam President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 209, S. 877; provided further that the committee amendment be agreed to and be considered original text for the purpose of further amendment.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MCCAIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 877) to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet.

The PRESIDING OFFICER. Is there objection to the Senator's request? Without objection, it is so ordered.

The Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after enacting clause and insert in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 877

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 ''Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003'', or the ''CAN–SPAM Act of 2003''.

[SEC. 2. CONGRESSIONAL FINDINGS AND POLICY.

[(a) FINDINGS.—The Congress finds the following:

(1) There is a right of free speech on the Internet.

[(2) The Internet has increasingly become a critical mode of global communication and now presents unprecedented opportunities for the development and growth of global commerce and an integrated worldwide economy.

[(3) In order for global commerce on the Internet to reach its full potential, individuals and entities using the Internet and other online services should be prevented from engaging in activities that prevent other users and Internet service providers from having a reasonably predictable, efficient, and economical online experience.

[(4) Unsolicited commercial electronic mail can be a mechanism through which businesses advertise and attract customers in the online environment.

[(5) The receipt of unsolicited commercial electronic mail may result in costs to recipients who cannot refuse to accept such mail and who incur costs for the storage of such mail, or for the time spent accessing, reviewing, and discarding such mail, or for both.

[(6) Unsolicited commercial electronic mail may impose significant monetary costs on providers of Internet access services, businesses, and educational and nonprofit institutions that carry and receive such mail, as there is a finite volume of mail that such providers, businesses, and institutions can handle without further investment in infrastructure.

[(7) Some unsolicited commercial electronic mail contains material that many recipients may consider vulgar or pornographic in nature.

[(8) While some senders of unsolicited commercial electronic mail messages provide simple and reliable ways for recipients to reject (or ''opt-out'' of) receipt of unsolicited commercial electronic mail from such senders in the future, other senders provide no such ''opt-out'' mechanism, or refuse to honor the requests of recipients not to receive electronic mail from such senders in the future, or both.

[(9) An increasing number of senders of unsolicited commercial electronic mail purposefully disguise the source of such mail so as to prevent recipients from responding to such mail quickly and easily.

[(10) An increasing number of senders of unsolicited commercial electronic mail purposefully include misleading information in the message's subject lines in order to induce the recipients to view the messages.

[(11) In legislating against certain abuses on the Internet, Congress should be very careful to avoid infringing in any way upon constitutionally protected rights, including the rights of assembly, free speech, and privacy.

[(b) CONGRESSIONAL DETERMINATION OF PUBLIC POLICY.—On the basis of the findings in subsection (a), the Congress determines that—

[(1) there is a substantial government interest in regulation of unsolicited commercial electronic mail;

[(2) senders of unsolicited commercial electronic mail should not mislead recipients as to the source or content of such mail; and

[(3) recipients of unsolicited commercial electronic mail have a right to decline to receive additional unsolicited commercial electronic mail from the same source.

[SEC. 3. DEFINITIONS.

[In this Act:

[(1) AFFIRMATIVE CONSENT.—The term ''affirmative consent'', when used with respect to a commercial electronic mail message, means that the recipient has expressly consented to receive the message, either in response to a clear and conspicuous request for such consent or at the recipient's own initiative.

[(2) COMMERCIAL ELECTRONIC MAIL MESSAGE.—

[(A) IN GENERAL.—The term ''commercial electronic mail message'' means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose).

[(B) REFERENCE TO COMPANY OR WEBSITE.—The inclusion of a reference to a commercial entity or a link to the website of a commercial entity in an electronic mail message does not, by itself, cause such message to be treated as a commercial electronic mail message for purposes of this Act if the contents or circumstances of the message indicate a primary purpose other than commercial advertisement or promotion of a commercial product or service.

[(3) COMMISSION.—The term ''Commission'' means the Federal Trade Commission.

[(4) DOMAIN NAME.—The term ''domain name'' means any alphanumeric designation which is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the Internet.

[(5) ELECTRONIC MAIL ADDRESS.—The term ''electronic mail address'' means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the ''local part'') and a reference to an Internet domain (commonly referred to as the ''domain part''), to which an electronic mail message can be sent or delivered.

[(6) ELECTRONIC MAIL MESSAGE.—The term ''electronic mail message'' means a message sent to an electronic mail address.

[(7) FTC ACT.—The term ''FTC Act'' means the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

[(8) HEADER INFORMATION.—The term ''header information'' means the source, destination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mail address.

[(9) IMPLIED CONSENT.—The term ''implied consent'', when used with respect to a commercial electronic mail message, means that—

[(A) within the 3-year period ending upon receipt of such message, there has been a business transaction between the sender and the recipient (including a transaction involving the provision, free of charge, of information, goods, or services requested by the recipient); and

[(B) the recipient was, at the time of such transaction or thereafter in the first electronic mail message received from the sender after the effective date of this Act, provided a clear and conspicuous notice of an opportunity not to receive unsolicited commercial electronic mail messages from the sender and has not exercised such opportunity.

[If a sender operates through separate lines of business or divisions and holds itself out to the recipient, both at the time of the transaction described in subparagraph (A) and at the time the notice under subparagraph (B) was provided to the recipient, as that particular line of business or division rather than as the entity of which such line of business or division is a part, then the line of business or the division shall be treated as the sender for purposes of this paragraph.

[(10) INITIATE.—The term ''initiate'', when used with respect to a commercial electronic mail message, means to originate such message or to procure the origination of such message, but shall not include actions that constitute routine conveyance of such message.

[(11) INTERNET.—The term ''Internet'' has the meaning given that term in the Internet Tax Freedom Act (47 U.S.C. 151 nt).

[(12) INTERNET ACCESS SERVICE.—The term ''Internet access service'' has the meaning given that term in section 231(e)(4) of the Communications Act of 1934 (47 U.S.C. 231(e)(4)).

[(13) PROTECTED COMPUTER.—The term ''protected computer'' has the meaning given that term in section 1030(e)(2) of title 18, United States Code.

[(14) RECIPIENT.—The term ''recipient'', when used with respect to a commercial electronic mail message, means an authorized user of the electronic mail address to which the message was sent or delivered. If a recipient of a commercial electronic mail message has 1 or more electronic mail addresses in addition to the address to which the message was sent or delivered, the recipient shall be treated as a separate recipient with respect to each such address. If an electronic mail address is reassigned to a new user, the new user shall not be treated as a recipient of any commercial electronic mail message sent or delivered to that address before it was reassigned.

[(15) ROUTINE CONVEYANCE.—The term ''routine conveyance'' means the transmission, routing, relaying, handling, or storing, through an automatic technical process, of an electronic mail message for which another person has provided and selected the recipient addresses.

[(16) SENDER.—The term ''sender'', when used with respect to a commercial electronic mail message, means a person who initiates such a message and whose product, service, or Internet web site is advertised or promoted by the message.

[(17) TRANSACTIONAL OR RELATIONSHIP MESSAGES.—The term ''transactional or relationship message'' means an electronic mail message the primary purpose of which is to facilitate, complete, confirm, provide, or request information concerning—

[(A) a commercial transaction that the recipient has previously agreed to enter into with the sender;

[(B) an existing commercial relationship, formed with or without an exchange of consideration, involving the ongoing purchase or use by the recipient of products or services offered by the sender; or

[(C) an existing employment relationship or related benefit plan.

[(18) UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGE.—The term ''unsolicited commercial electronic mail message'' means any commercial electronic mail message that—

[(A) is not a transactional or relationship message; and

[(B) is sent to a recipient without the recipient's prior affirmative or implied consent.

[SEC. 4. CRIMINAL PENALTY FOR UNSOLICITED COMMERCIAL ELECTRONIC MAIL CONTAINING FRAUDULENT ROUTING INFORMATION.

[(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

[''§ 1351. Unsolicited commercial electronic mail containing fraudulent transmission information

[''(a) IN GENERAL.—Any person who initiates the transmission, to a protected computer in the United States, of an unsolicited commercial electronic mail message, with knowledge and intent that the message contains or is accompanied by header information that is materially false or materially misleading shall be fined or imprisoned for not more than 1 year, or both, under this title. For purposes of this subsection, header information that is technically accurate but includes an originating electronic mail address the access to which for purposes of initiating the message was obtained by means of false or fraudulent pretenses or representations shall be considered materially misleading.

[''(b) DEFINITIONS.—Any term used in subsection (a) that is defined in section 3 of the CAN–SPAM Act of 2003 has the meaning given it in that section.''.

[(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

[''1351. Unsolicited commercial electronic mail containing fraudulent routing information''.

[SEC. 5. OTHER PROTECTIONS AGAINST UNSOLICITED COMMERCIAL ELECTRONIC MAIL.

[(a) REQUIREMENTS FOR TRANSMISSION OF MESSAGES.—

[(1) PROHIBITION OF FALSE OR MISLEADING TRANSMISSION INFORMATION.—It is unlawful for any person to initiate the transmission, to a protected computer, of a commercial electronic mail message that contains, or is accompanied by, header information that is materially or intentionally false or materially or intentionally misleading. For purposes of this paragraph, header information that is technically accurate but includes an originating electronic mail address the access to which for purposes of initiating the message was obtained by means of false or fraudulent pretenses or representations shall be considered materially misleading.

[(2) PROHIBITION OF DECEPTIVE SUBJECT HEADINGS.—It is unlawful for any person to initiate the transmission to a protected computer of a commercial electronic mail message with a subject heading that such person knows would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message.

[(3) INCLUSION OF RETURN ADDRESS OR COMPARABLE MECHANISM IN UNSOLICITED COMMERCIAL ELECTRONIC MAIL.—

[(A) IN GENERAL.—It is unlawful for any person to initiate the transmission to a protected computer of an unsolicited commercial electronic mail message that does not contain a functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that—

[(i) a recipient may use to submit, in a manner specified by the sender, a reply electronic mail message or other form of Internet-based communication requesting not to receive any future unsolicited commercial electronic mail messages from that sender at the electronic mail address where the message was received; and

[(ii) remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message.

[(B) MORE DETAILED OPTIONS POSSIBLE.—The sender of an unsolicited commercial electronic mail message may comply with subparagraph (A)(i) by providing the recipient a list or menu from which the recipient may choose the specific types of commercial electronic mail messages the recipient wants to receive or does not want to receive from the sender, if the list or menu includes an option under which the recipient may choose not to receive any unsolicited commercial electronic mail messages from the sender.

[(C) TEMPORARY INABILITY TO RECEIVE MESSAGES OR PROCESS REQUESTS.—A return electronic mail address or other mechanism does not fail to satisfy the requirements of subparagraph (A) if it is unexpectedly and temporarily unable to receive messages or process requests due to technical or capacity problems, if the problem with receiving messages or processing requests is corrected within a reasonable time period.

[(4) PROHIBITION OF TRANSMISSION OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL AFTER OBJECTION.—If a recipient makes a request to a sender, using a mechanism provided pursuant to paragraph (3), not to receive some or any unsolicited commercial electronic mail messages from such sender, then it is unlawful—

[(A) for the sender to initiate the transmission to the recipient, more than 10 business days after the receipt of such request, of an unsolicited commercial electronic mail message that falls within the scope of the request;

[(B) for any person acting on behalf of the sender to initiate the transmission to the recipient, more than 10 business days after the receipt of such request, of an unsolicited commercial electronic mail message that such person knows or consciously avoids knowing falls within the scope of the request; or

[(C) for any person acting on behalf of the sender to assist in initiating the transmission to the recipient, through the provision or selection of addresses to which the message will be sent, of an unsolicited commercial electronic mail message that the person knows, or consciously avoids knowing, would violate subparagraph (A) or (B).

[(5) INCLUSION OF IDENTIFIER, OPT-OUT, AND PHYSICAL ADDRESS IN UNSOLICITED COMMERCIAL ELECTRONIC MAIL.—It is unlawful for any person to initiate the transmission of any unsolicited commercial electronic mail message to a protected computer unless the message provides—

[(A) clear and conspicuous identification that the message is an advertisement or solicitation;

[(B) clear and conspicuous notice of the opportunity under paragraph (3) to decline to receive further unsolicited commercial electronic mail messages from the sender; and

[(C) a valid physical postal address of the sender.

[(b) PROHIBITION OF TRANSMISSION OF UNLAWFUL UNSOLICITED COMMERCIAL ELECTRONIC MAIL TO CERTAIN HARVESTED ELECTRONIC MAIL ADDRESSES.—

[(1) IN GENERAL.—It is unlawful for any person to initiate the transmission, to a protected computer, of an unsolicited commercial electronic mail message that is unlawful under subsection (a), or to assist in the origination of such a message through the provision or selection of addresses to which the message will be sent, if such person knows

that, or acts with reckless disregard as to whether—

[(A) the electronic mail address of the recipient was obtained, using an automated means, from an Internet website or proprietary online service operated by another person; or

[(B) the website or proprietary online service from which the address was obtained included, at the time the address was obtained, a notice stating that the operator of such a website or proprietary online service will not give, sell, or otherwise transfer addresses maintained by such site or service to any other party for the purpose of initiating, or enabling others to initiate, unsolicited electronic mail messages.

[(2) DISCLAIMER.—Nothing in this subsection creates an ownership or proprietary interest in such electronic mail addresses.

[(c) COMPLIANCE PROCEDURES.—An action for violation of paragraph (2), (3), (4), or (5) of subsection (a) may not proceed if the person against whom the action is brought demonstrates that—

[(1) the person has established and implemented, with due care, reasonable practices and procedures to effectively prevent violations of such paragraph; and

[(2) the violation occurred despite good faith efforts to maintain compliance with such practices and procedures.

[SEC. 6. ENFORCEMENT BY FEDERAL TRADE COMMISSION.

[(a) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR PRACTICE.—Except as provided in subsection (b), this Act shall be enforced by the Commission as if the violation of this Act were an unfair or deceptive act or practice proscribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

[(b) ENFORCEMENT BY CERTAIN OTHER AGENCIES.—Compliance with this Act shall be enforced—

[(1) under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—

[(A) national banks, and Federal branches and Federal agencies of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Office of the Comptroller of the Currency;

[(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 and 611), and bank holding companies and their nonbank subsidiaries or affiliates (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Board;

[(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) insured State branches of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Board of Directors of the Federal Deposit Insurance Corporation; and

[(D) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, and any subsidiaries of such savings associations (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Director of the Office of Thrift Supervision;

[(2) under the Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the Board of the National Credit Union Administration with respect to any Federally insured credit union, and any subsidiaries of such a credit union;

[(3) under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) by the Securities and Exchange Commission with respect to any broker or dealer;

[(4) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) by the Securities and Exchange Commission with respect to investment companies;

[(5) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) by the Securities and Exchange Commission with respect to investment advisers registered under that Act;

[(6) under State insurance law in the case of any person engaged in providing insurance, by the applicable State insurance authority of the State in which the person is domiciled, subject to section 104 of the Gramm-Bliley-Leach Act (15 U.S.C. 6701);

[(7) under part A of subtitle VII of title 49, United States Code, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part;

[(8) under the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.) (except as provided in section 406 of that Act (7 U.S.C. 226, 227)), by the Secretary of Agriculture with respect to any activities subject to that Act;

[(9) under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association; and

[(10) under the Communications Act of 1934 (47 U.S.C. 151 et seq.) by the Federal Communications Commission with respect to any person subject to the provisions of that Act.

[(c) EXERCISE OF CERTAIN POWERS.—For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of this Act is deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this Act, any other authority conferred on it by law.

[(d) ACTIONS BY THE COMMISSION.—The Commission shall prevent any person from violating this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any entity that violates any provision of that subtitle is subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of that subtitle.

[(e) ENFORCEMENT BY STATES.—

[(1) CIVIL ACTION.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by any person engaging in a practice that violates section 5 of this Act, the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction or in any other court of competent jurisdiction—

[(A) to enjoin further violation of section 5 of this Act by the defendant; or

[(B) to obtain damages on behalf of residents of the State, in an amount equal to the greater of—

[(i) the actual monetary loss suffered by such residents; or

[(ii) the amount determined under paragraph (2).

[(2) STATUTORY DAMAGES.—

[(A) IN GENERAL.—For purposes of paragraph (1)(B)(ii), the amount determined under this paragraph is the amount calculated by multiplying the number of willful, knowing, or negligent violations by an amount, in the discretion of the court, of up to $10 (with each separately addressed unlawful message received by such residents treated as a separate violation). In determining the per-violation penalty under this subparagraph, the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, the extent of economic gain resulting from the violation, and such other matters as justice may require.

[(B) LIMITATION.—For any violation of section 5 (other than section 5(a)(1)), the amount determined under subparagraph (A) may not exceed $500,000, except that if the court finds that the defendant committed the violation willfully and knowingly, the court may increase the limitation established by this paragraph from $500,000 to an amount not to exceed $1,500,000.

[(3) ATTORNEY FEES.—In the case of any successful action under paragraph (1), the State shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

[(4) RIGHTS OF FEDERAL REGULATORS.—The State shall serve prior written notice of any action under paragraph (1) upon the Federal Trade Commission or the appropriate Federal regulator determined under subsection (b) and provide the Commission or appropriate Federal regulator with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Federal Trade Commission or appropriate Federal regulator shall have the right—

[(A) to intervene in the action;

[(B) upon so intervening, to be heard on all matters arising therein;

[(C) to remove the action to the appropriate United States district court; and

[(D) to file petitions for appeal.

[(5) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this Act shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

[(A) conduct investigations;

[(B) administer oaths or affirmations; or

[(C) compel the attendance of witnesses or the production of documentary and other evidence.

[(6) VENUE; SERVICE OF PROCESS.—

[(A) VENUE.—Any action brought under paragraph (1) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

[(B) SERVICE OF PROCESS.—In an action brought under paragraph (1), process may be served in any district in which the defendant—

[(i) is an inhabitant; or

[(ii) maintains a physical place of business.

[(7) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Commission or other appropriate Federal agency under subsection (b) has instituted a civil action or an administrative action for violation of this Act, no State attorney general may bring an action under this subsection during the pendency of that action against

any defendant named in the complaint of the Commission or the other agency for any violation of this Act alleged in the complaint.

[(f) ACTION BY PROVIDER OF INTERNET ACCESS SERVICE.—

[(1) ACTION AUTHORIZED.—A provider of Internet access service adversely affected by a violation of section 5 may bring a civil action in any district court of the United States with jurisdiction over the defendant, or in any other court of competent jurisdiction, to—

[(A) enjoin further violation by the defendant; or

[(B) recover damages in an amount equal to the greater of—

[(i) actual monetary loss incurred by the provider of Internet access service as a result of such violation; or

[(ii) the amount determined under paragraph (2).

[(2) STATUTORY DAMAGES.—

[(A) IN GENERAL.—For purposes of paragraph (1)(B)(ii), the amount determined under this paragraph is the amount calculated by multiplying the number of willful, knowing, or negligent violations by an amount, in the discretion of the court, of up to $10 (with each separately addressed unlawful message carried over the facilities of the provider of Internet access service or sent to an electronic mail address obtained from the provider of Internet access service in violation of section 5(b) treated as a separate violation). In determining the per-violation penalty under this subparagraph, the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, the extent of economic gain resulting from the violation, and such other matters as justice may require.

[(B) LIMITATION.—For any violation of section 5 (other than section 5(a)(1)), the amount determined under subparagraph (A) may not exceed $500,000, except that if the court finds that the defendant committed the violation willfully and knowingly, the court may increase the limitation established by this paragraph from $500,000 to an amount not to exceed $1,500,000.

[(3) ATTORNEY FEES.—In any action brought pursuant to paragraph (1), the court may, in its discretion, require an undertaking for the payment of the costs of such action, and assess reasonable costs, including reasonable attorneys' fees, against any party.

[SEC. 7. EFFECT ON OTHER LAWS.

[(a) FEDERAL LAW.—

[(1) Nothing in this Act shall be construed to impair the enforcement of section 223 or 231 of the Communications Act of 1934 (47 U.S.C. 223 or 231, respectively), chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, United States Code, or any other Federal criminal statute.

[(2) Nothing in this Act shall be construed to affect in any way the Commission's authority to bring enforcement actions under FTC Act for materially false or deceptive representations in commercial electronic mail messages.

[(b) STATE LAW.—

[(1) IN GENERAL.—This Act supersedes any State or local government statute, regulation, or rule regulating the use of electronic mail to send commercial messages.

[(2) EXCEPTIONS.—Except as provided in paragraph (3), this Act does not supersede or pre-empt—

[(A) State trespass, contract, or tort law or any civil action thereunder; or

[(B) any provision of Federal, State, or local criminal law or any civil remedy available under such law that relates to acts of fraud or theft perpetrated by means of the unauthorized transmission of commercial electronic mail messages.

[(3) LIMITATION ON EXCEPTIONS.—Paragraph (2) does not apply to a State or local government statute, regulation, or rule that directly regulates unsolicited commercial electronic mail and that treats the mere sending of unsolicited commercial electronic mail in a manner that complies with this Act as sufficient to constitute a violation of such statute, regulation, or rule or to create a cause of action thereunder.

[(c) NO EFFECT ON POLICIES OF PROVIDERS OF INTERNET ACCESS SERVICE.—Nothing in this Act shall be construed to have any effect on the lawfulness or unlawfulness, under any other provision of law, of the adoption, implementation, or enforcement by a provider of Internet access service of a policy of declining to transmit, route, relay, handle, or store certain types of electronic mail messages.

[SEC. 8. STUDY OF EFFECTS OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL.

[(a) IN GENERAL.—Not later than 24 months after the date of the enactment of this Act, the Commission, in consultation with the Department of Justice and other appropriate agencies, shall submit a report to the Congress that provides a detailed analysis of the effectiveness and enforcement of the provisions of this Act and the need (if any) for the Congress to modify such provisions.

[(b) REQUIRED ANALYSIS.—The Commission shall include in the report required by subsection (a) an analysis of the extent to which technological and marketplace developments, including changes in the nature of the devices through which consumers access their electronic mail messages, may affect the practicality and effectiveness of the provisions of this Act.

[SEC. 9. SEPARABILITY.

[If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected.

[SEC. 10. EFFECTIVE DATE.

[The provisions of this Act shall take effect 120 days after the date of the enactment of this Act.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003'', or the ''CAN-SPAM Act of 2003''.

SEC. 2. CONGRESSIONAL FINDINGS AND POLICY.

(a) FINDINGS.—The Congress finds the following:

(1) Electronic mail has become an extremely important and popular means of communication, relied on by millions of Americans on a daily basis for personal and commercial purposes. Its low cost and global reach make it extremely convenient and efficient, and offer unique opportunities for the development and growth of frictionless commerce.

(2) The convenience and efficiency of electronic mail are threatened by the extremely rapid growth in the volume of unsolicited commercial electronic mail. Unsolicited commercial electronic mail is currently estimated to account for over 45 percent of all electronic mail traffic, up from an estimated 7 percent in 2001, and the volume continues to rise. Most of these unsolicited commercial electronic mail messages are fraudulent or deceptive in one or more respects.

(3) The receipt of unsolicited commercial electronic mail may result in costs to recipients who cannot refuse to accept such mail and who incur costs for the storage of such mail, or for the time spent accessing, reviewing, and discarding such mail, or for both.

(4) The receipt of a large number of unsolicited messages also decreases the convenience of electronic mail and creates a risk that wanted electronic mail messages, both commercial and noncommercial, will be lost, overlooked, or discarded amidst the larger volume of unwanted messages, thus reducing the reliability and usefulness of electronic mail to the recipient.

(5) Some unsolicited commercial electronic mail contains material that many recipients may consider vulgar or pornographic in nature.

(6) The growth in unsolicited commercial electronic mail imposes significant monetary costs on providers of Internet access services, businesses, and educational and nonprofit institutions that carry and receive such mail, as there is a finite volume of mail that such providers, businesses, and institutions can handle without further investment in infrastructure.

(7) Many senders of unsolicited commercial electronic mail purposefully disguise the source of such mail.

(8) Many senders of unsolicited commercial electronic mail purposefully include misleading information in the message's subject lines in order to induce the recipients to view the messages.

(9) While some senders of unsolicited commercial electronic mail messages provide simple and reliable ways for recipients to reject (or ''opt-out'' of) receipt of unsolicited commercial electronic mail from such senders in the future, other senders provide no such ''opt-out'' mechanism, or refuse to honor the requests of recipients not to receive electronic mail from such senders in the future, or both.

(10) Many senders of bulk unsolicited commercial electronic mail use computer programs to gather large numbers of electronic mail addresses on an automated basis from Internet websites or online services where users must post their addresses in order to make full use of the website or service.

(11) Many States have enacted legislation intended to regulate or reduce unsolicited commercial electronic mail, but these statutes impose different standards and requirements. As a result, they do not appear to have been successful in addressing the problems associated with unsolicited commercial electronic mail, in part because, since an electronic mail address does not specify a geographic location, it can be extremely difficult for law-abiding businesses to know with which of these disparate statutes they are required to comply.

(12) The problems associated with the rapid growth and abuse of unsolicited commercial electronic mail cannot be solved by Federal legislation alone. The development and adoption of technological approaches and the pursuit of cooperative efforts with other countries will be necessary as well.

(b) CONGRESSIONAL DETERMINATION OF PUBLIC POLICY.—On the basis of the findings in subsection (a), the Congress determines that—

(1) there is a substantial government interest in regulation of unsolicited commercial electronic mail on a nationwide basis;

(2) senders of unsolicited commercial electronic mail should not mislead recipients as to the source or content of such mail; and

(3) recipients of unsolicited commercial electronic mail have a right to decline to receive additional unsolicited commercial electronic mail from the same source.

SEC. 3. DEFINITIONS.

In this Act:

(1) AFFIRMATIVE CONSENT.—The term ''affirmative consent'', when used with respect to a commercial electronic mail message, means that—

(A) the recipient expressly consented to receive the message, either in response to a clear and conspicuous request for such consent or at the recipient's own initiative; and

(B) if the message is from a party other than the party to which the recipient communicated such consent, the recipient was given clear and conspicuous notice at the time the consent was

communicated that the recipient's electronic mail address could be transferred to such other party for the purpose of initiating commercial electronic mail messages.

(2) COMMERCIAL ELECTRONIC MAIL MESSAGE.—

(A) IN GENERAL.—The term ''commercial electronic mail message'' means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose).

(B) REFERENCE TO COMPANY OR WEBSITE.—The inclusion of a reference to a commercial entity or a link to the website of a commercial entity in an electronic mail message does not, by itself, cause such message to be treated as a commercial electronic mail message for purposes of this Act if the contents or circumstances of the message indicate a primary purpose other than commercial advertisement or promotion of a commercial product or service.

(3) COMMISSION.—The term ''Commission'' means the Federal Trade Commission.

(4) DOMAIN NAME.—The term ''domain name'' means any alphanumeric designation which is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the Internet.

(5) ELECTRONIC MAIL ADDRESS.—The term ''electronic mail address'' means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the ''local part'') and a reference to an Internet domain (commonly referred to as the ''domain part''), to which an electronic mail message can be sent or delivered.

(6) ELECTRONIC MAIL MESSAGE.—The term ''electronic mail message'' means a message sent to a unique electronic mail address.

(7) FTC ACT.—The term ''FTC Act'' means the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(8) HEADER INFORMATION.—The term ''header information'' means the source, destination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mail address, and any other information that appears in the line identifying, or purporting to identify, a person initiating the message.

(9) IMPLIED CONSENT.—

(A) IN GENERAL.—The term ''implied consent'', when used with respect to a commercial electronic mail message, means that—

(i) within the 3-year period ending upon receipt of such message, there has been a business transaction between the sender and the recipient (including a transaction involving the provision, free of charge, of information, goods, or services requested by the recipient); and

(ii) the recipient was, at the time of such transaction or thereafter in the first electronic mail message received from the sender after the effective date of this Act, provided a clear and conspicuous notice of an opportunity not to receive unsolicited commercial electronic mail messages from the sender and has not exercised such opportunity.

(B) MERE VISITATION.—A visit by a recipient to a publicly available website shall not be treated as a transaction for purposes of subparagraph (A)(i) if the recipient did not knowingly submit the recipient's electronic mail address to the operator of the website.

(C) SEPARATE LINES OF BUSINESS OR DIVISIONS.—If a sender operates through separate lines of business or divisions and holds itself out to the recipient, both at the time of the transaction described in subparagraph (A)(i) and at the time the notice under subparagraph (A)(ii) was provided to the recipient, as that particular line of business or division rather than as the entity of which such line of business or division is a part, then the line of business or the division shall be treated as the sender for purposes of this paragraph.

(10) INITIATE.—The term ''initiate'', when used with respect to a commercial electronic mail message, means to originate or transmit such message or to procure the origination or transmission of such message, but shall not include actions that constitute routine conveyance of such message. For purposes of this paragraph, more than 1 person may be considered to have initiated a message.

(11) INTERNET.—The term ''Internet'' has the meaning given that term in the Internet Tax Freedom Act (47 U.S.C. 151 nt).

(12) INTERNET ACCESS SERVICE.—The term ''Internet access service'' has the meaning given that term in section 231(e)(4) of the Communications Act of 1934 (47 U.S.C. 231(e)(4)).

(13) PROCURE.—The term ''procure'', when used with respect to the initiation of a commercial electronic mail message, means intentionally to pay or provide other consideration to, or induce, another person to initiate such a message on one's behalf, knowing, or consciously avoiding knowing, the extent to which that person intends to comply with the requirements of this Act.

(14) PROTECTED COMPUTER.—The term ''protected computer'' has the meaning given that term in section 1030(e)(2)(B) of title 18, United States Code.

(15) RECIPIENT.—The term ''recipient'', when used with respect to a commercial electronic mail message, means an authorized user of the electronic mail address to which the message was sent or delivered. If a recipient of a commercial electronic mail message has 1 or more electronic mail addresses in addition to the address to which the message was sent or delivered, the recipient shall be treated as a separate recipient with respect to each such address. If an electronic mail address is reassigned to a new user, the new user shall not be treated as a recipient of any commercial electronic mail message sent or delivered to that address before it was reassigned.

(16) ROUTINE CONVEYANCE.—The term ''routine conveyance'' means the transmission, routing, relaying, handling, or storing, through an automatic technical process, of an electronic mail message for which another person has identified the recipients or provided the recipient addresses.

(17) SENDER.—The term ''sender'', when used with respect to a commercial electronic mail message, means a person who initiates such a message and whose product, service, or Internet web site is advertised or promoted by the message.

(18) TRANSACTIONAL OR RELATIONSHIP MESSAGE.—The term ''transactional or relationship message'' means an electronic mail message the primary purpose of which is—

(A) to facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender;

(B) to provide warranty information, product recall information, or safety or security information with respect to a commercial product or service used or purchased by the recipient;

(C) to provide—

(i) notification concerning a change in the terms or features of;

(ii) notification of a change in the recipient's standing or status with respect to; or

(iii) at regular periodic intervals, account balance information or other type of account statement with respect to,

a subscription, membership, account, loan, or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of products or services offered by the sender;

(D) to provide information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating, or enrolled; or

(E) to deliver goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender.

(19) UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGE.—The term ''unsolicited commercial electronic mail message'' means any commercial electronic mail message that—

(A) is not a transactional or relationship message; and

(B) is sent to a recipient without the recipient's prior affirmative or implied consent.

SEC. 4. CRIMINAL PENALTY FOR COMMERCIAL ELECTRONIC MAIL CONTAINING FRAUDULENT ROUTING INFORMATION.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''§ 1351. Commercial electronic mail containing fraudulent transmission information.

''(a) IN GENERAL.—Any person who initiates the transmission, to a protected computer in the United States, of a commercial electronic mail message, with knowledge and intent that the message contains or is accompanied by header information that is materially false or materially misleading shall be fined or imprisoned for not more than 1 year, or both, under this title. For purposes of this subsection, header information that is technically accurate but includes an originating electronic mail address the access to which for purposes of initiating the message was obtained by means of false or fraudulent pretenses or representations shall be considered materially misleading.

''(b) DEFINITIONS.—Any term used in subsection (a) that is defined in section 3 of the CAN-SPAM Act of 2003 has the meaning given it in that section.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''1351. Commercial electronic mail containing fraudulent routing information.''.

SEC. 5. OTHER PROTECTIONS FOR USERS OF COMMERCIAL ELECTRONIC MAIL.

(a) REQUIREMENTS FOR TRANSMISSION OF MESSAGES.—

(1) PROHIBITION OF FALSE OR MISLEADING TRANSMISSION INFORMATION.—It is unlawful for any person to initiate the transmission, to a protected computer, of a commercial electronic mail message that contains, or is accompanied by, header information that is false or misleading. For purposes of this paragraph—

(A) header information that is technically accurate but includes an originating electronic mail address the access to which for purposes of initiating the message was obtained by means of false or fraudulent pretenses or representations shall be considered misleading; and

(B) a ''from'' line that accurately identifies any person who initiated the message shall not be considered false or misleading.

(2) PROHIBITION OF DECEPTIVE SUBJECT HEADINGS.—It is unlawful for any person to initiate the transmission to a protected computer of a commercial electronic mail message with a subject heading that such person knows would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message.

(3) INCLUSION OF RETURN ADDRESS OR COMPARABLE MECHANISM IN COMMERCIAL ELECTRONIC MAIL.—

(A) IN GENERAL.—It is unlawful for any person to initiate the transmission to a protected computer of a commercial electronic mail message that does not contain a functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that—

(i) a recipient may use to submit, in a manner specified in the message, a reply electronic mail

message or other form of Internet-based communication requesting not to receive future commercial electronic mail messages from that sender at the electronic mail address where the message was received; and

(ii) remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message.

(B) MORE DETAILED OPTIONS POSSIBLE.—The person initiating a commercial electronic mail message may comply with subparagraph (A)(i) by providing the recipient a list or menu from which the recipient may choose the specific types of commercial electronic mail messages the recipient wants to receive or does not want to receive from the sender, if the list or menu includes an option under which the recipient may choose not to receive any unsolicited commercial electronic mail messages from the sender.

(C) TEMPORARY INABILITY TO RECEIVE MESSAGES OR PROCESS REQUESTS.—A return electronic mail address or other mechanism does not fail to satisfy the requirements of subparagraph (A) if it is unexpectedly and temporarily unable to receive messages or process requests due to technical or capacity problems, if the technical or capacity problems were not reasonably foreseeable in light of the potential volume of response messages or requests, and if the problem with receiving messages or processing requests is corrected within a reasonable time period.

(D) EXCEPTION.—The requirements of this paragraph shall not apply to a message that is a transactional or relationship message.

(4) PROHIBITION OF TRANSMISSION OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL AFTER OBJECTION.—If a recipient makes a request using a mechanism provided pursuant to paragraph (3) not to receive some or any unsolicited commercial electronic mail messages from such sender, then it is unlawful—

(A) for the sender to initiate the transmission to the recipient, more than 10 business days after the receipt of such request, of an unsolicited commercial electronic mail message that falls within the scope of the request;

(B) for any person acting on behalf of the sender to initiate the transmission to the recipient, more than 10 business days after the receipt of such request, of an unsolicited commercial electronic mail message that such person knows or consciously avoids knowing falls within the scope of the request;

(C) for any person acting on behalf of the sender to assist in initiating the transmission to the recipient, through the provision or selection of addresses to which the message will be sent, of an unsolicited commercial electronic mail message that the person knows, or consciously avoids knowing, would violate subparagraph (A) or (B); or

(D) for the sender, or any other person who knows that the recipient has made such a request, to sell, lease, exchange, or otherwise transfer or release the electronic mail address of the recipient (including through any transaction or other transfer involving mailing lists bearing the electronic mail address of the recipient) for any purpose other than compliance with this Act or other provision of law.

(5) INCLUSION OF IDENTIFIER, OPT-OUT, AND PHYSICAL ADDRESS IN UNSOLICITED COMMERCIAL ELECTRONIC MAIL.—It is unlawful for any person to initiate the transmission of any unsolicited commercial electronic mail message to a protected computer unless the message provides—

(A) clear and conspicuous identification that the message is an advertisement or solicitation;

(B) clear and conspicuous notice of the opportunity under paragraph (3) to decline to receive further unsolicited commercial electronic mail messages from the sender; and

(C) a valid physical postal address of the sender.

(b) AGGRAVATED VIOLATIONS RELATING TO UNSOLICITED COMMERCIAL ELECTRONIC MAIL.—

(1) ADDRESS HARVESTING AND DICTIONARY ATTACKS.—

(A) IN GENERAL.—It is unlawful for any person to initiate the transmission, to a protected computer, of an unsolicited commercial electronic mail message that is unlawful under subsection (a), or to assist in the origination of such message through the provision or selection of addresses to which the message will be transmitted, if such person knows, should have known, or consciously avoids knowing that—

(i) the electronic mail address of the recipient was obtained using an automated means from an Internet website or proprietary online service operated by another person, and such website or online service included, at the time the address was obtained, a notice stating that the operator of such website or online service will not give, sell, or otherwise transfer addresses maintained by such website or online service to any other party for the purposes of initiating, or enabling others to initiate, unsolicited electronic mail messages; or

(ii) the electronic mail address of the recipient was obtained using an automated means that generates possible electronic mail addresses by combining names, letters, or numbers into numerous permutations.

(B) DISCLAIMER.—Nothing in this paragraph creates an ownership or proprietary interest in such electronic mail addresses.

(2) AUTOMATED CREATION OF MULTIPLE ELECTRONIC MAIL ACCOUNTS.—It is unlawful for any person to use scripts or other automated means to establish multiple electronic mail accounts or online user accounts from which to transmit to a protected computer, or enable another person to transmit to a protected computer, an unsolicited commercial electronic mail message that is unlawful under subsection (a).

(3) RELAY OR RETRANSMISSION THROUGH UNAUTHORIZED ACCESS.—It is unlawful for any person knowingly to relay or retransmit an unsolicited commercial electronic mail message that is unlawful under subsection (a) from a protected computer or computer network that such person has accessed without authorization.

(c) COMPLIANCE PROCEDURES.—An action for violation of paragraph (2), (3), (4), or (5) of subsection (a) may not proceed if the person against whom the action is brought demonstrates that —

(1) the person has established and implemented, with due care, reasonable practices and procedures to effectively prevent violations of such paragraph; and

(2) the violation occurred despite good faith efforts to maintain compliance with such practices and procedures.

SEC. 6. BUSINESSES KNOWINGLY PROMOTED BY ELECTRONIC MAIL WITH FALSE OR MISLEADING TRANSMISSION INFORMATION.

(a) IN GENERAL.—It is unlawful for a person to promote, or allow the promotion of, that person's trade or business, or goods, products, property, or services sold, offered for sale, leased or offered for lease, or otherwise made available through that trade or business, in a commercial electronic mail message the transmission of which is in violation of section 5(a)(1) if that person—

(1) knows, or should have known in ordinary course of that person's trade or business, that the goods, products, property, or services sold, offered for sale, leased or offered for lease, or otherwise made available through that trade or business were being promoted in such a message;

(2) received or expected to receive an economic benefit from such promotion; and

(3) took no reasonable action—

(A) to prevent the transmission; or

(B) to detect the transmission and report it to the Commission.

(b) LIMITED ENFORCEMENT AGAINST THIRD PARTIES.—

(1) IN GENERAL.—Except as provided in paragraph (2), a person (hereinafter referred to as the ''third party'') that provides goods, products, property, or services to another person that violates subsection (a) shall not be held liable for such violation.

(2) EXCEPTION.—Liability for a violation of subsection (a) shall be imputed to a third party that provides goods, products, property, or services to another person that violates subsection (a) if that third party—

(A) owns, or has a greater than 50 percent ownership or economic interest in, the trade or business of the person that violated subsection (a); or

(B)(i) has actual knowledge that goods, products, property, or services are promoted in a commercial electronic mail message the transmission of which is in violation of section 5(a)(1); and

(ii) receives, or expects to receive, an economic benefit from such promotion.

(c) EXCLUSIVE ENFORCEMENT BY FTC.—Subsections (e) and (f) of section 7 do not apply to violations of this section.

SEC. 7. ENFORCEMENT BY FEDERAL TRADE COMMISSION.

(a) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR PRACTICE.—Except as provided in subsection (b), this Act shall be enforced by the Commission as if the violation of this Act were an unfair or deceptive act or practice proscribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) ENFORCEMENT BY CERTAIN OTHER AGENCIES.—Compliance with this Act shall be enforced—

(1) under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 and 611), and bank holding companies and their nonbank subsidiaries or affiliates (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Board;

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) insured State branches of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Board of Directors of the Federal Deposit Insurance Corporation; and

(D) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, and any subsidiaries of such savings associations (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Director of the Office of Thrift Supervision;

(2) under the Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the Board of the National Credit Union Administration with respect to any Federally insured credit union, and any subsidiaries of such a credit union;

(3) under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) by the Securities and Exchange Commission with respect to any broker or dealer;

(4) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) by the Securities and Exchange Commission with respect to investment companies;

(5) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) by the Securities and Exchange Commission with respect to investment advisers registered under that Act;

(6) under State insurance law in the case of any person engaged in providing insurance, by

the applicable State insurance authority of the State in which the person is domiciled, subject to section 104 of the Gramm-Bliley-Leach Act (15 U.S.C. 6701);

(7) under part A of subtitle VII of title 49, United States Code, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part;

(8) under the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.) (except as provided in section 406 of that Act (7 U.S.C. 226, 227)), by the Secretary of Agriculture with respect to any activities subject to that Act;

(9) under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association; and

(10) under the Communications Act of 1934 (47 U.S.C. 151 et seq.) by the Federal Communications Commission with respect to any person subject to the provisions of that Act.

(c) EXERCISE OF CERTAIN POWERS.—For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of this Act is deemed to be a violation of a Federal Trade Commission trade regulation rule. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this Act, any other authority conferred on it by law.

(d) ACTIONS BY THE COMMISSION.—The Commission shall prevent any person from violating this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any entity that violates any provision of that subtitle is subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of that subtitle.

(e) ENFORCEMENT BY STATES.—

(1) CIVIL ACTION.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by any person engaging in a practice that violates section 5 of this Act, the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction or in any other court of competent jurisdiction—

(A) to enjoin further violation of section 5 of this Act by the defendant; or

(B) to obtain damages on behalf of residents of the State, in an amount equal to the greater of—

(i) the actual monetary loss suffered by such residents; or

(ii) the amount determined under paragraph (2).

(2) STATUTORY DAMAGES.—

(A) IN GENERAL.—For purposes of paragraph (1)(B)(ii), the amount determined under this paragraph is the amount calculated by multiplying the number of violations (with each separately addressed unlawful message received by or addressed to such residents treated as a separate violation) by—

(i) up to $100, in the case of a violation of section 5(a)(1); or

(ii) $25, in the case of any other violation of section 5.

(B) LIMITATION.—For any violation of section 5 (other than section 5(a)(1)), the amount determined under subparagraph (A) may not exceed $1,000,000.

(C) AGGRAVATED DAMAGES.—The court may increase a damage award to an amount equal to not more than three times the amount otherwise available under this paragraph if—

(i) the court determines that the defendant committed the violation willfully and knowingly; or

(ii) the defendant's unlawful activity included one or more of the aggravating violations set forth in section 5(b).

(3) ATTORNEY FEES.—In the case of any successful action under paragraph (1), the State shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

(4) RIGHTS OF FEDERAL REGULATORS.—The State shall serve prior written notice of any action under paragraph (1) upon the Federal Trade Commission or the appropriate Federal regulator determined under subsection (b) and provide the Commission or appropriate Federal regulator with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Federal Trade Commission or appropriate Federal regulator shall have the right—

(A) to intervene in the action;

(B) upon so intervening, to be heard on all matters arising therein;

(C) to remove the action to the appropriate United States district court; and

(D) to file petitions for appeal.

(5) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this Act shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

(A) conduct investigations;

(B) administer oaths or affirmations; or

(C) compel the attendance of witnesses or the production of documentary and other evidence.

(6) VENUE; SERVICE OF PROCESS.—

(A) VENUE.—Any action brought under paragraph (1) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(B) SERVICE OF PROCESS.—In an action brought under paragraph (1), process may be served in any district in which the defendant—

(i) is an inhabitant; or

(ii) maintains a physical place of business.

(7) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Commission or other appropriate Federal agency under subsection (b) has instituted a civil action or an administrative action for violation of this Act, no State attorney general may bring an action under this subsection during the pendency of that action against any defendant named in the complaint of the Commission or the other agency for any violation of this Act alleged in the complaint.

(f) ACTION BY PROVIDER OF INTERNET ACCESS SERVICE.—

(1) ACTION AUTHORIZED.—A provider of Internet access service adversely affected by a violation of section 5 may bring a civil action in any district court of the United States with jurisdiction over the defendant, or in any other court of competent jurisdiction, to—

(A) enjoin further violation by the defendant; or

(B) recover damages in an amount equal to the greater of—

(i) actual monetary loss incurred by the provider of Internet access service as a result of such violation; or

(ii) the amount determined under paragraph (2).

(2) STATUTORY DAMAGES.—

(A) IN GENERAL.—For purposes of paragraph (1)(B)(ii), the amount determined under this paragraph is the amount calculated by multiplying the number of violations (with each separately addressed unlawful message that is transmitted or attempted to be transmitted over the facilities of the provider of Internet access service, or that is transmitted or attempted to be transmitted to an electronic mail address obtained from the provider of Internet access service in violation of section 5(b)(1)(A)(i), treated as a separate violation) by—

(i) up to $100, in the case of a violation of section 5(a)(1); or

(ii) $25, in the case of any other violation of section 5.

(B) LIMITATION.—For any violation of section 5 (other than section 5(a)(1)), the amount determined under subparagraph (A) may not exceed $1,000,000.

(C) AGGRAVATED DAMAGES.—The court may increase a damage award to an amount equal to not more than three times the amount otherwise available under this paragraph if—

(i) the court determines that the defendant committed the violation willfully and knowingly; or

(ii) the defendant's unlawful activity included one or more of the aggravated violations set forth in section 5(b).

(3) ATTORNEY FEES.—In any action brought pursuant to paragraph (1), the court may, in its discretion, require an undertaking for the payment of the costs of such action, and assess reasonable costs, including reasonable attorneys' fees, against any party.

SEC. 8. EFFECT ON OTHER LAWS.

(a) FEDERAL LAW.—

(1) Nothing in this Act shall be construed to impair the enforcement of section 223 or 231 of the Communications Act of 1934 (47 U.S.C. 223 or 231, respectively), chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, United States Code, or any other Federal criminal statute.

(2) Nothing in this Act shall be construed to affect in any way the Commission's authority to bring enforcement actions under FTC Act for materially false or deceptive representations or unfair practices in commercial electronic mail messages.

(b) STATE LAW.—

(1) IN GENERAL.—This Act supersedes any statute, regulation, or rule of a State or political subdivision of a State that expressly regulates the use of electronic mail to send commercial messages, except for any such statute, regulation, or rule that prohibits falsity or deception in any portion of a commercial electronic mail message or information attached thereto.

(2) STATE LAW NOT SPECIFIC TO ELECTRONIC MAIL.—This Act shall not be construed to preempt the applicability of State laws that are not specific to electronic mail, including State trespass, contract, or tort law, and State laws relating to acts of fraud or computer crime.

(c) NO EFFECT ON POLICIES OF PROVIDERS OF INTERNET ACCESS SERVICE.—Nothing in this Act shall be construed to have any effect on the lawfulness or unlawfulness, under any other provision of law, of the adoption, implementation, or enforcement by a provider of Internet access service of a policy of declining to transmit, route, relay, handle, or store certain types of electronic mail messages.

SEC. 9. RECOMMENDATIONS CONCERNING DO-NOT-EMAIL REGISTRY.

Not later than 6 months after the Federal Trade Commission has completed implementation of its national telemarketing Do-Not-Call list, the Commission shall transmit to the Congress recommendations for a workable plan and timetable for creating a nationwide marketing Do-Not-Email list modeled on the Do-Not-Call list, or an explanation of any practical, technical, security, or privacy-related issues that cause the Commission to recommend against creating such a list.

SEC. 10. STUDY OF EFFECTS OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL.

(a) IN GENERAL.—Not later than 24 months after the date of the enactment of this Act, the

Commission, in consultation with the Department of Justice and other appropriate agencies, shall submit a report to the Congress that provides a detailed analysis of the effectiveness and enforcement of the provisions of this Act and the need (if any) for the Congress to modify such provisions.

(b) REQUIRED ANALYSIS.—The Commission shall include in the report required by subsection (a)—

(1) an analysis of the extent to which technological and marketplace developments, including changes in the nature of the devices through which consumers access their electronic mail messages, may affect the practicality and effectiveness of the provisions of this Act;

(2) analysis and recommendations concerning how to address unsolicited commercial electronic mail that originates in or is transmitted through or to facilities or computers in other nations, including initiatives or policy positions that the Federal government could pursue through international negotiations, fora, organizations, or institutions; and

(3) analysis and recommendations concerning options for protecting consumers, including children, from the receipt and viewing of unsolicited commercial electronic mail that is obscene or pornographic.

SEC. 11 SEPARABILITY.

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected.

SEC. 12. EFFECTIVE DATE.

The provisions of this Act shall take effect 120 days after the date of the enactment of this Act.

The committee amendment in the nature of a substitute was agreed to.

Mr. MCCAIN. Madam President, this bill was introduced in April by Senators BURNS and WYDEN, and the substitute version was approved by the Senate Commerce Committee on June 19.

Also, we have had intensive negotiations with the Senator from New York, Mr. SCHUMER, who is now on the floor, concerning a ''do not spam'' aspect of this legislation.

First of all, I wish to thank, of course, Senator HOLLINGS, the ranking member of the committee, for all of his effort, but I particularly acknowledge my two colleagues who are on the floor, Senators BURNS and WYDEN. Around here, we have a tendency to take credit for a lot of things that may not necessarily be true, although I am not sure that is true in my case, but the fact is, Senator BURNS and Senator WYDEN have worked for, I believe, 3 years on this issue. It is complex. It is difficult. It has a lot to do with technology. The issues are very technical in nature in some respects. They have responded to what I think is a major concern of every young American and every American who uses a computer, and that is this issue of unwanted spam.

I again tell my colleagues that without the efforts Senator BURNS and Senator WYDEN have made on this bill, we would not be here today, and I am very grateful for their participation.

I believe the ranking member, Senator HOLLINGS, wishes to make an opening comment, and then I would like to be recognized after Senator HOLLINGS.

I yield the floor.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from South Carolina.

Mr. HOLLINGS. Madam President, I thank our distinguished chairman, Senator MCCAIN, for getting this bill to the floor. Actually, we started 4 years ago under the leadership of Senator WYDEN. In the last Congress, we had a bill reported from the committee but we could not get it up. We have learned lessons now from the Do Not Call effort, where we had to forgo committee and floor procedures to finally get it up. In this sense, I thank Senator MCCAIN for getting this bill to the floor for its consideration, as well as Senator WYDEN and Senator BURNS for their leadership, and particularly my colleague from New York, Senator SCHUMER. He has a very important amendment. He has been driving forward for the expedition of this particular procedure, where the Federal Trade Commission is given some 6 months, although I think it can be done in a much shorter period.

We will be riding herd on the Federal Trade Commission to see if we can congeal that time, get that list ready, and report it to the committee so we can act. Other than that, if there is a need for a Do Not Call list, there certainly is a need for a Do Not Spam list.

I again thank Senator BURNS, Senator DAYTON, and Senator SCHUMER for their particular amendment and efforts on this case, and particularly my colleague, Senator WYDEN, for his leadership over the past 4 years. It is under his drive that we have gotten it here.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, I will mention Senator SCHUMER's amendment which we have agreed to, which as soon as opening statements are completed we will propose, and I believe it will be without objection. It does do several things. I will mention it now because Senator SCHUMER has worked so hard on this amendment.

This amendment says that not later than 6 months after the date of enactment of the act, the Commission will transmit to the Senate Committee on Commerce, Science, and Transportation, and to the House of Representatives Committee on Energy and Commerce a report that sets forth a plan and timetable for establishing a nationwide market Do Not E-mail Registry. It includes an explanation of any practical, technical, security, privacy, enforceability, or other concerns the Commission has regarding such a registry and includes an explanation of how the registry would be applied with respect to children with e-mail accounts.

Finally, it says the Commission may establish and implement the plan, but not earlier than 9 months after the date of enactment of this act.

I say to my friend, Senator SCHUMER, that I will do everything in my power to make sure that this is enacted and this plan, not earlier than 9 months, should be implemented. I hope that is satisfactory.

Again, I thank Senator SCHUMER. If we can implement a Do Not Spam provision which is clearly modeled after the Do Not Call list, I think it will have enormous benefit to all Americans.

I will make a few comments about the bill and then yield to my colleagues and to Senator SCHUMER for their remarks.

If passed into law by Congress and signed by the President, the CAN–SPAM Act would be the first Federal law to regulate senders of commercial e-mail.

The bill would prohibit senders of commercial e-mail from falsifying or disguising the following: their identity; the return address or routing information of an e-mail; and the subject matters of their messages. Violations of these provisions would result in both criminal and civil penalties.

The bill would also require senders of commercial e-mail to give their recipients an opportunity to opt out of receiving future messages and to honor those requests. Except for e-mail that is transactional in nature, such as purchase receipts or airlines ticket confirmations, every commercial e-mail sent over the Internet to American consumers would be required to provide this valid, working opt-out or unsubscribe mechanism. These rules represent current industry best practices regarding commercial e-mail messages.

For unsolicited commercial e-mail, however, the bill would require more disclosures from the sender of the message, such as providing recipients with instructions on how to operate the opt-out mechanism, a valid physical address of the sender, and a clear notice in the body of the message that it is an advertisement or solicitation.

In an amendment I offered in committee, this bill would also prohibit businesses from knowingly promoting or permitting the promotion of their business through e-mail transmitted with false or misleading identity or routing information. Those that benefit the most from sending fraudulent spam, the companies advertised in those messages, should be held accountable, and they will.

As my colleagues, Senators BURNS and WYDEN, will explain in more detail, the bill would also target many of the insidious mechanisms used by today's spammers, including e-mail harvesting, dictionary attacks, and the hijacking of consumer e-mail accounts in order to send spam.

In addition to setting strict rules of the road for senders of commercial e-mail, the CAN–SPAM Act would provide tough criminal and civil penalties for offenders, and a multilayered approach to enforcement. This bill provides for enforcement actions by the FTC, State attorneys general, Internet service providers, and if Senator

HATCH's proposed criminal amendment is passed which I assume it will, the Department of Justice.

I strongly support this bill and I urge my colleagues to join me, Senators BURNS, WYDEN, HOLLINGS, HATCH, and others, in passing this bill as a first step toward giving consumers back some control of their e-mail in-boxes.

I would like to make a few general observations about this issue that I have come to learn over the years that the Commerce Committee has examined it.

According to the Pew Internet & American Life Project, approximately 140 million Americans, nearly half of all U.S. citizens and 63 percent of full-time or part-time workers regularly use e-mail. E-mail messaging has fundamentally changed the way we communicate with family, friends, coworkers and business partners; the way consumers communicate with businesses that provide goods and services; and the way that businesses may legitimately market products to consumers. The growing affliction of spam, however, may threaten all of this.

We must keep in mind the tremendous promise that the Internet and more specifically e-mail, holds for consumers and businesses alike. We must recognize that the word ''spam'' means different things to different people.

The Federal Trade Commission defines spam generally as ''unsolicited commercial e-mail.'' and some Americans do not want any of it. Other consumers like to receive unsolicited offers by e-mail; to these consumers, spam means only the unwanted fraudulent or pornographic e-mail that also floods their inbox.

Many American businesses view e-mail over the Internet as a new medium through which to market or communicate more efficiently with consumers. To them, this type of communication is not spam, but commercial speech protected by the first amendment. The Direct Marketing Association reports that 37 percent of consumers it surveyed have bought something as a result of receiving unsolicited e-mail from marketers.

Internet service provider are the businesses caught in the middle, forced every day to draw distinctions between what they perceive as legitimate e-mail and what is spam. In this environment, the risk of ISPs blocking legitimate mail that consumers depend on, such as purchase receipts or healthcare communications, is as much a concern as the prospect of failing to block as much spam as possible in the face of consumer demand. Often, the filters used by ISPs fail to meet their subscribers' expectations on both accounts, failing to block the spam and sometimes blocking legitimate e-mail from coming through, leaving consumers, legitimate businesses and the ISPs themselves frustrated.

I think Senator BURNS and Senator WYDEN remember, as well as I do, a professional spammer who came and testified before our committee. I mentioned in passing that it took him approximately 4 hours to break through a filter that had recently been in place, and he immediately began his work again of spamming millions of people every day. He was a man who was proud of his work, by the way. He was a very interesting witness and, I might say in an otherwise dull hearing, a very entertaining one.

We must be mindful that in our quest to stop spam, we may impose e-mail restrictions that go too far and actually prohibit or effectively prevent e-mail that customers want to receive and that legitimate businesses depend on to service their customers.

I believe this bill strikes the proper balance, thanks to the efforts of Senator WYDEN, Senator BURNS, Senator SCHUMER, and others, by carefully targeting the spam that consumers reject while preserving the fundamental benefits of e-mail to all Americans.

Regardless of whether we call all solicited commercial e-mail spam, one fact is clear: Spam is rapidly on the rise. Its sheer volume is significantly affecting how consumers and businesses use e-mail. Less than 2 years ago, spam made up only 8 percent of all e-mail. In a hearing before the Commerce Committee in May, my colleagues and I learned that spam accounted for more than 45 percent of all global e-mail traffic and, worse, it would probably exceed the 50 percent mark by year's end.

In the committee's hearing, America Online—our Nation's largest Internet service provider with roughly 30 million subscribers—testified that it blocks 80 percent of all its inbound e-mail—nearly 2.4 billion out of 3 billion messages it receives each day. Not surprisingly, this number of blocked messages was nearly 2.5 times larger than the 1 billion messages AOL blocked per day only 2 months prior to that hearing, and nearly 5 times larger than the 500 million messages it blocked per day in December 2002.

It's not just AOL. Our Nation's second and third largest e-mail providers, Microsoft and Earthlink, have also reported a tremendous surge in spam. Microsoft, the provider of MSN mail and the free Hotmail service, reported in May that both services combined block up to 2.4 billion spam messages each day. Earthlink, the third largest ISP in the United States, also reported a 500 percent increase in its inbound spam over the past 18 months.

I realize that these numbers may not mean as much to those who do not follow e-commerce closely, so let me put it in perspective to what nearly all Americans are familiar with—junk mail. The USA Today recently reported that more than 2 trillion spam messages are expected to be sent over the Internet this year, or 100 times the amount of direct mail advertising pieces delivered by U.S. mail last year.

Managing this influx adds real monetary costs to consumers and businesses.

A 2001 European Union study found that spam cost Internet subscribers wouldwide $9.4 billion each year, and USA Today reported in April that research organizations estimate fighting spam adds an average of $2 per month to an individual's Internet bill.

Costs to businesses are also on the rise. Ferris Research currently estimates that costs to U.S. businesses from spam in lost productivity, network system upgrades, unrecoverable data, and increased personnel costs, combined will top $10 billion in 2003. Of that total, Ferris estimates that employee productivity losses from sifting through and deleting spam account for nearly 40 percent of that—or $4 billion alone.

There are other costs to our society besides monetary costs. All of us are deeply concerned about the risks to our children who use e-mail and may be victimized by the nearly 20 percent of spam that contains pornographic material, including graphic sexual images.

Parents encourage their children to use the Internet to play and do schoolwork, and to use e-mail to reach distant relatives. Yet, parents today spend more and more of their time worrying that their children may open up an e-mail, disguised to look like it's from a friend or loved one, only to find pornography.

This greatly concerns me as a parent, as a legislator and as an American citizen. First and foremost, parents should not have to think twice before encouraging their children to use the computer at home.

In addition to pornography, the FTC also tells us that two-thirds of all spam contains deceptive information, much of it peddling get-rich-quick schemes, dubious financial or healthcare offers, and questionable products and services.

Spam is a serious and rapidly growing problem that the Senate must act on, but we must also be mindful of the complexity of the problem we face. While I agree with my colleagues in the Senate who believe that passing legislation is a necessary step, I also believe that legislation alone will not solve the problem of spam.

Spammers today disregard our laws and are winning the technological arms race with Internet service providers who try to block the spam they send. The New York Times recently reported just one example of how unscrupulous spammers were using technology to stay one step ahead of the law—in this instance, by highjacking a local Virginia school's computers to send out untraceable spam.

I repeat: A local Virginia schools computers. The same day, in the Commerce Committee's hearing, Mr. Ronald Scelson—who is popularly known by his moniker ''The Cajun Spammer''—testified that it took him only 12 hours to ''crack'' the latest technology filter supplied by the company of another witness at the table. Not only did he hack into their filter and figure out how to defeat it, the

Cajun Spammer had distributed the keys to unlocking the filter to all of his fellow spammers so that they too could send spam past the filters to the ISP's subscribers.

Keeping up with resourceful spammers' latest technology is not the only challenge. Jurisdictional barriers also complicate enforcement, and as we heard in our hearing, nearly 90 percent of all spam is untraceable and may be passing through mail servers outside of the United States.

I mention these things only to emphasize the complexity of this problem and to remind my colleagues that the odds of us defeating spam by legislation alone are extremely low. The fact that there may be no silver bullet to the problem of spam, however, does not mean that we should stand idly by and do nothing at all about it.

The CAN–SPAM Act is a good first step, and one we should take today.

It is clear this Congress must act, but we should make no mistake—unless we can effectively enforce the laws we write, those laws will have little meaning or deterrent effect on any would-be purveyor of spam.

At the Commerce Committee's executive session where we considered this bill, I introduced an amendment that would empower the FTC to take action against businesses that financially benefit from the sending of spam with deliberately falisifed sender information. This amendment passed unanimously and I would like to take a moment here to briefly comment on it because it goes to the heart of this enforcement matter.

In two hearings before the Commerce Committee this past spring, the chairman and Commissioners of the FTC testified to the Commission's tremendous difficulty in tracking and finding spammers who send out spam with fraudulent and often untraceable transmission information.

The chairman advised us, however, that their investigations are usually most effective when ''following the money'' to track down spammers. By this, they mean following the Web link or phone number in the spam message that consumers follow with their money to purchase the product or service promoted in the spam. From there, the FTC attempts to prove a connection between the business and a spammer who sent it out on their behalf. In essence, they spend significant time and effort attempting to follow the money trail all the way back to the spammer—if they can find them.

As an alternative to the inefficient and often slow moving process, the amendment I proposed which is now section 6 of the bill was designed to help the FTC enforce the law against those businesses at the front end of the money trail that are promoted in the spam consumers receive. They need to go further, and here is why.

Many unremarkable businesses employ sophisticated spammers to send e-mail to consumers in large volumes with deliberately falsified identity and routing information in order to get past the ISP's spam filters. These businesses often escape liability because enforcement efforts are too often focused on catching the spammer rather than the unscrupulous businesses that hire them in the first place.

Section 6, however, would make it easier for the FTC to enforce the law against businesses knowingly complicit in the use of spam to promote their businesses with deliberately falsified routing information. I urge my colleagues to support this principle of holding businesses that benefit from spam messages accountable for the acts of those they knowingly hire to fraudulently send spam to consumers on their behalf.

I ask unanimous consent to have printed in the RECORD a number of letters I have received in support of this provision.

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

CONSUMERS UNION,
June 18, 2003.

Subject: McCain FTC Enforcement Amendment to Burns-Wyden Spam bill.

U.S. SENATE,
Washington, DC.

DEAR SENATOR:

Consumers Union urges you to support the McCain Amendment to the Burns-Wyden CAN–SPAM bill. This amendment is an important improvement on the underlying bill. The amendment would provide additional FTC enforcement authority to help consumers curb spam. With this amendment, the bill would hold businesses that use spam to advertise their products and services accountable for actions by spammers who falsify information regarding the origins of the e-mail in order to evade spam filters.

However, we still have significant reservations about the Burns-Wyden bill, because we believe that consumers will not see a significant reduction in spam without a guarantee that spam is disallowed unless the consumer opts to receive such materials (an ''opt-in''), as well as an appropriate legal remedy for consumers who have been harmed by spammers that circumvent the anti-spam safeguards established in this legislation (a private right of action).

Consumers Union hopes the Committee will address these substantial consumer concerns before bringing this legislation to the Senate floor.

Sincerely,

CHRIS MURRAY,
Legislative Counsel.

BUSINESS SOFTWARE ALLIANCE,
Washington, DC, June 18, 2003.

Hon. JOHN MCCAIN,
Chairman, Senate Commerce Committee, U.S. Senate, Washington, DC.

DEAR CHAIRMAN MCCAIN: On behalf of the member companies of the Business Software Alliance, I write in support of your efforts to amend and report favorably S. 877 to address the ability of the FTC to pursue those who use third parties to send unsolicited commercial email, spam, on their behalf. As the Committee is aware, spam continues to grow at an exponential rate, clogging inboxes, diverting network resources, damaging reputations and brands of responsible companies, and discouraging the use of email as a communications tool.

Those who deliberately engage third parties to send spam with false or misleading transmission information should be held as accountable as those who click on the send button. By taking away the financial incentive to send spam, the potential interest of a responsible company to utilize such a deceptive form of marketing to reach customers now or in the future would evaporate.

As you finalize the language of your amendment and proceed to consideration on the Senate floor prior to markup, we look forward to working with you and your staff on ways to further pursue spammers. BSA believes that a combination of legislation, technology, and enforcement is the right approach. A copy of our principles regarding spam is attached for your review.

Please contact me or Joe Keeley in BSA's office at (202) 872–5500 should you have any questions about the BSA position on spam.

Sincerely,

ROBERT HOLLEYMAN,
President and CEO.

DEAR SENATOR MCCAIN: We would like to thank you for scheduling this markup of S. 877, the Burns-Wyden CANSPAM Act. Senators Burns and Wyden have been true leaders in the effort to address the spam problem working with industry and public interest groups to refine their legislation over the last two sessions.

CDT is conducting a consultative study on the most effective ways to prevent spam while still protecting privacy and free expression. At this time, we have not endorsed any specific bill. We look forward to continue working with you and Senators Burns and Wyden on this important issue as the legislative process unfolds.

In this context, we have reviewed your amendment to extend FTC enforcement authority to businesses knowingly promoted through electronic mail with false or misleading transmission. We believe that this amendment will help the FTC take action against wrongdoers. CDT supports its inclusion in this bill and into the larger discussion on preventing unsolicited commercial email. We hope that this provision—in concert with effective baseline federal legislation, new anti-spam technologies and industry efforts—will help to begin to turn the rising tide of unwanted email.

Sincerely,

ARI SCHWARTZ,
Associate Director,
Center for Democracy and Technology.

JUNE 18, 2003.

Hon. JOHN MCCAIN,
Chairman, Commerce, Science and Transportation Committee, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am writing on behalf of the U.S. Chamber of Commerce, the world's largest business federation, representing more than three million businesses of every size, sector and region, regarding S. 877, the CAN SPAM Act.

Spam has become more than a nuisance—it has become so overwhelming that all aspects of the business community, from ISPs who have to invest millions of dollars in bandwidth, to retailers who have seen their opt-in emails deleted along with the spam and pornography, and everyone in between, would like to see this problem eradicated. We believe that stopping spam is going to take a multi-pronged effort, including technology, increased FTC enforcement, and enhanced ability of ISPs to go after the bad actors.

Therefore, I would like to commend Senators Burns and Wyden for their relentless pursuit of legislation to fill in a key piece of the puzzle regarding this issue. The CAN

SPAM Act has been improved significantly, although it still requires some modifications, mostly related to liability issues that could potentially subject even legitimate companies who communicate with their customers through opt-in communications to potential frivolous, but expensive, liability.

I would also like to specifically commend Chairman McCain, and to offer our strong support for his amendment. There are two principal issues that the Committee's educational hearing on spam helped to clarify: the extent to which businesses, whose products are promoted by the deluge of spam, are in realty responsible for the amount of spam that permeates the Internet; and the difficulty of finding actual ''spammers.'' The Chairman's amendment addresses both of these concerns, and does so in a way that specifically targets those underlying problems. In particular, the amendment empowers the FTC, who has the expertise to find and stop the promoted businesses, to go after those who actually benefit from increased volume of spam—the ''companies'' that hire spammers to sell their products and attract consumers to their web sites.

Therefore, the Chamber urges the Committee to approve this important component of the fight against spam, including the McCain amendment, and we look forward to working with the Committee to further improve the legislation as it moves to the floor.

Sincerely,

R. BRUCE JOSTEN.

YAHOO!,
June 18, 2003.

Hon. JOHN MCCAIN,
Chairman, Senate Commerce, Science and Transportation Committee, Senate Russell Building, Washington, DC.

DEAR CHAIRMAN MCCAIN: Yahoo! supports your amendment to S. 877, the CAN Spam Act of 2003, to hold the owners of websites who knowingly employ spammers using fraudulent means to deliver their advertisements.

The hearing on spam held by your committee revealed significant changes in the marketplace. The volume of spam has grown in exponential terms, and it is extremely difficult to track down spammers who use fraud to conceal themselves. Your amendment takes a new approach to finding these spammers—getting at their revenue source. When a website owner know the person advertising its website is using fraud to get its message out, it must be held responsible. The FTC will be empowered to pursue those who allow such techniques to be used. This has the potential to put fraudulent spammers out of business, as their customers refuse to work with them. This, in turn, has potential to dramatically affect the volume of spam crossing the networks of email service providers. We are encouraged by this creative approach to get at spammers from a new direction.

We also commend you for being absolutely true to your word to bring before your committee legislation to address the problem of spam early in this session. We look forward to working with you and other members of the committee to bring anti-spam legislation to the floor of the Senate before the August recess.

Sincerely,

JOHN SCHEIBEL,
Vice President, Public Policy.

Mr. MCCAIN. Madam President, the House will adopt a similar provision in any House spam bill. I have received support for the provision from every sector involved in the spam debate—consumers' groups, e-mail providers, marketers, advertisers, online and offline retailers, technology companies and the U.S. Chamber of Commerce.

I urge my colleagues to join me in responding to the demands of millions of American consumers in doing all that we can to try to stop spam. I urge them to support passage of the CAN–SPAM Act.

My comments were a little lengthy, and I apologize. This is a very serious and important and complex issue, as I stated at the beginning of my remarks. That is why my two colleagues have spent 4 years working on this issue. I think they would be the first to agree that this may not stop spam.

There are some very smart people out there who will do everything they can for avoidance, including this issue I mention of organizations outside the United States. For us to do nothing would be a great disservice to millions of Americans, including the young ones, the majority of whom in America are regular users of computers.

I thank my colleagues, Senator WYDEN and Senator BURNS. For the benefit of my colleagues, we have three or four amendments. Maybe one or two might require a vote. I hope we can dispose of this legislation in a fairly short period of time.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. Madam President, I thank Senator MCCAIN, the chairman of the full Committee on Commerce, for his diligence and insight on this, and the ranking member, Senator HOLLINGS. He laid out the facts. I will not rehash everything he said because his numbers are right.

Also I thank my good friend from Oregon, Senator WYDEN. We have worked on this bill for 4 years. It is not an easy piece of legislation to put together.

The simplest piece of legislation we ever put together, I say to Senator WYDEN, was the E 9–1–1 which is probably the best public safety piece of legislation we have ever passed. It sounded like a no-brainer, and it only took 2 years, so this must have been really complicated. I thank you for your efforts. It was a pleasure working with you.

Also, two Senators not on the floor who have not been mentioned are Senator HATCH and Senator LEAHY. We appreciate their cooperation incorporating a significantly expanded criminal package in this law.

The extent of bipartisan cooperation on this issue is no surprise, of course, given the deluge of spam to the consumers and what they face in their inbox each day. The cost of business, the cost to individuals, is escalating and wide ranging.

The chairman asked a valid question: Does this piece of legislation protect us from spam? It can have an effect on people thinking twice before they send it. That is the answer. I have contended all along, as my colleagues on the Commerce Committee have contended, that industry is going to have to come along and get together, talk about the technologies it takes to keep out unwanted mail or some organization or technology that ferrets out the bad people but allows some in the industry to be able to send some messages of what would be considered spam today.

This especially affects people in rural areas. In Montana we have people using the Internet who have to incur long-distance charges to their ISPs. Servers all over the country have difficulty in blocking spam. They are saying the systems are jammed up. The CAN–SPAM bill empowers consumers and grants additional enforcement authority to the Federal Trade Commission to take action against spammers and allows State attorneys general to take action if they see fit.

The bill also provides additional tools to end this online harassment, allowing users to remove themselves from mass email lists and imposing steep fines up to $3 million on spammers. In cases where outright deception is involved, penalties will be unlimited. That is a big point.

The chairman also brings up another point: unwanted and pornographic mail. In my State of Montana, something else is emerging regarding protection of our children: sexual predators. This has to do with how they work in our homes with our children. There are a couple of amendments we will deal with as they come up.

I have a constituent in Montana. If you do not think it does not cost companies money, Jeff Smith, who built a cutting-edge fiber hotel in Missoula, MT, says unwanted spam costs his business about $300,000 a year. His company is worth $2.5 million, so his costs are real.

Not only do we pass legislation, but I will participate in an I-SAFE conference in Billings on Friday at Castle Rock School on how to deal with this unwanted and pornographic mail that comes into our homes on the Internet.

I thank my chairman, Senator MCCAIN, for his patience. I have worn him out a couple of times. He yells back, though, pretty well.

I thank my friend from Oregon, too, who has worked very hard on this issue.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Madam President, kingpin spammers who send out emails by the millions are threatening to drown the Internet in a sea of trash. The American people want it stopped. Every single day the Senate delays, these big-time spammers, the ones who are trying to take advantage of the open and low-cost nature of the Internet, gives them another opportunity to crank up their operations to even more dizzying levels of volumes.

Every Member of the Senate is hearing from citizens. This is a consumer abuse that is visited on millions of people every day. It is now time to put in

place strong enforcement tools to protect the public.

Many are asking, what is the role of Federal legislation? My colleagues have talked a bit about there not being a silver bullet. The key is to pass this bill and come down on the violators with hobnail boots. It is fair to say a lot of the big-time abusers are not exactly quaking today about the prospect of Senate action. They are not technological simpletons. They are very savvy and they figure any law that is passed by the Senate they can get out in front of.

What is going to be important is for those who are charged with enforcement—the Federal Trade Commission, the criminal authorities, we give a role to the State attorneys general, the Internet service providers—when this bill is signed into law, to bring a handful of actions very quickly to establish that for the first time there is a real deterrent, there will be real consequences when those big-time spammers try to exploit our citizens. When the bill takes effect, for the first time those violators are going to risk criminal prosecution, Federal Trade Commission enforcement, and million-dollar lawsuits by the State attorneys general and Internet service providers.

The reason that is the case is because big-time spammers have to violate this bill in order for their sleazy business to work. If they do not hide their identities, their messages end up getting filtered out by the Internet service providers. If they do not use misleading subject lines, people are going to click the messages straight into the trash, unread. It is costly to deal with thousands of demands for consumers to be removed from the lists. The day this bipartisan legislation becomes law, for the first time big-time spamming will become an outlaw business.

It is worth noting when Senator BURNS and I started this effort nearly 4 years ago, we had the strong support of Senator MCCAIN. Senator HOLLINGS has been tremendous to me. I got involved in this shortly after joining the Commerce Committee. A lot of people asked, why in the world would CONRAD BURNS and I be spending our time on something like this. They essentially intimated this was not the kind of issue important enough for the Senate. They said, Senators deal with key matters. They deal with war and peace and entitlement programs. Why in the world would the Senate get involved with something like spam. It was only 6 to 8 percent when we started in 2000. Why is the Senate spending its time on that kind of concern? Suffice it to say, nobody is saying any longer spam is just a minor annoyance. Nobody is saying the delete key is now going to be a sufficient solution to the problem.

This is now something that threatens this medium. Spam, in the view of experts, and in my view, stunts the growth of e-commerce. And if it continues at the rate of growth we have seen in the last few years, I think it will engulf the entire medium.

So something the American people use every day, something that is considered a vibrant, exciting tool, that has empowered millions of people to learn, to be part of cultural activities, to start small businesses—if nothing is done, if somehow this legislation goes by the board or the Senate and House cannot agree, I think what we are seeing in the days ahead is a genuine threat to the entire medium.

So with respect to the specifics of the bill, I think there are a number of key provisions. One I have stressed is the question of misleading identities because I think that goes right to the heart of how you set in place a strong enforcement regime.

But I also emphasize the role of the States here this afternoon. At this point, over half the States have enacted State-level spam legislation. It is pretty easy to see why the States have acted. They are frustrated that the Congress has not moved.

But I believe a State-by-State approach cannot work in this area. The numerous State laws to date certainly have not put in place a coordinated effort against spam. Neither the Internet nor the big-time spammers is sitting around saying: Let's tip our hat to State jurisdictions. And certainly an e-mail address, unlike a phone number, does not reveal the State in which the holder of the address is located. So compliance with a patchwork of inconsistent State laws is virtually impossible, and spammers do not even go through the motions of trying.

What is needed is a uniform, nationwide spam standard to put the spammers on notice and to empower the consumers to have an enforcement regime consistent with their reasonable expectations.

Having emphasized the importance of a nationwide, uniform standard in this area, the legislation does preserve an important role for the States.

First, the State laws that address deception in spam—deception in spam—would be preserved. Second, general consumer protection fraud and computer abuse laws would remain enforceable as well. And third, the bill authorizes States' attorneys general to use the Federal statute to prosecute spammers.

The bottom line is, our States, which have done so much important and innovative work in the area of consumer protection, are going to remain active and important partners in the battle against spam.

Shortly, we will be talking about the Do Not E-mail Registry. I commend Senators SCHUMER and DAYTON. Both of them have introduced legislation in this area. They deserve a great deal of credit with respect to their patience on this legislation. And we know it is a challenge. The telephone Do Not Call list is certainly facing a lot of battles.

But I think this is an important idea. I think it is an idea that makes a genuine contribution. It certainly is one that the American consumer wants. We are going to work with the sponsors, Senator SCHUMER and Senator DAYTON, and others who have been so interested in this to address the various questions that have been brought up with respect to feasibility.

I also commend Senator NELSON of Florida. These big-time spammers—there are only a few hundred of them. I think Senator MCCAIN and I were struck, as we listened to the debate, at the fact that we are talking about a few hundred big-time violators. They seem to have gravitated to a couple States, particularly Florida and Texas.

Senator NELSON has been very interested in ensuring that there are tough enforcement provisions in this legislation. I share his view that we ought to use all of the enforcement tools, including measures such as the RICO statute, against these particularly reprehensible violators. I commend Senator NELSON for this effort as well.

Finally, as we put together a coordinated game plan against the spammers, I would also like to emphasize that we expect our trading partners, and the many countries that look to do business with the United States, to play a more activist role in this area. As sure as night follows day, some of these kingpin spammers are going to just move offshore and set up shop.

So as we look to the future, I have stressed enforcement. I think we need to see aggressive enforcement action the day this bill is signed into law. Then we have to push our trading partners around the world to work with us to ensure that, as part of a coordinated strategy, we are preventing the big-time violators from simply closing down in the United States and moving offshore.

I have tried to specialize in technology issues in my time in the Senate. My State cares greatly about this issue. I have been fortunate to have a chairman in Senator MCCAIN who has always encouraged these efforts, to deal with Internet taxes, digital signatures, Y2K liability—and the list goes on and on. And Senator HOLLINGS, who is not in the Chamber, has been extraordinarily supportive of my involvement in these issues.

But I think it is fair to say that this spam question—of all the technology issues we have tackled in the last few years in the Commerce Committee, I cannot think of another one that has inflamed consumers more, has been emphasized more to me at townhall meetings.

I can tell the Senate, at the time when we were all concerned about the well-being of our troops and the conflict in Iraq, folks would also say, in addition to standing up for our troops: Make sure you do something about spam as well. I think it is indicative of how much concern there is in the country with respect to these kingpin spammers who really do put at risk—I do not say this lightly—an entire medium that has made such a difference and been so important for millions of Americans.

We are going to deal expeditiously with the amendments. A number of colleagues have already asked of the managers what we thought the timetable of this bill would be. My guess is, we can deal with this legislation certainly within the next couple of hours, at most.

We urge Senators who have an interest in this matter to come to the floor. This is an opportunity for the Senate to stand up for the consumer.

We are not going to overpromise. We are not going to say that the day this bill is signed, spam will magically vanish into the vapor. But this legislation, coupled with an enforcement strategy that has the Federal Trade Commission, criminal authorities, pushing spam as it relates to these big-time violators up the priority list of the tasks that they face—that kind of strategy can make a difference.

Madam President, with that, I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, I believe the Senator from Oregon has a technical amendment and maybe would like to propose that at this time. It is my understanding that the Senator from New York, Mr. SCHUMER, is on his way over to propose his Do Not Spam amendment.

It is also my understanding that Senator HATCH, Senator SANTORUM, and Senator CORZINE are the ones who have amendments. I would urge them to come forward when it is convenient so we can dispense with those amendments in a timely fashion.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

AMENDMENT NO. 1891

Mr. WYDEN. Madam President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. WYDEN], for himself and Mr. BURNS, proposes an amendment numbered 1891.

The amendment is as follows:

(Purpose: To clarify the provision prohibiting false or misleading transmission information, and for other purposes)

On page 37, lines 12, after the comma, insert ''whether or not not displayed,''.

On page 44, line 20, strike ''false or misleading.'' and insert ''materially false or materially misleading.''.

On page 45, line 2, strike ''misleading; and'' and insert ''materially misleading;''.

On page 45, line 5, strike ''false or misleading.'' and insert ''materially false or materially misleading; and''.

On page 45, between 5 and 6, insert the following:

''(C) if header information attached to a message fails to identify a protected computer used to initiate the message because the person initiating the message knowingly uses another protected computer to relay or retransmit the message for purposes of disguising its origin, then such header information shall be considered materially misleading.''.

On page 49, between lines 11 and 12, insert the following:

(6) MATERIALITY DEFINED.—For purposes of paragraph (1), an inaccuracy or omission in header information is material if it would materially impede the ability of a party seeking to allege a violation of this Act to locate the person who initiated the message or to investigate the alleged violation.

On page 50, beginning in line 24, strike ''establish'' and insert ''register for''.

On page 51, after line 22, insert the following:

''(d) SUPPLEMENTARY RULEMAKING AUTHORITY.—The Commission may be rule—

''(1) modify the 10-business-day period under subsection (a)(4)(A) or subsection (a)(4)(B), or both, if the Commission determines that a different period would be more reasonable after taking into account—

''(A) the purposes of subsection (a);

''(B) the interests of recipients of commercial electronic mail; and

''(C) the burdens imposed on senders of lawful commercial electronic mail; and

''(2) specify additional activities or practices to which subsection (b) applies if the Commission determines that those activities or practices are contributing substantially to the proliferation of commercial electronic mail messages that are unlawful under subsection (a).''.

On page 58, beginning in line 16, strike ''jurisdiction or in any other court of competent''.

On page 62, beginning in line 14, strike ''defendant, or in any other court of competent jurisdiction, to—'' and insert ''defendant—''.

On page 65, beginning in line 7, strike ''for any such statute, regulation, or rule that'' and insert ''to the extent that any such statute, regulation, or rule''.

On page 65, line 16, strike ''State laws'' and insert ''other State laws to the extent that those laws relate''.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Madam President, I offer this amendment on behalf of myself and Senator BURNS. It is technical in nature. I know of no opposition.

It clarifies that header information that is technically false, but in such a minor way as to be nonmaterial, will not be actionable under the legislation.

It clarifies that spammers who knowingly route messages through what are called open relays in order to erase the message's originating information—which is a technique used by these big-time spammers—will be treated as having used false or misleading header information.

It permits the Federal Trade Commission to modify the bill's deadline for how quickly ''opt-out requests'' must be processed. Currently, the bill says that 10 business days after receiving a consumer's opt-out request, any further e-mails from the sender become punishable.

The amendment permits the Federal Trade Commission to modify that time period if it finds that a different period would be appropriate. It permits the Federal Trade Commission, if it identifies new and particularly nefarious techniques used by spammers, to add those techniques to the list of what are called aggravated violations so that spammers who use those techniques would be subject to higher penalties.

Finally, this amendment, which has the support of Chairman MCCAIN and Senator HOLLINGS, would clarify that any lawsuits for violations of Federal spam rules should be brought in Federal court. It is noncontroversial in nature. I urge its passage.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, we support the amendment. It is helpful to the legislation. I urge its adoption.

The PRESIDING OFFICER. Is there further debate?

If not, the question is on agreeing to amendment No. 1891.

The amendment was agreed to.

Mr. MCCAIN. Madam President, I move to reconsider the vote.

Mr. WYDEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1892

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Madam President, I have an amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER], for himself, Mr. MCCAIN, Mr. HOLLINGS, and Mr. GRAHAM of South Carolina, proposes an amendment numbered 1892.

Mr. SCHUMER. I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To authorize the Commission to implement a nationwide ''Do Not E-mail'' registry)

On page 66, strike lines 1 through 11 and insert the following:

SEC. 9. DO-NOT-E-MAIL REGISTRY.

(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Commission shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce a report that—

(1) sets forth a plan and timetable for establishing a nationwide marketing Do-Not-E-mail registry;

(2) includes an explanation of any practical, technical, security, privacy, enforceability, or other concerns that the Commission has regarding such a registry; and

(3) includes an explanation of how the registry would be applied with respect to children with e-mail accounts.

(b) AUTHORIZATION TO IMPLEMENT.—The Commission may establish and implement the plan, but not earlier than 9 months after the date of enactment of this Act.

Mr. SCHUMER. Madam President, I offer this amendment on behalf of myself, Senator GRAHAM of South Carolina, Senator MCCAIN, and Senator HOLLINGS. I thank my good friend, Senator LINDSEY GRAHAM, who worked long and hard on this issue with me. Senator GRAHAM and I have been working on quite a few pieces of legislation together. He is a good legislator and a fighter for the things in which he believes. We do not agree on everything, to say the least, but it is a pleasure to work with him.

I thank my colleagues, Senator BURNS and Senator WYDEN, both of whom have worked long and hard on this legislation for many years. They both were willing to work with me and accommodate some changes which I hope make the legislation better. I believe they do. But the foundation of this bill is their hard work. This is a good day for both of them because they have spent a long time and they deserve a great deal of accolades for their hard work on this important legislation which, hopefully, will pass today.

I thank my colleague, Senator HOLLINGS, ranking member of the Commerce Committee, who offers this amendment along with myself, Senator GRAHAM, and Senator MCCAIN. We are all going to miss FRITZ HOLLINGS. He is one of the true gems of the Senate. He is a forthright man and a direct man. He is a smart man. He is a principled man. I, for one, know that my amendment might not have happened, certainly wouldn't be in the form it is now, without his intervention. I thank him for that.

Finally, Senator MCCAIN and I have worked on a whole number of things together. It is a pleasure to work with him. Again, he is a man of his word. He is able to bring different people together to produce good legislation. He cares about the average person. He never lets any of the special interests get in his way. We wouldn't be here today without the Senator's leadership. I thank him very much.

Let me begin by saying how important this whole bill is to the continued vitality of e-mail and the Internet itself. Unsolicited e-mail has grown at astronomical rates over the past months. It is safe to say we are now under siege. Armies of online marketers have overrun e-mail inboxes across the country with advertisements for herbal remedies, get-rich-quick schemes, and, unfortunately, pornography. What was a simple annoyance last year has become a major concern this year and could cripple one of the greatest inventions of the 20th century next year if nothing is done.

Way back in 1999, the average e-mail user received just 40 pieces of unsolicited commercial e-mail, spam, each year. This year the number is expected to pass 2,500. I know that I am lucky if I don't get 40 pieces of spam every day. As a result, a revolution against spam is brewing as the epidemic against junk e-mail exacts an ever-increasing toll on families, businesses, and the economy.

Let me illustrate this point with a story. My wife and I have two wonderful daughters, one of whom is about to complete her first year at college; the other, a 14-year-old, is an absolute whiz on the Internet. She loves sending and receiving e-mails. As parents, we do our best to make sure she has good values and that the Internet is a positive experience for her, a device to help her with her school work or learn about events taking place around the world, and maybe even a way to order the latest In Sync CD, although I think she likes other groups better.

You can imagine my anger and dismay when I saw my daughter on e-mail. I would say: Great, she is not watching television. And then you can imagine my dismay when I discovered that not only was she a victim of spam like myself, but like all e-mail users, much of the junk mail she was receiving advertised pornographic Web sites. Some of the things that crossed her e-mail were things I would not want to see, let alone my 14-year-old daughter. I was and remain virtually powerless to prevent such garbage from reaching my daughter's inbox.

Recent surveys unambiguously show that the public shares my concern about spam infested with pornography and how it impacts their children. The bottom line is, if parents can control what their kids watch on TV, they should be able to control what their children are exposed to on the Internet. We have parental advisory notices on music, as well as ratings for TV shows and movies to ensure that parents are able to keep their children from being exposed to what they consider inappropriate. So it makes you scratch your head about why there is no safeguard in place to enable parents to protect their kids from vulgar e-mail. The e-mailing public has been at the mercy of spammers for long enough. They want to take back the Internet.

A recent survey conducted by UnSpam, one of the ardent foes of spam and backer of my legislation, and InSightExpress, a research group, backs that view. Here is a quick rundown of some of the highlights of the survey:

Almost 9 in 10 parents say they are seriously concerned about their children receiving inappropriate e-mail versus 5 percent who don't care. Ninety-six percent of parents want the ability to block pornography from their children's inboxes. A paltry 2 percent don't want that right. Ninety-five percent think children should be given extra protection under any anti-spam law, 3 percent undecided. And 93 percent think spammers should face enhanced penalties for sending inappropriate messages to children.

Our amendment is a solution that will give parents—the only solution—the ability to protect their children from offensive and obscene e-mail spam by registering their children's e-mail address. Parents across the country are increasingly worried about this problem, and we should do the right thing by giving them a registry. Parents and children are not the only ones who will benefit from a no e-mail registry. Business owners and ISPs across the Nation can identify with the frustration many of us feel in the battle against spam. With surveys showing that nearly 50 percent of e-mail traffic qualifies as spam, businesses spend millions of dollars each year on research-filtering software and new servers to deal with the ever expanding volume of junk e-mail being sent through the pipes.

According to Ferris Research, spam costs businesses in the United States $10 billion each year in lost productivity, consumption of information technology resources, and help desk time.

That is $10 billion that should be spent on growing American businesses and jobs instead of fighting spam.

The Do Not E-mail Registry created by the FTC would allow businesses to cut costs and improve productivity in the workplace by giving them the ability to register their entire domain names. Very important to businesses.

Some have expressed concern about creating a list of e-mail addresses that spammers could exploit. The FTC has already said it is technologically possible to create and secure the list. This is no longer a worry and one of the breakthroughs we made in the last few months that are allowing this legislation to come to the Senate floor.

In fact, we know that the database of addresses can be protected by military-caliber encryption so that its valuable contents will not fall into the wrong hands.

I want to take a few minutes to talk about the underlying bill and other amendments, and then I will get into mine.

First, I commend Senators BURNS and WYDEN for their long efforts on this bill. The bill will, for the first time, set minimum standards for all commercial e-mail. It will require all commercial mail to include valid return e-mail addresses and physical addresses of the sender. It must provide accurate header and router information. And most messages will be required to have an opt-out system.

It does not stop there. In addition to these provisions, it will take aim at the mass collection of e-mail addresses and the rampant fraud which, according to a report released by the FTC, is present in 66 percent of junk e-mail.

I am hopeful that we can add important criminal provisions to these civil measures. I know both my colleagues, including Senators MCCAIN and HOLLINGS, want to do that. I worked in the Judiciary Committee with Senators HATCH and LEAHY on a bill that makes it clear that fraud and deception in e-mail will not be tolerated. And those who do not heed the warnings in this bill will face stiff punishment. These criminal provisions will outlaw some of the spammers' favorite tricks.

About our legislation as well, let me just say it is really important that we put in the registry, which, in my judgment, is the best way to get at spam. No system is foolproof and, as Mr. Morris of the FTC has said, no bill will solve all of the problems. But the registry is the most complete, comprehensive way to do it, combined with the criminal penalties that we are adding in the Hatch-Leahy-Schumer amendment.

The minute somebody spams someone on the Do Not Call list, there will be an immediate cause of action and criminal prosecution.

The good news is that since we know that a large amount of spam comes from a small amount of people, we can get after these few people. This legislation, as you know, gives the FTC 6 months to come back with a comprehensive proposal. We then get 3 months here to examine it to see if we want to change it, and then the FTC may implement it. I have received—and they have both verbalized this on the Senate floor—assurances from Senators MCCAIN and HOLLINGS that if the FTC should decide they don't want to implement it, or come up with something that is unworkable, they will use their clout with the FTC to straighten things out and get this done. Otherwise, we in the Congress can respond.

I believe this amendment will allow, without any further action by Congress, as long as the House passes it and it stays in the bill—and I thank Senator MCCAIN for assuring me that he will not even sign a conference report that doesn't have this amendment in it, and I know all of my colleagues are for this legislation. But once it passes the House and is signed into law, we set the road for a no-call registry. It is all downhill after that.

Within a year, it is my belief we will have that registry and, just as the no-call registry was a great success, I believe the no-spam registry will be a great success. It will take a little longer, it will be a little more difficult, but the same basic popularity and support that the American people have given the no-call registry, they will give, for sure, to the no-spam registry, and the combination of a good proposal that the FTC will have to send to us in 6 months and vigilant enforcement, plus the no-spam registry, plus the underlying base of the bill, will put a crimp, a real dent in spam.

Are we ever going to eliminate all spam? For sure not. But is this legislation, along with the amendment I am adding, going to be the toughest, best approach, and greatly curtail spam? Indeed. It is my belief that when we enter these portals a year from now, spam will have greatly decreased.

One of the great inventions of the 20th century, which is now sick and ailing, will be healthy and going full steam ahead. The bottom line is that this is a very fine day for those who use computers and e-mail and for American technology in general. It shows that we can all work together and get something done—get something done that the American people want.

I ask my colleagues to support this amendment and the underlying legislation. Let's finally do something about one of the greatest technological problems that we face right now in this country, the proliferation of spam.

With that, I yield the floor.

Mr. WYDEN. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SCHUMER. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SCHUMER. Madam President, I ask unanimous consent that we adopt the amendment and add it to the legislation.

The PRESIDING OFFICER. Is there further debate?

The question is on agreeing to the amendment.

The amendment (No. 1892) was agreed to.

AMENDMENT NO. 1891, AS MODIFIED

Mr. WYDEN. Madam President, at this time, I ask unanimous consent that the previously agreed-to Burns-Wyden technical amendment, No. 1891, be modified with the change I now send to the desk.

The PRESIDING OFFICER. Is there objection?

Without objection, the amendment is so modified.

The amendment (No. 1891), as modified is as follows:

On page 67, line 20, strike ''act'' and insert ''act, other than section 9,''.

Mr. WYDEN. Madam President, this is also a very modest technical amendment. This amendment simply ensures that the Do Not E-mail Registry proposed would be considered on the timetable that all of the parties who have worked on this had intended. It is very noncontroversial.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. NELSON of Florida. Madam President, I rise to commend the Senators who have brought this legislation forward and say how gracious they have been to me in working to address the seriousness of this issue of spam. Later on, when Senator LEAHY comes to the floor, I will have a colloquy with him about some of the provisions that are going to be submitted in the Hatch-Leahy-Nelson amendment.

In the meantime, I wanted to commend the Senator from Oregon for his leadership. I commend Senator CONRAD BURNS from Montana for his leadership. I commend the Senators for how they saw the problem. They saw it years ago, and they have been so persistent. Senator WYDEN and Senator BURNS kept after it. It is an idea whose time has come simply by virtue of the fact that people can hardly even use their e-mail now it is so cluttered up with unwanted messages.

Mr. WYDEN. Will the Senator yield?

Mr. NELSON of Florida. I will be happy to yield.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Madam President, I will be very short.

Without turning this into a bouquet-tossing contest, let me thank my friend from Florida. Of course, many of the worst violators are people I call kingpin spammers who are located in his home State. The Senator from Florida brought it to the attention of Senator BURNS and I that to have an effective enforcement strategy, we had to have in place tools that would deal with the kind of shady operators who are present in his home State.

The Senator from Florida has hammered on that message. I think by the time we are done this afternoon and have Senator LEAHY on the floor as well, Senator NELSON's contribution will be especially helpful, not just in Florida but in terms of dealing with these kingpin spammers, the people who send out millions of e-mail now without consequences.

I thank my colleague for yielding, and I thank him for keeping this issue on the radar.

Mr. NELSON of Florida. Madam President, I thank Senator HATCH and Senator LEAHY for working with me in their capacity as leaders of the Judiciary Committee in attaching some strong penalties on the most egregious kinds of spam.

Spam is clearly a nuisance, and it impedes the course of commerce. When you can't even use your computer because it is so cluttered up, that is one thing, but when spam is used for illicit purposes, such as child pornography, then that is another thing. That needs to be dealt with swiftly and severely.

By Senator WYDEN and Senator BURNS working with Senator HATCH and Senator LEAHY, we have, as part of their amendment—and I think it is worth reading. This is a part of the amendment they will offer:

It is the sense of Congress that spam has become the method of choice for those who distribute pornography and perpetrate fraudulent schemes and also offers fertile ground for deceptive trade practices;

And it is the sense of Congress that the Department of Justice should use all existing law enforcement tools to investigate and prosecute those who send bulk commercial e-mail to facilitate the commission of Federal crimes, including the tools contained in—

And it lists several chapters of the United States Code, one relating to fraud and false statements; another relating to obscenity; another relating to the sexual exploitation of children; and another relating to racketeering.

By the adoption of this amendment, we will strengthen the penalties and also give a directive to the United States Sentencing Commission, which is the normal course of action, that they shall consider sentencing enhancements for those convicted of other offenses, including offenses involving fraud, identity theft, obscenity, child pornography, and sexual exploitation of children, if those offenses involve the sending of large quantities of unsolicited e-mail.

Why is this so egregious? We know what a nuisance it is. One day, I went in my Tampa office to check the e-mail. We had a list of single-spaced e-mail over the last evening filling up—single space, one sheet of paper, all unsolicited. That was bad enough. But to a Senate office, two of them were pornographic. If that is happening to my Tampa Senate office, we can imagine

what is happening to the e-mail receipt of every consumer in America on their computer. It has to stop. This is an attempt to stop it.

Under the old laws, when we tried to protect against activities such as child pornography or taking advantage of senior citizens by some extortion or deceptive scheme to bilk them out of money, before we had e-mail, the criminal would send out 100, 150 letters to the unsuspecting victims on whom they were preying on child pornography or on fleecing senior citizens of their assets. That was 100, 150 letters. Now with the punch of a button, they can send out 150 million. So we see the insidious ability of a criminal mind to prey upon millions of people by the use of this very new and fantastic tool that we ought to be using for good, not for ill, and that is e-mail.

This Senator is very happy that this legislation is being considered, and we are now going to attach some tough penalties to it for these egregious types of activities.

I also commend the Senator from Arizona, the chairman of our committee, and the Senator from South Carolina, the ranking member of our committee, for being so vigilant in bringing this legislation to the floor.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, we would like to, obviously, finish the bill as expeditiously as possible and yet offer all Members the opportunity to propose amendments. As I understand it right now, we have pending amendments by Senators CORZINE, SANTORUM, and HATCH.

As Members know, there is a briefing at 4 p.m. by the Secretary of Defense for all Members in room 407. Shortly before 4, I would like to propose a unanimous consent agreement to lock in all amendments with no time agreements agreed to. I ask my colleagues who may have additional amendments to let us know between now and shortly before the hour of 4, which is over a half an hour.

I will also say we are asking Senators HATCH, SANTORUM, and CORZINE to come over to offer their amendments so we can dispose of those amendments.

AMENDMENT NO. 1892

Mr. MCCAIN. Madam President, I wish to make a few comments about Senator SCHUMER's amendment regarding the Do Not Spam list. As Senator SCHUMER pointed out, it authorizes the Federal Trade Commission to develop a Do Not Spam list similar to the Do Not Call list which has been widely supported by Americans across the country.

The Senator from New York and I remember when apparently perhaps, in the view of some, a misguided member of the judiciary stayed the Do Not Call list and the reaction that followed was certainly extraordinary. If we are able technologically to develop a Do Not Spam list, I think it would be of great assistance to many Americans. So I think the Senator from New York has a remarkable idea here.

As a first step, the FTC, which has testified they have some technological reservations about creating such a list, although I am sure the FTC would not object to it in principle, but they have some reservations, Senator SCHUMER has modified his amendment so that the FTC would be required to submit a report to the Congress within 6 months. It contains a plan for implementing the Do Not Spam list. The FTC would be authorized to implement the list 3 months later, and I would certainly urge them to do so.

As everyone is aware by now, there has been a tremendous amount of discussion about this issue. I believe it is a good one and one that provides the FTC with the authority to establish such a registry if they believe it is the proper mechanism to stop the onslaught of spam to consumers.

I think we have given them the flexibility to come back and show us if there are serious problems. If there are serious problems, we would be glad to look at them and help resolve those problems through any kind of legislative or other assistance we can provide.

The Schumer amendment also absolutely emphasizes this is an idea that has worked in the Do Not Call area and is a concept that should be pursued to the fullest extent of our capabilities. So I thank the Senator. I also thank Senator NELSON, a valued member of the committee, for his involvement in this issue.

Again, I hope Senators who have amendments will come to the floor and let us know about them.

Mr. SCHUMER. Will my colleague yield?

Mr. MCCAIN. I am glad to yield.

Mr. SCHUMER. I once again thank my colleague from Arizona for helping us with this list and his commitment in terms of keeping this in the conference and then making sure the FTC moves forward with this in every technological way possible. I very much appreciate it. As I mentioned before, the Senator is a true gentleman, a man of his word. We would not be here today without his good work.

Mr. WYDEN. Will the Senator yield?

Mr. SCHUMER. I think the Senator from Arizona has the floor.

Mr. MCCAIN. I am glad to yield, but first, to add to my remarks, I believe Senator ENZI may have an amendment as well.

I thank my friend from New York for his comments and I yield to the Senator from Oregon.

Mr. WYDEN. I say to the Senator from New York, I appreciate his patience on this. I think he knows from the outset my concern was not with the nature of this, because clearly empowering consumers to make these kinds of choices is essential. What is important is to try to figure out how to do this right.

The Senator from New York knows people change their e-mail addresses constantly. In that sense, this is different than a telephone. We all understand that if a bad spammer, for example, one of these kingpin operators, was to hack into this, what a gold mine for an evil person who wanted to exploit our citizens. The Senator from New York has been acutely aware of it and that is why he has worked with me, Senator BURNS, and all of those on the Commerce Committee. I commend him for his patience.

This is an important contribution. We have a lot of work to do, because we have seen with the Do Not Call list what the challenge is. I personally believe in the telecommunications area we ought to establish, as kind of a bedrock principle, that there is a First Amendment right to communicate, but there also is a right of the consumer to say, I have had it. In effect, that is what the Senator from New York is allowing us to do in the spam area, and to do it in a responsible way.

I thank my colleague from Arizona for giving me this time. With a little luck, we will be able to dispose of the additional spam amendments and send this bill on its way.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, I again urge my colleagues, particularly Senators SANTORUM, HATCH, CORZINE, and ENZI, to come to the floor to give us their amendments so we can move expeditiously.

I also intend to propose a unanimous consent agreement in about 15 minutes that there be no further amendments in order at that time.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATCH. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1893

Mr. HATCH. Madam President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah (Mr. HATCH), for himself, Mr. LEAHY, Mr. NELSON of Florida, and Mr. SCHUMER proposes an amendment numbered 1893.

Mr. HATCH. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To revise the criminal penalty provisions of the bill as reported, and for other purposes)

On page 43, beginning with line 11, strike through the matter appearing between lines 10 and 11 on page 44 and insert the following:

SEC. 4. PROHIBITION AGAINST PREDATORY AND ABUSIVE COMMERCIAL E-MAIL.

(a) OFFENSE.—

(1) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by adding at the end the following new section:

''§ 1037. Fraud and related activity in connection with electronic mail

''(a) IN GENERAL.—Whoever, in or affecting interstate or foreign commerce, knowingly—

''(1) accesses a protected computer without authorization, and intentionally initiates the transmission of multiple commercial electronic mail messages from or through such computer,

''(2) uses a protected computer to relay or retransmit multiple commercial electronic mail messages, with the intent to deceive or mislead recipients, or any Internet access service, as to the origin of such messages,

''(3) falsifies header information in multiple commercial electronic mail messages and intentionally initiates the transmission of such messages,

''(4) registers, using information that falsifies the identity of the actual registrant, for 5 or more electronic mail accounts or online user accounts or 2 or more domain names, and intentionally initiates the transmission of multiple commercial electronic mail messages from any combination of such accounts or domain names, or

''(5) falsely represents the right to use 5 or more Internet protocol addresses, and intentionally initiates the transmission of multiple commercial electronic mail messages from such addresses,

or conspires to do so, shall be punished as provided in subsection (b).

''(b) PENALTIES.—The punishment for an offense under subsection (a) is—

''(1) a fine under this title, imprisonment for not more than 5 years, or both, if—

''(A) the offense is committed in furtherance of any felony under the laws of the United States or

''(B) the defendant has previously been convicted under this section or section 1030, or under the law of any State for conduct involving the transmission of multiple commercial electronic mail messages or unauthorized access to a computer system;

''(2) a fine under this title, imprisonment for not more than 3 years, or both, if—

''(A) the offense is an offense under subsection (a)(1);

''(B) the offense is an offense under subsection (a)(4) and involved 20 or more falsified electronic mail or online user account registrations, or 10 or more falsified domain name registrations;

''(C) the volume of electronic mail messages transmitted in furtherance of the offense exceeded 2,500 during any 24-hour period, 25,000 during any 30-day period, or 250,000 during any 1-year period;

''(D) the offense caused loss to 1 or more persons aggregating $5,000 or more in value during any 1-year period;

''(E) as a result of the offense any individual committing the offense obtained anything of value aggregating $5,000 or more during any 1-year period; or

''(F) the offense was undertaken by the defendant in concert with 3 or more other persons with respect to whom the defendant occupied a position of organizer or leader; and

''(3) a fine under this title or imprisonment for not more than 1 year, or both, in any other case.

''(c) FORFEITURE.—

''(1) IN GENERAL.—The court, in imposing sentence on a person who is convicted of an offense under this section, shall order that the defendant forfeit to the United States—

''(A) any property, real or personal, constituting or traceable to gross proceeds obtained from such offense; and

''(B) any equipment, software, or other technology used or intended to be used to commit or to facilitate the commission of such offense.

''(2) PROCEDURES.—The procedures set forth in section 413 of the Controlled Substances Act (21 U.S.C. 853), other than subsection (d) of that section, and in Rule 32.2 of the Federal Rules of Criminal Procedure, shall apply to all stages of a criminal forfeiture proceeding under this section.

''(d) DEFINITIONS.—In this section:

''(1) LOSS.—The term 'loss' has the meaning given that term in section 1030(e) of this title.

''(2) MULTIPLE.—The term 'multiple' means more than 100 electronic mail messages during a 24-hour period, more than 1,000 electronic mail messages during a 30-day period, or more than 10,000 electronic mail messages during a 1-year period.

''(3) OTHER TERMS.—Any other term has the meaning given that term by section 3 of the CAN–SPAM Act of 2003.''.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 47 of title 18, United States Code, is amended by adding at the end the following:

''Sec.

''0137. Fraud and related activity in connection with electronic mail.''.

(b) UNITED STATES SENTENCING COMMISSION.—

(1) DIRECTIVE.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the sentencing guidelines and policy statements to provide appropriate penalties for violations of section 1037 of title 18, United States Code, as added by this section, and other offenses that may be facilitated by the sending of large quantities of unsolicited electronic mail.

REQUIREMENTS.—In carrying out this subsection, the Sentencing Commission shall consider providing sentencing enhancements for—

(A) those convicted under section 1037 of title 18, United States Code, who—

(i) obtained electronic mail addresses through improper means, including—

(I) harvesting electronic mail addresses of the users of a Web site, proprietary service, or other online public forum operated by another person, without the authorization of such person; and

(II) randomly generating electronic mail addresses by computer; or

(ii) knew that the commercial electronic mail messages involved in the offense contained or advertised an Internet domain for which the registrant of the domain had provided false registration information; and

(B) those convicted of other offenses, including offenses involving fraud, identity theft, obscenity, child pornography, and the sexual exploitation of children, if such offenses involved the sending of large quantities of unsolicited electronic mail.

(c) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) Spam has become the method of choice for those who distribute pornography, perpetrate fraudulent schemes, and introduce viruses, worms, and Trojan horses into personal and business computer systems; and

(2) the Department of Justice should use all existing law enforcement tools to investigate and prosecute those who send bulk commercial e-mail to facilitate the commission of Federal crimes, including the tools contained in chapters 47 and 63 of title 18, United States Code (relating to fraud and false statements); chapter 71 of title 18, United States code (relating to obscenity); chapter 110 of title 18, United States Code (relating to the sexual exploitation of children); and chapter 95 of title 18, United States Code (relating to racketeering), as appropriate.

Mr. HATCH. Madam President, I rise today with Senator LEAHY, Senator NELSON of Florida, and Senator SCHUMER to offer an amendment to the CAN SPAM Act of 2003. This amendment strengthens the act's criminal provisions by incorporating key provisions of the Criminal Spam Act of 2003, which I worked closely with Senators LEAHY, GRASSLEY, SCHUMER, NELSON of Florida and others to draft earlier this year and which was favorably reported out of the Judiciary Committee. To send an effective and adequate message of deterrence to the most egregious spammers, stiff criminal penalties must be an element of any comprehensive anti-spam legislative package.

Over the course of the past several Congresses we have become more and more aware of the problems associated with unsolicited commercial e-mail, or spam. Rarely a minute passes that American consumers and their children are not bombarded with e-mail messages that promote pornographic web sites, illegally pirated software, bogus charities, pyramid schemes and other ''get rich quick'' or ''make money fast'' scams.

The rapid increase in the volume of spam has imposed enormous costs on our economy—potentially $10 billion in 2003 alone—as well as unprecedented risks on our children and other vulnerable components of our society. Spam has become the tool of choice for those who distribute pornography and indulge in fraud schemes. We all know of children who have opened unsolicited e-mail messages with benign subject lines only to be exposed to sexually explicit images. We have heard of seniors using their hard earned savings to buy fraudulent health care products advertised on-line or of being duped into sharing sensitive personal information to later find themselves victims of identity and credit card theft.

We cannot afford to stand idle and continue to allow sophisticated spammers to use abusive tactics to send millions of e-mail messages quickly, at an extremely low cost, with no repercussions. The sheer volume of spam, which is growing at an exponential rate, is overwhelming entire network systems, as well as consumers' in-boxes. By year end, it is estimated that 50 percent of all e-mail traffic will be spam. It is no exaggeration to say that spam is threatening the future viability of all e-commerce. The time has come to curb the growth of spam on all fronts—through aggressive civil and criminal enforcement actions, as well as innovative technological solutions.

The criminal provisions that make up this amendment are intended to target those who use fraudulent and deceptive means to send unwanted e-mail messages. A recent study conducted by the Federal Trade Commission demonstrates that this is no small number. According to the FTC, 66 percent of

spam contains some kind of false, fraudulent, or misleading information, and one-third of all spam contains a fraudulent return e-mail address that is included in the routing information, or header, of the e-mail message. By concealing their identities, spammers succeed in evading Internet filters, luring consumers into opening messages, and preventing consumers, ISPs and investigators from tracking them down to stop their unwelcomed messages.

This amendment significantly strengthens the criminal penalties contained in the CAN SPAM Act by striking its misdemeanor false header offense and replacing it with five new felony offenses. The amendment makes it a crime to hack into a computer, or to use a computer system that the owner has made available for other purposes, as a conduit for bulk commercial e-mail. It prohibits sending bulk commercial e-mail that conceals the true source, destination, routing or authentication information of the e-mail, or is generated from multiple e-mail accounts or domain names that falsify the identity of the actual registrant. It also prohibits sending bulk commercial e-mail that is generated from multiple e-mail accounts or domain names that falsify the identity of the actual registrant, or from Internet Protocol, IP, addresses that have been hijacked from their true assignees.

The amendment includes stiff penalties intended to deter the most abusive spammers. Recidivists and those who send spam to commit another felony face a sentence of up to 5 years' imprisonment. Those who hack into another's computer system to send spam, those who send large numbers of spam, and spam kingpins who direct others in their spam operations, face up to 3 years' imprisonment. Other illegal spammers face up to a year in prison. The amendment provides additional deterrence with criminal forfeiture provisions and the potential for sentencing enhancements for those who generate e-mail addresses through harvesting and dictionary attacks.

I commend Senators BURNS, WYDEN, MCCAIN, and HOLLINGS for their hard work over the course of the past several Congresses on the CAN SPAM Act. They have worked diligently to enhance the privacy of consumers without unnecessarily burdening legitimate electronic commerce. The balance is a difficult one to strike. I compliment these fine Senators for being able to strike that balance and get it done.

I believe enactment of the CAN SPAM Act is an important first step toward curbing predatory and abusive commercial e-mail, but it is certainly not the end. We all recognize that there is no single solution to the spam problem. While we must critically and continually monitor the effectiveness of any legislative solution we enact, we must pursue other avenues as well. Technological fixes, education and international enforcement are integral components to any effective solution. To this end, we will need the assistance of private industry and our international partners.

I look forward to working with my colleagues in both Houses as we attempt to confront the spam problem on all fronts. I urge my colleagues to support this amendment which will strengthen the comprehensive legislative package that is before us today.

Mr. WYDEN. Madam President, will the Senator from Utah yield?

Mr. HATCH. I am happy to do that.

Mr. WYDEN. I commend the Senator from Utah for his efforts in this area. The contribution the Senator from Utah makes is not just useful but it is absolutely critical. We can write bills to fight spam until we run out of paper, but unless we have the kind of enforcement the Senator from Utah envisions, we are not going to get the job right.

I am particularly interested in working with the distinguished chairman of the Judiciary Committee in making sure we have some vigorous oversight after this bill is enacted into law. If after this bill is passed we have the prosecutors, the Federal Trade Commission, and others bring some tough enforcement actions, that will be a tremendously valuable deterrent.

I would like to work with the distinguished chairman of the committee to have some vigorous oversight hearings after this bill has gone into effect. That is what it is going to take to make sure we have the teeth in this legislation to make a difference. I thank my colleague.

Mr. HATCH. I thank my colleague for those kind remarks and thank him and Senator MCCAIN for their leadership in the Senate.

I ask unanimous consent to add Senator GRASSLEY as a cosponsor of this amendment, No. 1893. Senator GRASSLEY has worked with me and Senator LEAHY every step of the way and deserves a lot of credit.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Arizona.

Mr. MCCAIN. I thank Senator HATCH and Senator LEAHY for their work to improve the criminal provisions and strengthen the Burns-Wyden CAN-SPAM Act. The active participation of Senator HATCH and his committee on this issue has been extremely valuable.

I join my friend from Oregon in urging Senator HATCH to have oversight on how this law is enforced and that it is properly done. We face challenges in enforcement of this act, particularly in light of the changes in technology that will inevitably occur which will make this legislation even harder to enforce than it is today. I thank Senator HATCH, and I urge adoption of the amendment.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. I encourage the adoption of this amendment. I am one of the cosponsors along with Senator HATCH and Senator LEAHY. Let me state for the RECORD the essence of part of a colloquy between myself and Senator LEAHY.

We have all been stunned by how pervasive spam has become in e-mail traffic. We have experienced the way the clogged inboxes, the unwanted solicitations, and the unwelcome pornographic material make a session on the computer less productive and less enjoyable.

I detailed earlier in my remarks the innumerable pornographic messages that come into my Senate office computer in my offices back in Florida. It is one of the top complaints I receive from my constituents. I am very pleased to be working with the Senators from Utah and Vermont to impose tough penalties on those who impose this garbage on others.

I am always concerned with the type of spam that goes beyond the mere nuisance variety. It is becoming clear with each passing month that many criminal enterprises have adopted spam as their method of choice for perpetrating criminal schemes. Spammers are now frequently perpetrating fraud to cheat people out of their savings, stealing people's identities, or trafficking in child pornography. What spam allows them to do is to conduct these criminal activities on a much broader scale at dramatically reduced costs. They can literally reach millions of people at the push of a button.

I have given the example in the old days that someone would use the mail to send out 100 or 150 letters. They would have nefarious schemes such as bilking senior citizens out of money or perpetrating child pornography. Now they do not send out 150 letters to do it. They punch a button and they are sending out 150 million e-mail messages perpetrating their schemes of fleecing senior citizens or perpetrating child pornography.

The colloquy I propose with Senator LEAHY at his convenience would be to reinforce a ban—which is why I had originally introduced S. 1052—in the Deceptive Unsolicited Bulk Electronic Mail Act. I introduced that with Senator PRYOR. That is why I have sought, with the help of the Senator from Vermont and the Senator from Utah, to include provisions in this legislation that make it clear our intent to treat the use of spam to commit large-scale criminal activity as the organized crime that it is.

We do it in two ways. First, by working with the United States Sentencing Commission in the amendment being offered by the Senators toward enhanced sentences for those who use spam or other unsolicited bulk e-mail to commit fraud, identity theft, obscenity, child pornography, or the sexual exploitation of children.

Second, we make the seriousness of our intentions clear in this amendment by urging prosecutors to use all the tools at their disposal, including RICO, to bring down the criminal enterprises that are facilitated by the use of spam.

Specifically, we are talking about the RICO statute which not only comes

with some of the stiffest penalties in the Criminal Code but it allows for the seizure of assets of criminal organizations, it allows the prosecutors to go after the criminal enterprise, and it allows for civil suits brought by injured parties. It is tough enforcement like this that will help bring the worst of the spammers to their knees.

Mr. MCCAIN. Madam President, I ask consent that the following amendments be the only first-degree amendments in order to the bill and that they be subject to second-degrees which would be relevant to the first degree to which they are offered: Corzine amendment, Santorum amendment, Enzi amendment, Landrieu amendment, and Boxer amendment.

Mr. LEAHY. Reserving the right to object.

Mr. WYDEN. I ask unanimous consent to add Senator HARKIN's name to that list and then I support the unanimous consent.

The PRESIDING OFFICER. Does the Senator so modify his request?

Mr. LEAHY. Reserving the right to object.

The PRESIDING OFFICER. Does the Senator from Arizona so modify his request?

Mr. MCCAIN. I do modify my request.

Mr. LEAHY. Where is the Hatch-Leahy amendment?

Mr. MCCAIN. Pending and about to be adopted.

Mr. LEAHY. It is not precluded by the unanimous consent request.

The PRESIDING OFFICER (Mr. CHAMBLISS). It would not be precluded.

Without objection, it is so ordered.

Mr. MCCAIN. Mr. President, I thank Senator LEAHY for his work on this amendment, along with Senator HATCH, who lends and contributes a great deal of teeth to this bill. I know they have worked very hard.

As I mentioned to Senator HATCH, as did the Senator from Oregon, we know that the Senator and his committee will be involved in the oversight of the enforcement of this legislation. We thank you for his valuable contribution.

I urge the sponsors of those amendments, Senators CORZINE, SANTORUM, ENZI, LANDRIEU, BOXER, and HARKIN, to please come to the floor in courtesy to their colleagues so we can take up and dispose of these amendments. Please show some courtesy to your colleagues. If you have amendments pending, please come. We are ready for them.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, when the Senator from Arizona asked to make his unanimous consent request, I was in the process of answering the question of the Senator from Florida, who has spoken to me many times about his interest in these areas.

I appreciate what he has done to strengthen this legislation.

We keep the authority to set sentences where it belongs, with the Sentencing Commission, while remaining deferential, to the discretion of prosecutors.

The provisions from the Senator from Florida make it unmistakably clear that Congress expects this legislation to be used not just to punish spammers but also to dismantle criminal operations that are carried out with spam and other unsolicited bulk e-mail.

I also would note that the Senator from Florida has spoken about spam evolving from being just a nuisance. He is absolutely right. Serious crimes are being committed using this medium, which reaches a large number of people. Senior citizens are more and more often targeted to being bilked out of millions of dollars, and with very little effort on the part of the spammers.

Mr. President, I will engage in a colloquy with Senator NELSON because I think it is important for the purposes of the RECORD. With all the work the Senator from Florida has done, I want the RECORD to be very clear.

Mr. NELSON of Florida. Mr. President, would the Senator from Vermont be willing to engage me in a colloquy?

Mr. LEAHY. I would be pleased to engage in a colloquy with the Senator from Florida.

Mr. NELSON of Florida. Mr. President, I have been stunned, as have so many of my colleagues, by how pervasive spam has become in email traffic. We have all experienced the way clogged in-boxes, unwanted solicitations, and unwelcome pornographic material make a session on the computer less productive and less enjoyable. It is one of the top complaints that I receive from my constituents, and I am very pleased to be working with the Senators from Vermont and Utah to impose tough penalties on those who impose this garbage on others.

But I am also concerned with a type of spam that goes beyond the mere nuisance variety. It is becoming clearer with each passing month that many criminal enterprises have adopted spam as their method of choice for perpetrating their criminal schemes. Spammers are now frequently perpetrating fraud to cheat people out of their savings, stealing people's identities, or trafficking in child pornography. What spam allows them to do is to conduct these criminal activities on a much broader scale at dramatically reduced costs—they can literally reach millions of people at the push of a button.

Mr. LEAHY. The Senator from Florida is correct. Nowadays, we see that spam has moved far beyond being just a nuisance to people trying to use email on their personal computers. Serious crimes are being committed using this medium, which can reach large numbers of people in a matter of seconds. For example, if a person or organization seeks to commit fraud to bilk senior citizens out of their money, with spam they can reach millions of potential victims at very low, even negligible costs. With such low costs, and such wide reach, even a small rate of success can make for a very profitable criminal enterprise.

Mr. NELSON of Florida. The Senator from Vermont has provided an excellent example of the problem that we are trying to address. And that is why I have sought, with the help of the Senator from Vermont and the Senator from Utah, to include provisions in this legislation that make clear our intent to treat the use of spam to commit large-scale criminal activity as the organized crime that it is.

We do this in two ways: First, by working with the U.S. Sentencing Commission toward enhanced sentences for those who use spam or other unsolicited bulk email to commit fraud, identity theft, obscenity, child pornography, or the sexual exploitation of children.

Second, we make the seriousness of our intentions clear by urging prosecutors to use all tools at their disposal to bring down the criminal enterprises that are facilitated by the use of spam. Among other things, we are talking about the RICO statute, which not only comes with some of the stiffest penalties in the criminal code, but also allows for the seizure of the assets of criminal organizations, and for civil suits brought by injured parties. It is tough enforcement like this that will help bring the worst of the spammers to their knees.

Mr. LEAHY. The Senator from Florida has made me aware of his interest in these provisions on several occasions, and I appreciate his contributions to this effort. They strengthen the legislation in important ways. While keeping the authority to set sentences where it belongs—with the Sentencing Commission—and while remaining deferential to the discretion of prosecutors, these provisions makes unmistakably clear that Congress expects this legislation to be used not just to punish spammers, but also to dismantle the criminal enterprises that are carried out with spam and other unsolicited bulk e-mail.

Mr. NELSON of Florida. I thank the Senator from Vermont for his outstanding leadership on this issue, and for his cooperation in including my amendments in the legislation.

Mr. LEAHY. Mr. President, it is increasingly obvious that unwanted commercial e-mail is more than just a nuisance. Businesses and individuals sometimes have to wade through hours of spam. It makes it impossible for them to do their work. It slows down whole enterprises.

In my home State of Vermont, one legislator logged on to his server and found that two-thirds of the e-mails in his inbox were spam. Our legislator is a citizen or legislature. He does not have staff or anything else. This was after the legislator had installed spam-blocking software. His computer stopped about 80 percent of it. But even

after he blocked 80 percent, two-thirds of the e-mail he had was spam.

The e-mail users are having the online equivalent of the experience of the woman in the classic Monty Python skit. She wanted to order a Spam-free breakfast at a restaurant. Try as she might, she cannot get the waitress to bring her the meal she wants. Every dish in the restaurant comes with Spam; it is just a matter of how much. There is eggs, bacon, and Spam; eggs, bacon, sausage, and Spam; Spam, bacon, sausage, and Spam; Spam, egg, Spam, Spam, bacon, and Spam; Spam, sausage, Spam, Spam, Spam, bacon, Spam, tomato, and Spam, and so on. Finally, the customer said: I don't like Spam. I don't want Spam. I hate Spam.

Now, I repeat that with apologies to John Cleese and everybody else in the Monty Python skit.

Mr. President, anybody who goes on e-mail, including every member of my family down to my 5-year-old grandchild, knows how annoying spam can be.

A Harris poll taken last year found that 80 percent of the respondents viewed spam as ''very annoying'' and 74 percent wanted to make it illegal.

Some 30 States now have anti-spam laws but it is difficult to enforce them.

There are actually billions of unwanted e-mails that are blocked by ISPs every day. Hundreds of millions of spam e-mails get through just the same.

Now, we have to be very careful when we regulate in cyberspace. We must not forget that spam, like more traditional forms of commercial speech, is protected by the first amendment. We cannot allow spam to result in the ''virtual death'' of the Internet, as one Vermont newspaper put it.

So what Senator HATCH and I have offered and is being accepted—the Hatch-Leahy-Nelson-Schumer amendment—would, first, prohibit hacking into another person's computer system and sending bulk spam from or through that system.

Second, it would prohibit using a computer system that the owner makes available for other purposes as a conduit for bulk spam, with the intent to deceive the recipient as to where the spam came from.

The third prohibition targets another way that outlaw spammers evade ISP filters: falsifying the ''header information'' that accompanies every e-mail and sending bulk spam containing that fake header information. The amendment prohibits forging information regarding the origin of the e-mail message.

Fourth, the Hatch-Leahy-Nelson-Schumer amendment prohibits registering for multiple e-mail accounts or Internet domain names and sending bulk mail from those accounts or domains.

Fifth, and finally, our amendment addresses a major hacker spammer technique for hiding identity that is a common and pernicious alternative to domain name registration—that is, hijacking unused expanses of Internet address space and using them to launch junk mail.

Now, penalties under the amendment are tough, but they are measured. Recidivists and those who send spam in furtherance of another felon may be imprisoned for up to 5 years. The sound of a jail cell closing for 5 years should focus their attention.

Large-volume spammers, those who hack into another person's computer system to send bulk spam, and spam ''kingpins'' who use others to operate their spamming operations may be imprisoned for up to 3 years, and so on.

Then, of course, we direct the Sentencing Commission to look at other areas.

So, Mr. President, I see my colleagues on the floor, Senator BURNS and Senator WYDEN, who have done yeoman work on this legislation. I compliment all those who worked together. I certainly compliment the two of them, as well as Senator HATCH, Senator NELSON, and Senator SCHUMER. I think we are putting together something that is worth passing.

Mr. WYDEN. Will the Senator yield?

Mr. LEAHY. Sure.

Mr. WYDEN. Mr. President, just before he leaves the floor, I thank the distinguished Senator from Vermont for all his help. I have already told Senator HATCH how incredibly important the enforcement provision is. You can write bills forever, but without the enforcement to which the Senator from Vermont and the Senator from Utah are committed, those bills are not going to get the job done.

Suffice it to say, when there were a lot of people in public life who thought their computers were somehow a TV screen, the Senator from Vermont was already leading the Senate and those who work in the public policy arena to understand the implications of the medium.

There is nobody in public life whose counsel I value more on telecommunications and Internet policy than the distinguished Senator from Vermont. I appreciate his giving me this opportunity to work with him on the enforcement provisions. It will be the lifeblood of making this bill work.

Mr. LEAHY. Mr. President, I thank my dear friend from Oregon for his far too generous words. I have enjoyed working with him. He has carried over from his service in the other body. He has a strong interest in this. Just as important as his strong interest is the fact he has extraordinary expertise in this area. That is very helpful.

If you would allow me one quick personal story. This sort of humbles you. I like to think I am very knowledgeable on this. My 5-year-old grandson climbed in my lap and asked me to log on to a particular interactive site for children. It is something he could do himself, but we don't let him log on himself because of the problems with some sites that appear to be for children, and are anything but.

So I log on for him, and he climbs up on my lap, takes the mouse out of my hand and says: I better take over now because it gets very complicated.

In some ways we are protecting those 5-year-olds because they are the next generation using this technology. I thank my friend from Oregon and good friend from Montana for the enormous amount of work they have done here.

I yield the floor.

Mr. BURNS. Mr. President, I might add, Senator LEAHY and I serve as cochairs on the Internet caucus. We understand the ramifications of this new medium that has come upon us, its importance, and all it has to offer. Of course, getting rid of spam is one of those things that if we don't do it, then I am afraid it will be the one that chokes this very new way of communicating and brings us not only information but new services.

I appreciate the work of the Senator from Vermont and thank him for it.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I have been watching. Everybody is pretty much congratulating everybody else. Let me add my congratulations. This is an important issue. There are some serious people who have done serious work on this matter.

I don't know where the word spam came from. I suspect someone has described that today. It is a luncheon meat in northern Minnesota in our region of the country. But spam is a term used to describe those unsolicited messages that are sent into your computer. It has become much more than just a nuisance. It was not too long ago, perhaps even a year or two, these unsolicited notices you receive through e-mail and other devices were a nuisance. Now it is a very serious problem. Log on to your computer and see what happens. You have intruders in that computer, and they are flagging for you gambling sites and dating sites and pornography, virtually everything. Go to your e-mail and find out how many unsolicited e-mails you have had. You have more friends than you thought you had. Dozens and dozens of people and groups are writing to you. Most of them, of course, are pornographic, and they are unsolicited kinds of messages you wouldn't want to explore, nor would you want your family to explore.

If this afternoon someone drove up in front of your house with a truck and knocked on the front door and said: I have some actors in the back of this truck of mine, and we want to come into your home because we know you have a 10-year-old and a 12-year-old child, we would like to put on a show for you, it is going to be a pornographic sex show, you would go to the phone and call the police. The police would come and arrest them, and they would be prosecuted. Yet there are people who come into our homes and put on these pornographic sex shows through the computer—yes, to

unsuspecting children. Yes, it happens all the time. We know it. That is why we are trying to determine what can we do to stop it.

There is a right of free speech, but no stranger has a right to entertain 10-year-old kids in your home or our home with pornography. No stranger has that right. That does not exist as a right of free speech.

The question is, what kind of legislation can we craft that addresses this in a serious way. There is so much spam on the Internet. I am describing pornography, but there are so many commercial and other devices with unsolicited messages that it almost completely overwhelms the use of e-mail. It clogs the arteries of commerce for which the Internet and e-mail have been very valuable.

In the last couple of years, we have a circumstance where 46 percent of all e-mail traffic in the month of April this year was spam. It was only 18 percent in April of 2002, more than double in just a year. It does clog the arteries of commerce. It exposes children to things that are harmful and inappropriate. The question is, what can we do about it.

This legislation is an attempt to try to address it. We will best congratulate ourselves if and after the legislation is passed, in force, and we determine it works. If and when that is the case, then we all should say congratulations for having done something useful. We have, of course, tried this before. The Supreme Court struck down legislation that came from the Commerce Committee dealing with this issue. I think this is a better way to approach it. It is more serious, more thoughtful, and more likely to be able to meet the test of being constitutional.

We in the Commerce Committee have worked on other issues similar to this, not so much dealing with spam but especially protecting children.

Senator ENSIGN and I coauthored legislation dealing with a new domain name. We are creating a new domain in this country called dot U.S., just like there is a domain dot U.K. We will have a new one called dot U.S. We decided by legislation we would attach to that domain a condition that they must also create a domain within dot U.S. called dot kids dot U.S. That will be a domain in which parents know that when their children are in dot kids dot U.S., any site in dot kids dot U.S., they are going to be seeing things that are only appropriate for children. That is going to be a big help to parents.

If you restrict the child to dot kids dot U.S. and you know that child is not going to be exposed to things children should not be exposed to, that is legislation that is going to be very helpful.

Let me also say this piece of legislation dealing with spam is similarly helpful. We have a circumstance where what shows up on the computers of virtually every American is not only unsolicited messages but messages that come from anonymous sources all over the world, messages that contain things you don't have any interest in, that are grotesque, unwanted, and pornographic. You can't determine where they come from.

This legislation, along with the amendments being offered, moves exactly in the right direction to prohibit false and misleading transmission of information. It prohibits the knowing use of deceptive subject headings, requires a return address or comparable reply message so you can figure out who sent it, requires the UCE be self-identified as an advertisement or a solicitation. All of these things are very important. At the end of time, when we have passed this legislation, it is in force, and we determine it is workable, then we will know we have done something very significant.

Let me make one additional point. I think computers and the Internet are quite remarkable. It is difficult to find words to describe how wonderful it can be. To be in a town like my hometown of nearly 300 people and have access through the Internet to the biggest library in the world, have access on the Internet to the great museums of the world. I grew up in a small town, with a high school senior class of nine. We had a library the size of a coat closet. With the Internet, that school now has a library the size of the largest library in the world, the largest repository of human knowledge existing anywhere on Earth—the Library of Congress. Yes, that exists in my hometown by virtue of the Internet.

The Internet is remarkable, wonderful, and breathtaking. It opens vistas of new opportunities for all Americans. We are dealing with the other side of the Internet because there are two sides to this issue. The other side contains some very serious issues and problems. We can continue to ignore them at our peril, at the peril of our children, and at the peril of business and commerce, which relies on the Internet as an artery of commerce. We can ignore them or we can address them, as my colleagues, Senators WYDEN and BURNS, chose to do with their leadership in the Commerce Committee. I thank them and I also thank the Senator from Arizona, Mr. MCCAIN, and Senator HOLLINGS.

We have a great committee, one on which I am proud to serve. We do a lot of work and address a lot of issues. This is but one, but it is a very important one and it is a timely piece of legislation to bring to the floor. It appears that, based on the unanimous consent request, this will now move and, with some amendments being offered, I think we will get to final passage. I expect to have a very strong vote by the entire Senate because it is a good piece of legislation. The time to do this is now and this is the right thing to do.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BURNS. Mr. President, I thank my friend from North Dakota for his kind words. I tell all Senators, both here and watching, that the Boxer amendment has been withdrawn. That gets us down to where we could get this bill passed tonight.

I believe the pending business is the Hatch-Leahy amendment No. 1893. I call for its adoption.

The PRESIDING OFFICER. Is there further debate?

The question is on agreeing to the amendment.

The amendment (No. 1893) was agreed to.

Mr. BURNS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, we are very close to being able to pass this bill tonight. This is an extraordinarily important consumer measure, a measure that literally touches the lives of millions of people every single day. At this point, we have only three amendments left. The Senator from New Jersey, Mr. CORZINE, has an amendment; the Senator from Wyoming, Mr. ENZI, is to offer an amendment with Senator SANTORUM; and then Senator LANDRIEU has an amendment.

I am very hopeful we will be able to finish this bill fairly shortly. I urge those Senators who have their amendments in order to come to the floor at this point. This is legislation that has been worked on for more than 4 years. During that time, this problem has grown exponentially. A number of Senators have spoken about it, and the Senate ought to move ahead.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ALEXANDER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALEXANDER. I ask unanimous consent that I be allowed to speak as in morning business for 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE INTERNET TAX FREEDOM ACT

Mr. ALEXANDER. Mr. President, in our political speeches, Senators, especially we Republicans, have a lot to say in defense of the Tenth Amendment, that all powers not expressly given to the central government are reserved to the States. We are big talkers about local control, about State responsibilities, and about State rights.

Somehow, when we get to Washington and away from home, a lot of that goes up in smoke. We start thinking of grand ideas and sending State and local governments the bill to pay for our grand ideas. Special education for children with disabilities, but we say to the State and local governments, you pay the bill. New construction to stop storm water runoff, but we

say to the cities, you pay the bill. Higher standards for roads, we say to the States, you pay the bill. New standards for highly qualified teachers, you pay the bill. We call these unfunded mandates.

What I want to talk about today is the worst kind of unfunded mandate. Not only do we have grand ideas and are telling State and local governments that they have to pay for them, we now want to tell them how to pay for them. The latest such example is to tell State and local governments that a tax on Internet access or telephones is somehow a worse tax, a bad tax they should not be allowed to pursue, than a tax on medicine, food, or an income tax.

I supported a moratorium for 7 years on State and local access to the Internet so the Internet could get up and get going, but now it is up and going. It ought to be absolutely on its own with other commercial activity. Yet our friends in the House of Representatives and some in the Senate would not only extend the moratorium on State and local taxes on Internet access, they would broaden it.

This is none of the Congress's business. It is a State and local responsibility to decide how to pay the bill to fund State parks, local schools, roads, prisons, colleges, and universities. That is what Governors do. That is what legislators do. That is what mayors do. That is what county commissioners and city council men and women do.

The inevitable result of such unfunded mandates from Washington, DC, telling States what taxes they can and cannot use, is to transfer more government to Washington, DC, because here we can print money to pay for it. It sounds awfully good to say we are banning a tax, but what we are actually doing is favoring one tax over another tax with the decision made in Washington, DC.

For example, if Tennessee's ability to have a broad-based sales tax is limited, then the chances that Tennessee will have an income tax are higher, or a higher tax on medicine or food, or higher college tuition for families to pay. The same goes for Florida, Texas, Washington State, or any other State.

Some say this interference in State prerogatives and local prerogatives is justified by the interstate commerce clause of the Constitution, and that the Internet is too important to carry its fair share of the taxes. I ask: Is access to the Internet more important than food? If not, then why not limit the State sales tax on food, medicine, electricity, natural gas, water, corporations generally, car tags, telephones, cable TV? They are all in interstate commerce. Let us limit the tax on all of them from Washington, DC.

Unless we want to get rid of State and local governments and transfer all responsibilities for local schools, colleges, prisons, State parks, and roads to Washington, DC, and claim all wisdom resides here, then we have no business telling State and local governments how they pay the bill for legitimate services.

We should read the Tenth Amendment to the Constitution and get back to our basic job of funding war, welfare, Social Security, Medicare, and debt. And leave decisions about what services to provide and what taxes to impose to State and local governments and to State and locally elected officials.

Under the rules of the Senate, because this bill imposes costs on States without paying for them, it is an unfunded mandate and subject to a point of order to pass this bill that would extend the moratorium on State and local ability to tax access to the Internet.

In its cost estimate of September 9, 2003, the Congressional Budget Office determined that S. 150, as reported by the Commerce Committee, would impose direct costs on State and local governments of lost revenues of $80 million to $120 million per year beginning in 2007. Because the estimate exceeds the threshold of $64 million for 2007, this is an intergovernmental mandate, subject to a point of order. According to the Multi-state Tax Commission, the bill has the potential to exempt telephone and cable companies from a broad array of State and local taxes that could amount to an unfunded mandate on State and local governments of up to $9 billion a year. Every Senator who votes to overturn the point of order to this bill would be voting for an unfunded mandate, which most of us have promised not to do. Let the moratorium on access to the Internet die a well-deserved and natural death when it expires on November 1 and let us remember the Republican Congress 10 years ago promised to end unfunded mandates.

I ask unanimous consent that certain information from the Congressional Budget Act describing unfunded mandates and the point of order that is possible to be raised in opposition to such mandates be printed in the RECORD.

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

[Congressional Budget Office Cost Estimate]

S. 150—INTERNET TAX NONDISCRIMINATION ACT

AS ORDERED REPORTED BY THE SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION ON JULY 31, 2003.

SUMMARY

S. 150 would permanently extend a moratorium on certain state and local taxation of online services and electronic commerce, and after October 1, 2006, would eliminate an exception to that prohibition for certain states. Under current law, the moratorium is set to expire on November 1, 2003. CBO estimates that enacting S. 150 would have no impact on the federal budget, but beginning in 2007, it would impose significant annual costs on some state and local governments.

By extending and expanding the moratorium on certain types of state and local taxes, S. 150 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the mandate would cause state and local governments to lose revenue beginning in October 2006; those losses would exceed the threshold established in UMRA ($64 million in 2007, adjusted annually for inflation) by 2007. While there is some uncertainty about the number of states affected, CBO estimates that the direct costs to states and local governments would probably total between $80 million and $120 million annually, beginning in 2007. The bill contains no new private-sector mandates as defined in UMRA.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

CBO estimates that enacting S. 150 would have no impact on the federal budget.

INTERGOVERNMENTAL MANDATES CONTAINED IN THE BILL

The Internet Tax Freedom Act (ITFA) currently prohibits state and local governments from imposing taxes on Internet access until November 1, 2003. The ITFA, enacted as Public Law 105–277 on October 21, 1998, also contains an exception to this moratorium, sometimes referred to as the ''grandfather clause,'' which allows certain state and local governments to tax Internet access if such tax was generally imposed and actually enforced prior to October 1, 1998.

S. 150 would make the moratorium permanent and, after October 1, 2006, would eliminate the grandfather clause. The bill also would state that the term ''Internet access'' or ''Internet access services'' as defined in ITFA would not include telecommunications services except to the extent that such services are used to provide Internet access (known as ''aggregating'' or ''bundling'' of services). These extensions and expansions of the moratorium constitute intergovernmental mandates as defined in UMRA because they would prohibit states from collecting taxes that they otherwise could collect.

ESTIMATED DIRECT COSTS OF MANDATES TO STATE AND LOCAL GOVERNMENTS

CBO estimates that repealing the grandfather clause would result in revenue losses for as many as 10 states for several local governments totaling between $80 million and $120 million annually, beginning in 2007. We also estimate that the change in the definition of Internet access could affect tax revenues for many states and local governments, but we cannot estimate the magnitude or the timing of any such additional impacts at this time.

UMRA includes in its definition of the direct costs of a mandate the amounts that state and local governments would be prohibited from raising in revenues to comply with the mandate. The direct costs of eliminating the grandfather clause would be the tax revenues that state and local governments are currently collecting but would be precluded from collecting under S. 150. States also could lose revenues that they currently collect on certain services, if those services are redefined as Internet access under the bill.

Over the next five years there will likely be changes in the technology and the market for Internet access. Such changes are likely to affect, at minimum, the price for access to the Internet as well as the demand for and the methods of such access. How these technological and market changes will ultimately affect state and local tax revenues is unclear, but for the purposes of this estimate, CBO assumes that over the next five years, these effects will largely offset each other, keeping revenues from taxes on Internet access within the current range.

THE GRANDFATHER CLAUSE

The primary budget impact of this bill would be the revenue losses—starting in October 2006—resulting from eliminating the grandfather clause that currently allows some state and local governments to collect taxes on Internet access. While there is some uncertainty about the number of jurisdictions currently collecting such taxes—and the precise amount of those collections—CBO believes that as many as 10 states (Hawaii, New Hampshire, New Mexico, North Dakota, Ohio, South Dakota, Tennessee, Texas, Washington, Wisconsin) and several local jurisdictions in Colorado, Ohio, South Dakota, Texas, Washington, and Wisconsin are currently collecting such taxes and that these taxes total between $80 million and $120 million annually. The estimate is based on information from the states involved, from industry sources, and from the Department of Commerce. In arriving at this estimate, CBO took into account the fact that some companies are challenging the applicability of the tax to the service they provide and thus may not be collecting or remitting the taxes even though the states feel they are obligated to do so. So potential liabilities are not included in the estimate.

It is possible that if the moratorium were allowed to expire as scheduled under current law, some state and local governments would enact new taxes or decide to apply existing taxes to Internet access during the next five years. It is also possible that some governments would repeal existing taxes or preclude their application to these services. Because such changes are difficult to predict, for the purposes of estimating the direct costs of the mandate, CBO considered only the revenues from taxes that are currently in place and actually being collected.

DEFINITION OF INTERNET ACCESS

Depending on how the language altering the definition of what telecommunications services are taxable is interpreted, that language also could result in substantial revenue losses for states and local governments. It is possible that states could lose revenue if services that are currently taxes are redefined as Internet ''access'' under the definition in S. 150. Revenues could also be lost if Internet access providers choose to bundle products and call the product Internet access. Such changes would reduce state and local revenues from telecommunications taxes and possibly revenues from content currently subject to sales and use taxes. However, CBO cannot estimate the magnitude of these losses.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

This bill would impose no new private-sector mandates as defined in UMRA.

PREVIOUS CBO ESTIMATE

On July 21, 2003, CBO transmitted a cost estimate for H.R. 49, the Internet Tax Nondiscrimination Act, as ordered reported by the House Committee on the Judiciary on July 16, 2003. Unlike H.R. 49, which would eliminate the grandfather clause upon passage, S. 150 would allow the grandfather clause to remain in effect until October 2006. Thus, while both bills contain an intergovernmental mandate with costs above the threshold, the enactment of S. 150 would not result in revenue losses to states until October 2006.

ESTIMATE PREPARED BY:

Impact on State, Local, and Tribal Governments: Sarah Puro
Federal Costs: Melissa Zimmerman
Impact on the Private Sector: Paige Piper/Bach

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis

SEC. 424. [2 U.S.C. 658c] DUTIES OF THE DIRECTOR; STATEMENTS ON BILLS AND JOINT RESOLUTIONS OTHER THAN APPROPRIATIONS BILLS AND JOINT RESOLUTIONS.

(a) FEDERAL INTERGOVERNMENTAL MANDATES IN REPORTED BILLS AND RESOLUTIONS.—For each bill or joint resolution of a public character reported by any committee of authorization of the Senate or the House of Representatives, the Director of the Congressional Budget Office shall prepare and submit to the committee a statement as follows:

(1) CONTENTS.—If the Director estimates that the direct cost of all Federal intergovernmental mandates in the bill or joint resolution will equal or exceed $50,000,000 (adjusted annually for inflation) in the fiscal year in which any Federal intergovernmental mandate in the bill or joint resolution (or in any necessary implementing regulation) would first be effective or in any of the 4 fiscal years following such fiscal year, the Director shall so state, specify the estimate, and briefly explain the basis of the estimate.

(2) ESTIMATES.—Estimates required under paragraph (1) shall include estimates (and brief explanations of the basis of the estimates) of—

(A) the total amount of direct cost of complying with the Federal intergovernmental mandates in the bill or joint resolution;

(B) if the bill or resolution contains an authorization of appropriations under section 425(a)(2)(B), the amount of new budget authority for each fiscal year for a period not to exceed 10 years beyond the effective date necessary for the direct cost of the intergovernmental mandate; and

(C) the amount, if any, of increase in authorization of appropriations under existing Federal financial assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution and usable by State, local or tribal governments for activities subject of the Federal intergovernmental mandates.

(3) ADDITIONAL FLEXIBILITY INFORMATION.—The Director shall include in the statement submitted under this subsection, in the case of legislation that makes changes as described in section 421(5)(B)(i)(II)—

(A) if no additional flexibility is provided in the legislation, a description of whether and how the States can offset the reduction under existing law; or

(B) if additional flexibility is provided in the legislation, whether the resulting savings would offset the reductions in that program assuming the States fully implement that additional flexibility.

(4) ESTIMATE NOT FEASIBLE.—If the Director determines that it is not feasible to make a reasonable estimate that would be required under paragraphs (1) and (2), the Director shall not make the estimate, but shall report in the statement that the reasonable estimate cannot be made and shall include the reasons for that determination in the statement. If such determination is made by the Director, a point of order under this part shall lie only under section 425(a)(1) and as if the requirement of section 425(a)(1) had not been met.

(b) FEDERAL PRIVATE SECTOR MANDATES IN REPORTED BILLS AND JOINT RESOLUTIONS.—For each bill or joint resolution of a public character reported by any committee of authorization of the Senate or the House of Representatives, the Director of the Congressional Budget Office shall prepare and submit to the committee a statement as follows:

(1) CONTENTS.—If the Director estimates that the direct cost of all Federal private sector mandates in the bill or joint resolution will equal or exceed $100,000,000 (adjusted annually for inflation) in the fiscal year in which any Federal private sector mandate in the bill or joint resolution (or in any necessary implementing regulation) would first be effective or in any of the 4 fiscal years following such fiscal year, the Director shall so state, specify the estimate, and briefly explain the basis of the estimate.

(2) ESTIMATES.—Estimates required under paragraph (1) shall include estimates (and a brief explanation of the basis of the estimates) of—

(A) the total amount of direct costs of complying with the Federal private sector mandates in the bill or joint resolution; and

(B) the amount, if any, of increase in authorization of appropriations under existing Federal financial assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution usable by the private sector for the activities subject to the Federal private sector mandates.

(3) ESTIMATE NOT FEASIBLE.—If the Director determines that it is not feasible to make a reasonable estimate that would be required under paragraphs (1) and (2), the Director shall not make the estimate, but shall report in the statement that the reasonable estimate cannot be made and shall include the reasons for that determination in the statement.

(c) LEGISLATION FALLING BELOW THE DIRECT COSTS THRESHOLDS.—If the Director estimates that the direct costs of a Federal mandate will not equal or exceed the thresholds specified in subsections (a) and (b), the Director shall so state and shall briefly explain the basis of the estimate.

(d) AMENDED BILLS AND JOINT RESOLUTIONS; CONFERENCE REPORTS.—If a bill or joint resolution is passed in an amended form (including if passed by one House as an amendment in the nature of a substitute for the text of a bill or joint resolution from the other House) or is reported by a committee of conference in amended form, and the amended form contains a Federal mandate not previously considered by either House or which contains an increase in the direct cost of a previously considered Federal mandate, then the committee of conference shall ensure, to the greatest extent practicable, that the Director shall prepare a statement as provided in this subsection or a supplemental statement for the bill or joint resolution in that amended form.

SEC. 425. [2 U.S.C. 658d] LEGISLATION SUBJECT TO POINT OF ORDER

(a) IN GENERAL.—It shall not be in order in the Senate or the House of Representatives to consider—

(1) any bill or joint resolution that is reported by a committee unless the committee has published a statement of the Director on the direct costs of Federal mandates in accordance with section 423(f) before such consideration, except this paragraph shall not apply to any supplemental statement prepared by the Director under section 424(d); and

(2) any bill, joint resolution, amendment, motion, or conference report that would increase the direct costs of Federal intergovernmental mandates by an amount that causes the thresholds specified in section 424(a)(1) to be exceeded, unless—

(A) the bill, joint resolution, amendment, motion, or conference report provides new budget authority or new entitlement authority in the House of Representatives or direct spending authority in the Senate for each fiscal year for such mandates included in the bill, joint resolution, amendment, motion, or conference report in an amount equal to or exceeding the direct costs of such mandate; or

(B) the bill, joint resolution, amendment, motion, or conference report includes an authorization for appropriations in an amount equal to or exceeding the direct cost of such mandate, and—

(i) identifies a specific dollar amount of the direct costs of such mandate for each year up to 10 years during which such mandate shall be in effect under the bill, joint resolution, amendment, motion or conference report, and such estimate is consistent with the estimate determined under subsection (e) for each fiscal year;

(ii) identifies any appropriations bill that is expected to provide for Federal funding of the direct cost referred to under clause (i); and

(iii)(I) provides that for any fiscal year the responsible Federal agency shall determine whether there are insufficient appropriation for that fiscal year to provide for the direct costs under clause (i) of such mandate, and shall (no later than 30 days after the beginning of the fiscal year) notify the appropriate authorizing committees of Congress of the determination and submit either—

(aa) a statement that the agency has determined, based on a re-estimate of the direct costs of such mandate, after consultation with State, local, and tribal governments, that the amount appropriated is sufficient to pay for the direct costs of such mandate; or

(bb) legislative recommendations for either implementing a less costly mandate or making such mandate ineffective for the fiscal year;

(II) provides for expedited procedures for the consideration of the statement or legislative recommendations referred to in subclause (I) by Congress no later than 30 days after the statement or recommendations are submitted to Congress; and

(III) provides that such mandate shall—

(aa) in the case of a statement referred to in subclause (I)(aa), cease to be effective 60 days after the statement is submitted unless Congress has approved the agency's determination by joint resolution during the 60-day period;

(bb) cease to be effective 60 days after the date the legislative recommendations of the responsible Federal agency are submitted to Congress under subclause (I)(bb) unless Congress provides otherwise by law; or

(cc) in the case that such mandate that has not yet taken effect, continue not to be effective unless Congress provides otherwise by law.

(b) RULE OF CONSTRUCTION.—The provisions of subsection (a)(2)(B)(iii) shall not be construed to prohibit or otherwise restrict a State, local, or tribal government from voluntarily electing to remain subject to the original Federal intergovernmental mandate, complying with the programmatic or financial responsibilities of the original Federal intergovernmental mandate and providing the funding necessary consistent with the costs of Federal agency assistance, monitoring, and enforcement.

(c) COMMITTEE ON APPROPRIATIONS.—

(1) APPLICATION.—The provisions of subsection (a)—

(A) shall not apply to any bill or resolution reported by the Committee on Appropriations of the Senate or the House of Representatives; except

(B) shall apply to—

(i) any legislative provision increasing direct costs of a Federal intergovernmental mandate contained in any bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives;

(ii) any legislative provision increasing direct costs of a Federal intergovernmental mandate contained in any amendment offered to a bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives;

(iii) any legislative provision increasing direct costs of a Federal intergovernmental mandate in a conference report accompanying a bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives; and

* * *

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Before the Senator from Tennessee leaves the floor, I say to him I have my hands full today with spam so I am not going to get into the substance of the Internet Tax Freedom Act that, as my friend knows, I have been a sponsor of in the Senate with Congressman COX in the other body. I am always anxious to work with my colleague from Tennessee.

Essentially, the arguments being made today against the Internet Tax Freedom Act are identical to the ones that were made 5 years ago. If we were to look at the transcript 5 years ago before the Senate Commerce Committee, we were told the States and localities would be stripped of the revenue they needed. We were pretty much told western civilization was going to end at that time.

Ever since then, as we have gone through 5 years of experience, we have not seen that to be the case. States and localities have not been stripped of the revenue they need. Internet sales are still perhaps only 2 percent of the economy. No jurisdiction has shown that they have been hurt by their inability to discriminate against the Internet, and that is all this law stands for is technological neutrality, treating the online world like the offline world is treated.

As I said to my good friend, I have my hands full today with spam so we will debate the Internet Tax Freedom Act another day. I am anxious to work with my colleague. I would only point out the reauthorization of the Internet Tax Freedom Act passed the Commerce Committee unanimously. It is the first time since we have been at this that it has been passed unanimously. I think it is going to be an important debate I will certainly be anxious to talk with my colleague about at that time.

Again, we are hoping those with the amendments that have been made in order to the spam bill will come to the floor. We could finish this legislation in perhaps half an hour, pass a very important proconsumer measure by pretty close to a unanimous vote in the Senate. Senator BURNS and I are certainly hoping that will be the case and hope in particular that Senator CORZINE, Senator ENZI, and Senator SANTORUM will come to the floor and we could be done very quickly.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MCCAIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. COLLINS). Without objection, it is so ordered.

AMENDMENT NO. 1894

Mr. MCCAIN. Madam President, I send an amendment to the desk on behalf of Senators SANTORUM and ENZI, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for Mr. ENZI and Mr. SANTORUM, proposes an amendment numbered 1894.

Mr. MCCAIN. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To require warning labels on sexually explicit commercial e-mail)

On page 51, after line 22, insert the following:

(d) REQUIREMENT TO PLACE WARNING LABELS ON COMMERCIAL ELECTRONIC MAIL CONTAINING SEXUALLY ORIENTED MATERIAL.—

(1) IN GENERAL.—No person may initiate in or affecting interstate commerce the transmission, to a protected computer, of any unsolicited commercial electronic mail message that includes sexually oriented material and—

(A) fail to include in subject heading for the electronic mail message the marks or notices prescribed by the Commission under this subsection; or

(B) fail to provide that the matter in the message that is initially viewable to the recipient, when the message is opened by any recipient and absent any further actions by the recipient, includes only—

(i) to the extent required or authorized pursuant to paragraph (2), any such marks or notices;

(ii) the information required to be included in the message pursuant to subsection (a)(5); and

(iii) instructions on how to access, or a mechanism to access, the sexually oriented material.

(2) PRESCRIPTION OF MARKS AND NOTICES.—Not later than 120 days after the date of the enactment of this Act, the Commission in consultation with the Attorney General shall prescribe clearly identifiable marks or notices to be included in or associated with unsolicited commercial electronic mail that contains sexually oriented material, in order to inform the recipient of that fact and to facilitate filtering of such electronic mail. The Commission shall publish in the Federal Register and provide notice to the public of the marks or notices prescribed under this paragraph.

(3) DEFINITION.—In this subsection, the term ''sexually oriented material'' means any material that depicts sexually explicit conduct (as that term is defined in section 2256 of title 18, United States Code), unless the depiction constitutes a small and insignificant part of the whole, the remainder of which is not primarily devoted to sexual matters.

(4) PENALTY.—A violation of paragraph (1) is punishable as if it were a violation of section 1037(a) of title 18, United States Code.

Mr. ENZI. Madam President, today I introduce an amendment to the CAN–SPAM Act. As some of my colleagues have already expressed, unsolicited commercial e-mail, also known as

spam, aggravates many computer users. Not only can it be a nuisance, but its cost may be passed on to consumers in the form of wasted time, energy and money spent to handle and filter out unwanted spam e-mails. Also, e-mail service providers incur substantial costs when they are forced to upgrade their equipment to process the millions of spam e-mails that they receive every day. Spam e-mail is a time and money vacuum. I support the CAN–SPAM Act because it empowers us to stop these unwanted and unwelcome e-mails.

A recent study conducted by the Federal Trade Commission found that 66 percent of spam contains false or misleading claims. Another 18 percent contains pornographic or adult content. My amendment mandates stronger restrictions that would prevent the increasing amount of spam e-mail containing explicit content from reaching unintended recipients. There is clearly a need to address this in the CAN–SPAM Act because it is potentially the most offensive type of spam on the Internet today. There are sorely misguided individuals—spamers—whose sole mission is to e-mail as many people as possible, regardless of age, indecent material. Internet users, especially minors, should not be involuntarily exposed to explicit content by simply checking their e-mail inbox. My amendment would protect these people in two ways:

First, it would place a notice, approved by the FTC, in the subject header of spam e-mail that contains explicit content. Usually, a subject header is a title line noting the content of the message that has arrived in your inbox. However, in a virtual world already saturated with millions of pieces of spam e-mail, spammers often title e-mails with catchy phrases and whatever they think will get the most people to open the message and read their advertisements. Now spam e-mail with explicit and offensive material is often camouflaged by an inviting and completely misleading subject heading. This is a common way that many e-mail users end up being involuntarily exposed to offensive sexual content. Adding a notice in the subject heading would immediately alert the computer user that the message contained within has explicit and possibly offensive content and should not be viewed by minors. This notice would alert the e-mail recipient and allow him or her to organize and filter their mail for any unwanted material.

Second, my amendment would require that all spam e-mail with explicit content add an opening page to all copies of their e-mail being sent to unknown recipients. This opening page would not contain any explicit images or text, but instead have a link that would link users to that content if they wished. This valuable provision would protect minors and other e-mail users by requiring that the recipient purposefully act and ''click'' in order to get to the explicit images or text. Adding this firewall allows users to opt out of spam e-mail lists and delete offensive e-mails from their inbox without ever being exposed to their content.

As a Senator from the rural State of Wyoming, I fully appreciate the value that the Internet holds for electronic communication and business across long distances. This amendment would allow both communication and business to continue and prosper. However, it also takes an important step in protecting Internet and e-mails users, especially minors, from receiving sexually explicit, offensive and unwanted content in their e-mails. Most people check their inboxes without an idea of what might have landed there or who might have sent it. This amendment makes that process more transparent and gives control back to the Internet user who doesn't want to be exposed to indecent, offensive or explicit content.

Mr. MCCAIN. Madam President, this amendment by Senators SANTORUM and ENZI requires warning labels on sexually explicit commercial e-mail to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet.

Basically, this amendment says no person may initiate or affect interstate commerce the transmission, to a protected computer, of any unsolicited commercial electronic mail message that includes sexually oriented material and fail to include in the subject heading for the electronic mail message the marks or notices prescribed by the Commission, or fail to provide that the matter in the message that is initially viewable to the recipient, when the message is opened by any recipient, and absent any further actions by the recipient, includes only to the extent required or authorized pursuant to any such marks or notices; the information required to be included in the message is clear.

This amendment also prescribes that not later than 120 days after the date of the enactment of this act, the Commission, the Federal Trade Commission, in consultation with the Attorney General, shall prescribe clearly identifiable marks or notices to be included in or associated with unsolicited commercial electronic mail that contains sexually oriented material, in order to inform the recipient of this message, of the material, of that fact to facilitate filtering of such electronic mail.

As all of us have discussed in consideration of this bill, one of the great concerns all of us have is pornographic material that is transmitted in the form of spam. According to several experts, 20 percent of unsolicited spam is pornography. This is an effort on the part of Senators ENZI and SANTORUM to try to at least begin addressing this issue. It is a valuable and important contribution in the form of trying to identify it and to bring it under control. It would make it a crime to send unsolicited e-mail that contains sexually oriented material unless they labeled it as prescribed by the FTC. The criminal penalties for this section would be the same as those contained in the Hatch-Leahy amendment.

I strongly support the amendment and urge its adoption.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Madam President, let me associate myself with the remarks of the distinguished chairman of the committee. Every Member understands that pornography being transmitted through spam is a scourge. There is no question about it. What we have done, because we have just seen this, is we have asked the minority on the Judiciary Committee, under the leadership of Senator LEAHY, to take a look at this. We are very hopeful that we will be able to approve this language in just a few minutes. Again, we are hoping that this bill will be passed, certainly within 20, 25 minutes, and we will have a comment from the Democrats on the Judiciary Committee very shortly.

I share Chairman MCCAIN's view that this is an extremely important issue. When you think about spam, the first thing parents all over this country think about is the flood that is being targeted at families from coast to coast. I am hopeful we will get this approved in a matter of minutes.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCAIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCAIN. Madam President, for the benefit of my colleagues, we have a Landrieu amendment which the Senator from Louisiana has been kind enough to withdraw, but we need to discuss what we need to do in the form of sending a letter to the Federal Trade Commission instructing them to take certain actions which I will discuss in a minute; a Corzine amendment which has two parts to it, which both sides have agreed to; and then I don't believe there will be any further amendments, although that is not completely clear. We could expect a vote on final passage relatively soon.

Senator LANDRIEU was going to offer an amendment that would have required the Consumer Product Safety Commission to undertake a rulemaking to have manufacturers create a database for consumers to be notified of certain product recalls. I have committed to Senator LANDRIEU to work with the CPSC to solicit these views on her legislation and ask how best to accomplish her worthy goals of better informing consumers about product recalls.

Senator LANDRIEU has hit on a very important issue. Unless you happen to see it by accident mentioned on television, the recalls are very seldom

known by at least a majority of those who would be affected by it. I commit to Senator LANDRIEU to see how we can best accomplish that. I appreciate her forbearance at this time in withdrawing the amendment. I hope we can satisfy her concerns by asking for rapid action on the part of the Consumer Product Safety Commission.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Madam President, on behalf of the minority, Senator HOLLINGS believes that Senator LANDRIEU is raising a very important issue for consumers and kids. We do want to work closely with her and move ahead on her initiative. It is an important one for families.

Mr. MCCAIN. Madam President, as we are nearing the end, I am waiting for the Corzine amendment that we will discuss and adopt. Then I believe we will be able to move to final passage. I am not positive, but I think we will be able to. I would like to again express my appreciation to the Senator from Montana, Mr. BURNS, and Senator WYDEN. Four years is a long time to work on a single issue. When these two Senators began work on this issue, spam was minuscule as compared to what it is today. I must admit, I didn't pay much attention to it then, nor did the members of the Commerce Committee, nor the oversight agencies. Both Senators had the foresight to see the incredible proportions that this spamming would reach and the effect that it would have not only on our ability to use e-commerce and e-communications but also on our ability to improve productivity.

The costs involved in the spamming issue are pretty incredible when you count it all up according to certain experts.

So I thank our staffs who have worked on this for so long. Without the leadership of the Senator from Montana, Mr. BURNS, and that of Senator WYDEN, we would not have been able to move this, after several hearings in the Commerce Committee, to the floor of the Senate. I have some confidence that our friends on the other side of the Capitol will act with some dispatch since they are as wary as we are of the gravity of this problem. As soon as we get the Corzine amendment, we will move forward.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BURNS. Madam President, I associate myself with the words of the chairman of the committee. Four years ago we started on this, and it has blossomed. I think it was pretty obvious to a lot of us what the impact of the Internet would be on our everyday communications and the technologies and services and information it provides. But also starting then was this unwanted mail that would show up in your mailbox. It didn't mean much at first, but it was obvious to a lot of us, who have been working on this legislation for 4 years, that this was something that was going to be picked up by a lot of people—the good, the bad, and the ugly, so to speak.

So we went to work on it then and we have been working on it ever since. We thought we had a chance last year to pass it. I would say we had not really done all of our homework, and we didn't get it passed.

I appreciate the leadership of both the chairman and ranking member of the Commerce Committee and also my good friend from Oregon. We have worked hard on this legislation.

I really believe, with the debate going on in the House now, that the time has come. I don't go to a townhall meeting or meet a friend who doesn't say: Take care of that spam. I tell my friends also that this will not do it totally. The industry is going to have to come together using new technologies in order to get it done, and I think the industry will now because they know we are serious about criminal charges, fines, the result of violations of this law.

So I think we send a very strong message to those people who would use the Internet to do what is not acceptable to the American public.

I thank my friends and I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. WYDEN. Madam President, I think we are about ready to actually move to final passage. We have the Corzine amendment and another one coming from the Senator from Iowa. I think we are very close to being able to move ahead.

I wish to express my thanks to the leadership of the committee and my partner for over 4 years, Senator BURNS, on this legislation.

The bottom line here is that when this bill becomes law, big-time spamming, in effect, becomes an outlaw business. For the first time, the kingpin spammers are going to be at risk of Federal prosecution, Federal Trade Commission enforcement, million-dollar lawsuits by State attorneys general and Internet service providers. The reason that is the case is that big-time spammers would have to violate this bill in order for their sleazy operations to continue. If they don't hide their identity, their messages will get filtered out. If they don't use misleading subject lines, people are going to go click and these garbage messages will go straight into the trash unread.

It seems to me there is a chance now, recognizing that we still need international cooperation and tough enforcement, to make a very significant step forward for consumers all across the country.

I will conclude by way of saying that, again, I think enforcement is going to be the key to making this legislation work. When this bill is signed into law, I have been saying that the enforcers—the Justice Department, State attorneys general, Internet service providers, and others—have to be prepared to come down on those 200 or 300 big-time spammers with hobnail boots. A lot of them are not exactly quaking tonight at the prospect of Senate action. They are not convinced that the Senate is really going to insist on strong oversight. We saw today, because of what was said by Senator HATCH and Senator LEAHY, that they are committed to strong enforcement and vigorous oversight.

I believe as a result of the attention the Senate has given to this issue, when this bill is signed into law, we are going to see very quickly a handful of very tough, significant enforcement actions with real penalties and the prospect of spammers going to jail and paying million-dollar fines. That is the kind of deterrence we need.

The text of this law is very important, but it is only as good a law as we see backed up by enforcement. We have a commitment today from Chairman HATCH and Senator LEAHY to follow up and ensure that that kind of enforcement takes place. With that, I think we take a very significant step forward in terms of protecting the rights of consumers who right now find a blizzard of spam every single time they turn on their computer.

I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCAIN. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCAIN. Madam President, I ask unanimous consent that we lay aside the pending amendment so Senator HARKIN may be recognized.

AMENDMENT NO. 1895

Mr. HARKIN. Madam President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN], for himself, and Mr. GRASSLEY, proposes an amendment numbered 1895.

Mr. HARKIN. Madam President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(To provide competitive grants for training court reporters and closed captioners to meet requirements for realtime writers under the Telecommunications Act of 1996, and for other purposes)

At the appropriate place add the following:

SECTION 1. SHORT TITLE.

This title may be cited as the ''Training for Realtime Writers Act of 2003''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) As directed by Congress in section 723 of the Communications Act of 1934 (47 U.S.C.

613), as added by section 305 of the Telecommunications Act of 1996 (Public Law 104–104; 110 Stat. 126), the Federal Communications Commission adopted rules requiring closed captioning of most television programming, which gradually require new video programming to be fully captioned beginning in 2006.

(2) More than 28,000,000 Americans, or 8 percent of the population, are considered deaf or hard of hearing, and many require captioning services to participate in mainstream activities.

(3) More than 24,000 children are born in the United States each year with some form of hearing loss.

(4) According to the Department of Health and Human Services and a study done by the National Council on Aging—

(A) 25 percent of Americans over 65 years old are hearing impaired;

(B) 33 percent of Americans over 70 years old are hearing impaired; and

(C) 41 percent of Americans over 75 years old are hearing impaired.

(5) The National Council on Aging study also found that depression in older adults may be directly related to hearing loss and disconnection with the spoken word.

(6) Empirical research demonstrates that captions improve the performance of individuals learning to read English and, according to numerous Federal agency statistics, could benefit—

(A) 3,700,000 remedial readers;

(B) 12,000,000 young children learning to read;

(C) 27,000,000 illiterate adults; and

(D) 30,000,000 people for whom English is a second language.

(7) Over the past 5 years, student enrollment in programs that train court reporters to become realtime writers has decreased significantly, causing such programs to close on many campuses.

SEC. 3. AUTHORIZATION OF GRANT PROGRAM TO PROMOTE TRAINING AND JOB PLACEMENT OF REALTIME WRITERS.

(a) IN GENERAL.—The National Telecommunications and Information Administration shall make competitive grants to eligible entities under subsection (b) to promote training and placement of individuals, including individuals who have completed a court reporting training program, as realtime writers in order to meet the requirements for closed captioning of video programming set forth in section 723 of the Communications Act of 1934 (47 U.S.C. 613) and the rules prescribed thereunder.

(b) ELIGIBLE ENTITIES.—For purposes of this Act, an eligible entity is a court reporting program that—

(1) can document and demonstrate to the Secretary of Commerce that it meets minimum standards of educational and financial accountability, with a curriculum capable of training realtime writers qualified to provide captioning services;

(2) is accredited by an accrediting agency recognized by the Department of Education; and

(3) is participating in student aid programs under title IV of the Higher Education Act of 1965.

(c) PRIORITY IN GRANTS.—In determining whether to make grants under this section, the Secretary of Commerce shall give a priority to eligible entities that, as determined by the Secretary of Commerce—

(1) possess the most substantial capability to increase their capacity to train realtime writers;

(2) demonstrate the most promising collaboration with local educational institutions, businesses, labor organizations, or other community groups having the potential to train or provide job placement assistance to realtime writers; or

(3) propose the most promising and innovative approaches for initiating or expanding training and job placement assistance efforts with respect to realtime writers.

(d) DURATION OF GRANT.—A grant under this section shall be for a period of two years.

(e) MAXIMUM AMOUNT OF GRANT.—The amount of a grant provided under subsection (a) to an entity eligible may not exceed $1,500,000 for the two-year period of the grant under subsection (d).

SEC. 4. APPLICATION.

(a) IN GENERAL.—To receive a grant under section 3, an eligible entity shall submit an application to the National Telecommunications and Information Administration at such time and in such manner as the Administration may require. The application shall contain the information set forth under subsection (b).

(b) INFORMATION.—Information in the application of an eligible entity under subsection (a) for a grant under section 3 shall include the following:

(1) A description of the training and assistance to be funded using the grant amount, including how such training and assistance will increase the number of realtime writers.

(2) A description of performance measures to be utilized to evaluate the progress of individuals receiving such training and assistance in matters relating to enrollment, completion of training, and job placement and retention.

(3) A description of the manner in which the eligible entity will ensure that recipients of scholarships, if any, funded by the grant will be employed and retained as realtime writers.

(4) A description of the manner in which the eligible entity intends to continue providing the training and assistance to be funded by the grant after the end of the grant period, including any partnerships or arrangements established for that purpose.

(5) A description of how the eligible entity will work with local workforce investment boards to ensure that training and assistance to be funded with the grant will further local workforce goals, including the creation of educational opportunities for individuals who are from economically disadvantaged backgrounds or are displaced workers.

(6) Additional information, if any, of the eligibility of the eligible entity for priority in the making of grants under section 3(c).

(7) Such other information as the Administration may require.

SEC. 5. USE OF FUNDS.

(a) IN GENERAL.—An eligible entity receiving a grant under section 3 shall use the grant amount for purposes relating to the recruitment, training and assistance, and job placement of individuals, including individuals who have completed a court reporting training program, as realtime writers, including—

(1) recruitment;

(2) subject to subsection (b), the provision of scholarships;

(3) distance learning;

(4) development of curriculum to more effectively train realtime writing skills, and education in the knowledge necessary for the delivery of high-quality closed captioning services;

(5) assistance in job placement for upcoming and recent graduates with all types of captioning employers;

(6) encouragement of individuals with disabilities to pursue a career in realtime writing; and

(7) the employment and payment of personnel for such purposes.

(b) SCHOLARSHIPS.—

(1) AMOUNT.—The amount of a scholarship under subsection (a)(2) shall be based on the amount of need of the recipient of the scholarship for financial assistance, as determined in accordance with part F of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087kk).

(2) AGREEMENT.—Each recipient of a scholarship under subsection (a)(2) shall enter into an agreement with the National Telecommunications and Information Administration to provide realtime writing services for a period of time (as determined by the Administration) that is appropriate (as so determined) for the amount of the scholarship received.

(3) COURSEWORK AND EMPLOYMENT.—The Administration shall establish requirements for coursework and employment for recipients of scholarships under subsection (a)(2), including requirements for repayment of scholarship amounts in the event of failure to meet such requirements for coursework and employment. Requirements for repayment of scholarship amounts shall take into account the effect of economic conditions on the capacity of scholarship recipients to find work as realtime writers.

(c) ADMINISTRATIVE COSTS.—The recipient of a grant under section 3 may not use more than 5 percent of the grant amount to pay administrative costs associated with activities funded by the grant.

(d) SUPPLEMENT NOT SUPPLANT.—Grants amounts under this Act shall supplement and not supplement other Federal or non-Federal funds of the grant recipient for purposes of promoting the training and placement of individuals as realtime writers.

SEC. 6. REPORTS.

(a) ANNUAL REPORTS.—Each eligible entity receiving a grant under section 3 shall submit to the National Telecommunications and Information Administration, at the end of each year of the grant period, a report on the activities of such entity with respect to the use of grant amounts during such year.

(b) REPORT INFORMATION.—

(1) IN GENERAL.—Each report of an entity for a year under subsection (a) shall include a description of the use of grant amounts by the entity during such year, including an assessment by the entity of the effectiveness of activities carried out using such funds in increasing the number of realtime writers. The assessment shall utilize the performance measures submitted by the entity in the application for the grant under section 4(b).

(2) FINAL REPORT.—The final report of an entity on a grant under subsection (a) shall include a description of the best practices identified by the entity as a result of the grant for increasing the number of individuals who are trained, employed, and retained in employment as realtime writers.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this Act, amounts as follows:

(1) $20,000,000 for each of fiscal years 2004, 2005, and 2006.

(2) Such sums as may be necessary for fiscal year 2007.

Mr. HARKIN. Madam President, today I am offering an amendment, a bill I introduced earlier this year, S. 480, the Training for Realtime Writers Act of 2003, on behalf of myself and Senator GRASSLEY. The 1996 Telecom Act requires that all television broadcasts were to be captioned by 2006. This was a much-needed reform that has helped millions of deaf and hard-of-hearing Americans to be able to take full advantage of television programming. As of today, it is estimated that

3,000 captioners will be needed to fulfill this requirement, and that number continues to increase as more and more broadband stations come online. Unfortunately, the United States only has 300 captioners. If our country expects to have media fully captioned by 2006, something must be done.

This is an issue that I feel very strongly about because my late brother Frank was deaf. I know personally that access to culture, news, and other media was important to him and to others in achieving a better quality of life. More than 28 million Americans, or 8 percent of the population, are considered deaf or hard of hearing and many require captioning services to participate in mainstream activities. In 1990, I authored legislation that required all television sets to be equipped with a computer chip to decode closed captioning. This bill completes the promise of that technology, affording deaf and hard of hearing Americans the same equality and access that captioning provides.

Though we do not necessarily think about it, the morning of September 11 was a perfect example of the need for captioners. Holli Miller of Ankeny, IA, was captioning for Fox News. She was supposed to do her three and a half hour shift ending at 8 a.m. but, as we all know, disaster struck. Despite the fact that she had already worked most of her shift and had two small children to care for, Holli Miller stayed right where she was and for nearly 5 more hours continued to caption. Without even the ability to take bathroom breaks, Holli Miller made sure that deaf and hard of hearing people got the same news the rest of us got on September 11. I want to personally say thank you to Holli Miller and all the many captioners and other people across the country that made sure all Americans were alert and informed on that tragic day.

But let me emphasize that the deaf and hard of hearing population is only one of a number of groups that will benefit from this legislation. The audience for captioning also includes individuals seeking to acquire or improve literacy skills, including approximately 27 million functionally illiterate adults, 3 to 4 million immigrants learning English as a second language, and 18 million children learning to read in grades kindergarten through 3. In addition, I see people using closed captioning to stay informed everywhere—from the gym to the airport. Captioning helps people educate themselves and helps all of us stay informed and entertained when audio isn't the most appropriate medium.

Madam President, although we have two years to go until the deadline given by the 1996 Telecom Act, our Nation is facing a serious shortage of captioners. Over the past five years, student enrollment in programs that train court reporters to become realtime writers has decreased significantly, causing such programs to close on many campuses. Yet, the need for these skills continues to rise. That is why I thank the chairman and ranking member for giving me this opportunity to present this vital amendment, and, hopefully, it can be accepted.

To reiterate, in 1990 I authored a bill, that became legislation, that required that all television sets that have a size 13-inch screen or larger have incorporated into that set a chip that would automatically decode for closed captioning. That went into effect in 1996, and all television sets now have a chip in them. If you have a remote, you can punch it and closed captions will come up.

Then in 1996, Congress passed legislation that said that, by the year 2006, we would have a policy that all television programming would be real-time captioned. Right now if you watch the Senate in debate, you will see real-time captioning coming across the screen. You see that on news programs and sports programs. So it is engaging.

But we wanted real-time captioners so that deaf and hard-of-hearing people around the country could watch television in a real-time setting and have real-time captioning. So again, we said that by 2006 we wanted to have this done. Real-time captioning is a highly trained skill that people have to have, and it is estimated that it is going to take about 3,000 captioners nationwide to do this.

Madam President, right now there are only about 300 captioners nationally. We only have 2 years to go before the congressionally mandated deadline of meeting this requirement. So, earlier this year, I introduced a bill, S. 480, along with 40 cosponsors on both sides of the aisle, providing for competitive grants. These grants would go to authorize entities, accredited by their State education agencies, that could then use these grants to fund programs to get scholarships for recruitment, training, and job placement to get this pipeline filled as soon as possible with these real-time captioners over the next couple of years.

That is the amendment I have sent to the desk. As I said, it has broad support. It is basically in the Commerce Committee jurisdiction. I know with the press of time, it wasn't acted on this year. I thought this might be an appropriate place to put it. I think it will be widely supported by everybody.

I thank the ranking member and others for their positive reception of this amendment on this bill.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from Arizona.

Mr. MCCAIN. Mr. President, I ask unanimous consent that Senator HATCH be added as a cosponsor to the Enzi-Santorum amendment No. 1894, and I ask unanimous consent that I be added as a cosponsor of S. 877.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCAIN. Mr. President, I think the amendment of the Senator from Iowa is a worthy cause. We appreciate very much Senator HARKIN's continued commitment to those who are hearing impaired in America. He has been a consistent and longtime advocate of this group of Americans. I thank him for his other contributions.

I urge adoption of the amendment.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, on behalf of Senator HOLLINGS, this is what we think Government ought to be about: going to bat for these people. I encourage the Senate to adopt the Harkin amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, without objection, the amendment is agreed to.

The amendment (No. 1895) was agreed to.

Mr. HARKIN. Mr. President, I ask unanimous consent to print in the RECORD the cosponsors of the amendment.

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

COSPONSORS

Senators Max Baucus [MT], Jeff Bingaman [NM], Jim Bunning [KY], Saxby Chambliss [GA], Thad Cochran [MS], Michael D. Crapo [ID], Christopher J. Dodd [CT], Russell D. Feingold [WI], Charles E. Grassley [IA], Tim Johnson [SD], John F. Kerry [MA], Mary L. Landrieu [LA], Patrick J. Leahy [VT], Blanche Lincoln [AR], Richard G. Lugar [IN], Bill Nelson [FL], Harry M. Reid [NV], Charles E. Schumer [NY], Gordon Smith [OR], Debbie Stabenow [MI], Evan Bayh [IN], John B. Breaux [LA], Conrad R. Burns [MT], Hillary Rodham Clinton [NY], Larry E. Craig [ID], Michael DeWine [OH], John Edwards [NC], Lindsey O. Graham [SC], James M. Jeffords [VT], Edward M. Kennedy [MA], Herb Kohl [WI], Frank R. Lautenberg [NJ], Joseph I. Lieberman [CT], Trent Lott [MS], Patty Murray [WA], Mark Lunsford Pryor [AR], Rick Santorum [PA], Jeff Sessions [AL], Olympia J. Snowe [ME], Ron Wyden [OR].

Mr. REID. I move to reconsider the vote.

Mr. MCCAIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MCCAIN. Mr. President, Senator SANTORUM would like to speak about the Santorum-Enzi amendment, and then we will have the Corzine amendment, which I will propose, and then we will be ready, I believe, for final passage.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

AMENDMENT NO. 1894

Mr. SANTORUM. I thank the Chair. Mr. President, I say to the Senator from Arizona that I appreciate he and the ranking member accepting this amendment that Senator ENZI and I have proposed. As a father of six little children who spend some time—not a lot of time—but some time on the Internet, just viewing the amount of spam, the pornographic spam that comes into my 10-year-old's site, in

some cases, is just absolutely frightening.

Senator ENZI and I had been working on separate tracks, and those tracks came together today in proposing an amendment which would provide a warning label on those kinds of materials that will be in the subject line of the e-mail so young people, as well as old, do not have to subject themselves to this rather disgusting attempt at advertising, if you want to call it that. This is an important piece of legislation.

I ask the Senator from Arizona, if I can get his attention for a moment.

Mr. WYDEN. Will the Senator yield?

Mr. SANTORUM. I am happy to yield to the Senator from Oregon.

Mr. WYDEN. Mr. President, very briefly, I think the Senator from Pennsylvania is trying to address a very important issue. We have asked for the Democrats on the Senate Judiciary Committee, under Senator LEAHY's leadership, to take a look at it. I think we will have that answer quickly.

As the Senator knows, some of the definitions in this area can get fairly technical. We also understand that pornography, which is conveyed through spam across the Internet, is a real public scourge. We are interested in getting the Senator's amendment adopted. I am hopeful we will be able to support it.

Mr. SANTORUM. Mr. President, I say to both the Senator from Oregon and the Senator from Arizona, I hear their words of encouragement. I encourage them and would like their assurance that this amendment, as it is adopted, will be held in conference. This is an important issue that we need to deal with, and I hope they will fight to make sure this amendment—the House has a similar amendment, but I would argue it is not as strong as this one, and I hope they will fight for the stronger language of the Senate amendment in conference.

Mr. MCCAIN. Mr. President, I assure the Senator from Pennsylvania that we will do everything we can to hold it. I have to tell my friend from Pennsylvania that probably the greatest single aspect of this spamming that is so disturbing to families all over America is the issue the Senator from Pennsylvania raises, and that is this graphic pornography that pops into view when children are trying to do their homework, much less other entertaining aspects of using the computer.

I want to work with the Senator from Pennsylvania in every way we can to see if we can enact whatever safeguards to prevent this pollution of young Americans' minds.

Mr. SANTORUM. I thank the Senator from Arizona. My 10-year-old John takes cyberclasses on the Internet. I am appalled by the filth he has to go through every day, whether it is e-mails or pop-ups, in trying to get his work done.

We have to do something about this. I am as much for free speech and free advertising as anybody else, but it reaches a point where it is intruding upon the American family and doing real damage to young people, and we have to take a stand.

I appreciate the support of the Senator from Oregon and the Senator from Arizona. I speak on behalf of Senator ENZI; we appreciate their consideration and adoption of this amendment.

Mr. MCCAIN. Mr. President, as we await the completion of the Corzine amendment, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCAIN. I believe the pending amendment is the Santorum-Enzi amendment.

The PRESIDING OFFICER. That is correct.

Mr. MCCAIN. Mr. President, we have discussed this amendment and we have now received clearance from both sides of the aisle and I urge its adoption.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to amendment No. 1894.

The amendment (No. 1894) was agreed to.

Mr. MCCAIN. I am told by the staff that we will commence this vote at 6:30. I hope by that time we would have the final writing of the Corzine amendment, which I could propose at that time and have adopted since it is agreed to by both sides. We are waiting for that. Is that correct?

Mr. LOTT. Mr. President, will the Senator yield?

Mr. MCCAIN. I am glad to yield.

Mr. LOTT. Is the vote going to be at 6:30? Was the Senator asking consent that the final passage be at 6:30?

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, it is my understanding the only amendment in order that has not been resolved is the Corzine amendment. Is that correct?

Mr. MCCAIN. It has been resolved. We are just waiting for the language to be done. We may have to fire some staff people, I am afraid. Senator WYDEN was writing them before.

Mr. REID. So it is my understanding the vote on this matter would occur at 6:30, is that what is being requested?

Mr. MCCAIN. Let me put it this way: I ask unanimous consent that after the adoption of the Corzine amendment, the bill be read a third time and a final vote be taken at 6:30, with the understanding that if the Corzine amendment is not adopted that would not happen.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. MCCAIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1896

Mr. MCCAIN. On behalf of Senator CORZINE, I have an amendment at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for Mr. CORZINE, for himself, and Mr. GRAHAM of South Carolina, proposes an amendment numbered 1896.

The amendment is as follows:

(Purpose: To direct the FTC to develop a system for rewarding those who supply information about violations of this Act and a system for requiring ADV labeling on unsolicited commercial electronic mail)

At the appropriate place, insert the following:

SEC. ___. IMPROVING ENFORCEMENT BY PROVIDING REWARDS FOR INFORMATION ABOUT VIOLATIONS; LABELING.

(a) IN GENERAL.—The Commission shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce—

(1) A report within 9 months after the date of enactment of this Act, that sets forth a system for rewarding those who supply information about violations of this Act, including—

(A) procedures for the Commission to grant a reward of not less than 20 percent of the total civil penalty collected for a violation of this Act to the first person that—

(i) identifies the person in violation of this Act; and

(ii) supplies information that leads to the successful collection of a civil penalty by the Commission; and

(B) procedures to minimize the burden of submitting a complaint to the Commission concerning violations of this Act, including procedures to allow the electronic submission of complaints to the Commission; and

(2) A report, within 18 months after the date of enactment of this Act, that sets forth a plan for requiring unsolicited commercial electronic mail to be identifiable from its subject line, by means of compliance with Internet Engineering Task Force standards, the use of the characters ''ADV'' in the subject line, or other comparable identifier, or an explanation of any concerns the Commission has that cause the Commission to recommend against the plan.

(b) IMPLEMENTATION OF REWARD SYSTEMS.—The Commission may establish and implement the plan under subsection (a)(1), but not earlier than 12 months after the date of enactment of this Act.

Mr. CORZINE. Mr. President, this amendment is based on legislation I introduced earlier this year, S. 1327, which proposed an innovative way to improve anti-spam laws. The amendment would move us toward a system that creates an incentive for individuals to assist the FTC in identifying spammers, by giving them a portion of

any collections resulting from information provided to the Commission. It also calls for the FTC to set forth a plan for requiring all unsolicited commercial e-mail to be identifiable from its subject line by means of the use of the characters ''ADV'' or other comparable identifier. If the Commission recommends against such a plan, it will have to provide Congress with a full explanation.

The fundamental problem in dealing with spam is enforcement. It is one thing to propose rules governing e-mails. But it is often hard for Government officials to track down those who violate those standards. Spammers typically use multiple e-mail addresses or disguised routing information to avoid being identified. As a result, finding spammers can take not just real expertise, but persistence, time, energy and commitment.

The concept of requiring the FTC to pay a bounty to those who track down spammers actually isn't my idea. It was originally proposed by one of the leading thinkers about the Internet, Professor Lawrence Lessig of Stanford Law School, and introduced in the House of Representatives by Congresswoman ZOE LOFGREN. The proposal would invite anyone who uses the Internet to hunt down these law-violating spammers. These would include people who send fraudulent e-mail, e-mail with inaccurate routing information, and e-mail that fails to include the required opt-out. The FTC would then fine the spammer and pay a portion of that fine as a reward to the person who provided the information.

Creating incentives for private individuals to help track down spammers is likely to substantially strengthen the enforcement of anti-spam laws. It promises to create an army of computer geeks who seek out spammers for their and the public's—benefit. Those who share my belief in the efficiency of entrepreneurial capitalism should understand the potential value of this free market approach to enforcement.

At the request of the managers, I have modified the original proposal I introduced earlier this year. This amendment calls for the FTC to develop a plan to implement a bounty hunting system and issue a report to the Congress within 9 months of enactment. The Commission then could implement the plan, but not before 12 months after the date of enactment. While this doesn't go quite as far as I proposed originally, I think it is an important step forward. And I am pleased that the managers have committed to me that they will secure inclusion of the proposal in any related conference report.

I also am pleased that the amendment calls on the FTC to investigate another proposal that I actually believe is very important in the reduction of spam, and that also was included in legislation I introduced earlier this year: a requirement that the subject line of unsolicited commercial e-mails include a so-called ''ADV'' label. In my view, such an approach would give individuals and ISPs considerable power to keep spam out of their in boxes, and I am hopeful that we will return to this proposal before long. In fact, I understand that some members of the House of Representatives will be pursuing this on a related bill, and I hope there will be a way to include an enforceable labeling requirement in a conference report on anti-spam legislation.

Mr. MCCAIN. Mr. President, I support the amendment by Senator CORZINE. I thank my colleagues for reaching a compromise at this time. I thank those who rapidly wrote this amendment on short notice so we could complete work on this legislation.

The amendment has two components. The first part addresses labeling of unsolicited commercial e-mail with the term ADV and also addresses the possibility of industry self-regulation. The Federal Trade Commission has raised serious concerns with both of these proposals with respect to ADV labeling. The FTC has written to me in opposition to labeling:

> First, consumer groups, ISPs, and emailers at the SPAM Forum roundly criticized the mandatory use of an ''ADV'' label. Labeling requirements could harm legitimate marketers, while illegitimate marketers are likely to ignore the requirement. Indeed, although several States require ''ADV'' labels on unsolicited commercial email, in its recent study on False Claims in SPAM, Commission staff found that only 2 percent of email messages analyzed contained such a label.

In lieu of Senator CORZINE's original proposal to make ADV labeling an industry self-regulation, the amendment has been modified to require the Federal Trade Commission to report to Congress on whether the ADV labeling and industry self-regulation should be implemented.

So I think this is a sensible solution in light of the Federal Trade Commission's concerns as I just read from their report to Congress.

The second part of the amendment would authorize the Federal Trade Commission to adopt a bounty hunter proposal to give people a portion of the fines collected from spammers that they hope to catch. As with the Do Not Spam Registry, the FTC would be authorized to act after first sending a report to Congress.

I support the amendment.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I also support the amendment. This is a compromise. Both of these topics are topics about which we really have not heard a lot. We have not had a chance to discuss them in hearings. Senator CORZINE has been working constructively with us. I urge the passage of it.

The bounty issue essentially comes from Professor Lessig at Stanford, looking at innovative ways to create incentives to deal with the problem. It is certainly one the Federal Trade Commission should look at. The question about making sure every unsolicited e-mail has ADV has been contentious among a number of small business groups, ones that have really been burdened by these costs. But I think this is a fair compromise. It gives the Federal Trade Commission ample opportunity to study this and look at the feasibility of it. I urge our colleagues to support it.

As soon as we agree to the Corzine amendment, I believe Senator HARKIN has a unanimous consent request he needs to make, and then we are ready to go to final passage. I urge my colleagues now to support the Corzine amendment.

The PRESIDING OFFICER. If there is no further debate, without objection, the amendment is agreed to.

The amendment (No. 1896) was agreed to.

Mr. PRYOR. Mr. President, last month, this body overwhelmingly voted to stop unwanted phone calls from telemarketers. We put our foot down and stopped these uninvited guests from barging into our home, interrupting our family time and invading our privacy. I would like to think that families can enjoy a peaceful dinner now that we have allowed the Do-Not-Call list to move forward.

Today we address a similar problem—America's e-mail inboxes have been invaded by unwanted and deceptive e-mail solicitations. Not only is this practice annoying and frustrating to our constituents, but the practice is costing consumers and businesses valuable time and resources.

In a report dated January 22, 2003, the Federal Trade Commission indicated that at least 40 percent of all e-mail is spam, with more than half considered to contain false and deceptive information. This has been a problem in my State of Arkansas. The FTC recorded 2,048 fraud and identity theft complaints from Arkansas consumers who reported having lost $1.3 million to these scams.

In addition, businesses are losing money as employees spend time wading through unsolicited e-mail messages and are forced to continuously update their servers and software in an attempt to avoid spam and prevent worms and viruses that are submitted through spam.

One thing I have learned as Senator is that this body does not agree often on the root of a problem. But I know for sure that each of us can agree that we have better things to do with our time than delete dozens of emails about the latest diet craze or money scheme. Even more, I know none of the mothers and fathers in this body want their children to receive emails that contain inappropriate sexual material. Neither do the mothers and fathers in Arkansas.

Now is the time to crack down on deceptive and unsolicited spam once and for all.

This bill which I support has two strong elements:

First, it would require anyone sending unsolicited bulk e-mail directly, or through an intermediary, to provide each recipient with a valid ''opt-out'' process for declining any future spam.

Second, it would outlaw transmitting high-volume unsolicited e-mail sources if they contain false, misleading or deceptive routing information, or forged e-mail addresses.

I am pleased that this bill has been made even stronger with the inclusion of Senator BILL NELSON's RICO statute amendment. I am proud to be named as the provision's original cosponsor.

This amendment encourages the prosecution of those people who use spam to seek money illegally or who engage in other illegal acts by making use of the civil Federal Racketeer Influenced and Corrupt Organizations Act, commonly known as RICO.

RICO makes it illegal to acquire or maintain a business through a pattern of racketeering activity. This law lets authorities seize the assets of such an operation and allows victims grounds for recovery in civil court.

By adopting the amendment, this body has given the overall bill teeth, which will go along way toward punishing those scam artists who prey on the everyday trusting, law-abiding citizens of our land.

As Attorney General I fought to curtail mail fraud and I think some of the spam being sent to Arkansans online is in that same category. The only difference is that this type of fraud reaches many more victims in a shorter period of time.

I look forward to the completion of this bill, and I am pleased that we have again been able to work in a bipartisan matter to carry out the will of the populace.

Mr. LEAHY. Mr. President, it is increasingly apparent that unwanted commercial e-mail, commonly known as ''spam,'' is more than just a nuisance. In the past few years, it has become a serious and growing problem that threatens to undermine the vast potential of the Internet.

Businesses and individuals currently wade through tremendous amounts of spam in order to access e-mail that is of relevance to them—and this is after ISPs, businesses, and individuals have spent time and money blocking a large percentage of spam from reaching its intended recipients.

In my home State of Vermont, one legislator recently found that two-thirds of the 96 e-mails in his inbox were spam. And this occurred after the legislature had installed new spam-blocking software on its computer system that seemed to be catching 80 percent of the spam. The assistant attorney general in Vermont was forced to suggest to computer users the following means to avoid these unsolicited commercial e-mails: ''It's very bad to reply, even to say don't send anymore. It tells the spammer they have a live address . . . The best thing you can do is just keep deleting them. If it gets really bad, you may have to change your address.'' This experience is echoed nationwide.

E-mail users are having the online equivalent of the experience of the woman in the Monty Python skit, who seeks to order a Spam-free breakfast at a restaurant. Try as she might, she cannot get the waitress to bring her the meal she desires. Every dish in the restaurant comes with Spam; it's just a matter of how much. There's ''egg, bacon and Spam''; ''egg, bacon, sausage and Spam''; ''Spam, bacon, sausage and Spam''; ''Spam, egg, Spam, Spam, bacon and Spam''; ''Spam, sausage, Spam, Spam, Spam, bacon, Spam, tomato and Spam''; and so on. Exasperated, the woman finally cries out: ''I don't like Spam! . . . I don't want ANY Spam!''

Individuals and businesses are reacting similarly to electronic spam. A Harris poll taken late last year found that 80 percent of respondents view spam as ''very annoying,'' and fully 74 percent of respondents favor making mass spamming illegal. Earlier this month, more than 3 out of 4 people surveyed by Yahoo! Mail said it was ''less aggravating to clean a toilet'' than to sort through spam. Americans are fed up.

Some 30 States now have antispam laws, but the globe-hopping nature of e-mail makes these laws difficult to enforce. Technology will undoubtedly play a key role in fighting spam, but a technological solution to the problem is not likely in the foreseeable future. ISPs block billions of unwanted e-mails each day, but spammers are winning the battle.

Millions of unwanted, unsolicited commercial e-mails are received by American businesses and individuals each day, despite their own, additional filtering efforts. A recent study by Ferris Research estimates that spam costs U.S. firms $8.9 billion annually in lost worker productivity, consumption of bandwidth, and the use of technical support to configure and run spam filters and provide helpdesk support for spam recipients.

The costs of spam are significant to individuals as well, including time spent identifying and deleting spam, inadvertently opening spam, installing and maintaining antispam filters, tracking down legitimate messages mistakenly deleted by spam filters, and paying for the ISP's blocking efforts.

And there are other prominent and equally important costs of spam. It may introduce viruses, worms, and Trojan horses into personal and business computer systems, including those that support our national infrastructure.

The public has recently witnessed the potentially staggering effects of a virus, not only through the Blaster case I discussed earlier, but with the appearance of the SoBigF virus just 8 days after Blaster began chewing its way through the Internet. This variant also infected Windows machines via e-mail, then sent out dozens of copies of itself. Antivirus experts say one of the main reasons virus writers continue to modify and re-release this particular piece of ''malware'' is that it downloads a Trojan horse to infected computers, which are then used to send spam.

Spammers are constantly in need of new machines through which to route their garbage e-mail, and a virus makes a perfect delivery mechanism for the engine they use for their mass mailings. Some analysts said the SoBigF virus may have been created with a more malicious intent than most viruses, and may even be linked to spam e-mail schemes that could be a source of cash for those involved in the scheme.

The interconnection between computer viruses and spam is readily apparent: Both flood the Internet in an attempt to force a message on people who would not otherwise choose to receive it. Criminal laws I wrote prohibiting the former have been invoked and enforced from the time they were passed it is the latter dilemma we must now confront headon.

Spam is also fertile ground for deceptive trade practices. The FTC has estimated that 96 percent of the spam involving investment and business opportunities, and nearly half of the spam advertising health services and products, and travel and leisure, contains false or misleading information.

This rampant deception has the potential to undermine Americans' trust of valid information on the Internet. Indeed, it has already caused some Americans to refrain from using the Internet to the extent they otherwise would. For example, some have chosen not to participate in public discussion forums, and are hesitant to provide their addresses in legitimate business transactions, for fear that their e-mail addresses will be harvested for junk e-mail lists. And they are right to be concerned. The FTC found spam arriving at its computer system just 9 minutes after posting an e-mail address in an online chat room.

I have often said that Congress must exercise great caution when regulating in cyberspace. Any legislative solution to spam must tread carefully to ensure that we do not impede or stifle the free flow of information on the Internet. The United States is the birthplace of the Internet, and the whole world watches whenever we decide to regulate it. Whenever we choose to intervene in the Internet with government action, we must act carefully, prudently, and knowledgeably, keeping in mind the implications of what we do and how we do it. And we must not forget that spam, like more traditional forms of commercial speech, is protected by the first amendment.

At the same time, we must not allow spam to result in the ''virtual death'' of the Internet, as one Vermont newspaper put it.

The Internet is a valuable asset to our Nation, to our economy, and to the lives of Americans, and we should act prudently to secure its continued viability and vitality.

On June 19 of this year, Senator HATCH and I introduced S.1293, the Criminal Spam Act, together with several of our colleagues on the Judiciary Committee. On September 25, the committee unanimously voted to report the bill to the floor. Today, Senators HATCH, NELSON, SCHUMER, GRASSLEY and I offered the criminal provisions of S. 1293 as an amendment to S. 877, the CAN SPAM Act. The amendment was adopted by voice vote.

I thank the lead cosponsors of S. 877 for working with us on this amendment, and for their support and cosponsorship of the Criminal Spam Act. I also thank Senator BILL NELSON for his contribution to the amendment.

The Hatch-Leahy amendment prohibits five principal techniques that spammers use to evade filtering software and hide their trails.

First, our amendment prohibits hacking into another person's computer system and sending bulk spam from or through that system. This criminalizes the common spammer technique of obtaining access to other people's e-mail accounts on an ISP's e-mail network, whether by password theft or by inserting a ''Trojan horse'' program—that is, a program that unsuspecting users download onto their computers and that then takes control of those computers—to send bulk spam.

Second, our amendment prohibits using a computer system that the owner makes available for other purposes as a conduit for bulk spam, with the intent of deceiving recipients as to the spam's origins. This prohibition criminalizes another common spammer technique—the abuse of third parties' ''open'' servers, such as e-mail servers that have the capability to relay mail, or Web proxy servers that have the ability to generate ''form'' mail. Spammers commandeer these servers to send bulk commercial e-mail without the server owner's knowledge, either by ''relaying'' their e-mail through an ''open'' e-mail server, or by abusing an ''open'' Web proxy server's capability to generate form e-mails as a means to originate spam, thereby exceeding the owner's authorization for use of that e-mail or Web server. In some instances the hijacked servers are even completely shut down as a result of tens of thousands of undeliverable messages generated from the spammer's e-mail list.

The amendment's third prohibition targets another way that outlaw spammers evade ISP filters: falsifying the ''header information'' that accompanies every e-mail, and sending bulk spam containing that fake header information. More specifically, the amendment prohibits forging information regarding the origin of the e-mail message, and the route through which the message attempted to penetrate the ISP filters.

Fourth, the Hatch-Leahy amendment prohibits registering for multiple e-mail accounts or Internet domain names, and sending bulk e-mail from those accounts or domains. This provision targets deceptive ''account churning,'' a common outlaw spammer technique that works as follows. The spammer registers—usually by means of an automatic computer program—for large numbers of e-mail accounts or domain names, using false registration information, then sends bulk spam from one account or domain after another. This technique stays ahead of ISP filters by hiding the source, size, and scope of the sender's mailings, and prevents the e-mail account provider or domain name registrar from identifying the registrant as a spammer and denying his registration request. Falsifying registration information for domain names also violates a basic contractual requirement for domain name registration falsification.

Fifth and finally, our amendment addresses a major hacker spammer technique for hiding identity that is a common and pernicious alternative to domain name registration—hijacking unused expanses of Internet address space and using them as launch pads for junk e-mail. Hijacking Internet Protocol—IP—addresses is not difficult: Spammers simply falsely assert that they have the right to use a block of IP addresses, and obtain an Internet connection for those addresses. Hiding behind those addresses, they can then send vast amounts of spam that is extremely difficult to trace.

Penalties for violations of these new criminal prohibitions are tough but measured. Recidivists and those who send spam in furtherance of another felony may be imprisoned for up to 5 years. Large-volume spammers, those who hack into another person's computer system to send bulk spam, and spam ''kingpins'' who use others to operate their spamming operations may be imprisoned for up to 3 years. Other offenders may be fined and imprisoned for no more than one year. Convicted offenders are also subject to forfeiture of proceeds and instrumentalities of the offense.

In addition to these penalties, the Hatch-Leahy amendment directs the Sentencing Commission to consider providing sentencing enhancements for those convicted of the new criminal provisions who obtained e-mail addresses through improper means, such as harvesting, and those who knowingly sent spam containing or advertising a falsely registered Internet domain name. We have also worked with Senator NELSON on language directing the Sentencing Commission to consider enhancements for those who commit other crimes that are facilitated by the sending of spam.

I should note that the Criminal Spam Act, from which the amendment is taken, enjoys broad support from ISPs, direct marketers, consumer groups, and civil liberties groups alike. It is also supported by the administration: In its September 11, 2003, views letter regarding the CAN SPAM Act, the administration advocated the addition to CAN SPAM of felony triggers similar to those proposed in the Criminal Spam Act. The administration further supported our proposal, advanced in the Hatch-Leahy amendment, to direct the Sentencing Commission to consider sentencing enhancements for convicted spammers that have additionally obtained e-mail addresses by harvesting.

Again, the purpose of the Hatch-Leahy amendment is to deter the most pernicious and unscrupulous types of spammers—those who use trickery and deception to induce others to relay and view their messages. Ridding America's inboxes of deceptively delivered spam will significantly advance our fight against junk e-mail. But it is not a cure-all for the spam pandemic.

The fundamental problem inherent to spam—its sheer volume—may well persist even in the absence of fraudulent routing information and false identities. In a recent survey, 82 percent of respondents considered unsolicited bulk e-mail, even from legitimate businesses, to be unwelcome spam. Given this public opinion, and in light of the fact that spam is, in essence, cost-shifted advertising, we need to take a more comprehensive approach to our fight against spam.

While I am generally supportive of the CAN SPAM Act, and will vote in favor of passage, it does raise some concerns. The bill takes an ''opt out'' approach to spam—that is, it requires all commercial e-mail to include an ''opt out'' mechanism, by which e-mail recipients may opt out of receiving further unwanted spam. My concern is that this approach permits spammers to send at least one piece of spam to each e-mail address in their database, while placing the burden on e-mail recipients to respond. People who receive dozens, even hundreds, of unwanted e-mails each day may have little time or energy for anything other than opting-out from unwanted spam.

According to one organization's calculations, if just one percent of the approximately 24 million small businesses in the U.S. sent every American just one spam a year, that would amount to over 600 pieces of spam for each person to sift through and opt out of each day. And this figure may be conservative, as it does not include the large businesses that also engage in online advertising.

I am also troubled by the labeling requirement in the CAN SPAM Act, which makes it unlawful to send an unsolicited commercial e-mail message unless it provides, among other things, '' clear and conspicuous identification that the message is an advertisement or solicitation,'' and ''a valid physical postal address of the sender''. While we all want to curb spam, we must be mindful of its status as protected commercial speech, and ensure that any restrictions we impose on it are as narrowly tailored as possible.

Reducing the volume of junk commercial e-mail, and so protecting legitimate Internet communications, is not an easy matter. There are important First Amendment interests to consider, as well as the need to preserve the ability of legitimate marketers to use e-mail responsibly. We must be sure we get this right, so as not to exacerbate an already terribly vexing problem. This is especially important given the preemption provisions of the CAN SPAM Act, which will override many of the tough anti-spamming laws already enacted by the States.

My distinguished colleagues from Wyoming and Pennsylvania offered an amendment requiring ''warning labels'' on certain commercial electronic mail. While I appreciate my colleagues' efforts to protect our children from the on-line assault of internet pornography—an important goal that we all share—I fear the amendment has been drafted in haste and raises significant constitutional issues that require further analysis.

First, the amendment incorporates broad and vague phrases such as ''devoted to sexual matters'' that are not otherwise defined in the law. I expressed similar concerns during debate on the Communications Decency Act, CDA, which the Supreme Court struck down as unconstitutional in 1996. The CDA also punished as a felony anyone who transmitted ''obscene'' or ''indecent'' material over the Internet. The CDA was deemed too vague as to what was ''indecent'' or ''obscene.'' Some of the terms and phrases used in the Enzi-Santorum amendment may be deemed equally vague when subjected to judicial scrutiny.

There are also first amendment concerns to regulating commercial electronic mail in ways that require specific labels on protected speech. Such requirements inhibit both the speaker's right to express and the listener's right to access constitutionally protected material.

More importantly, existing laws already ban obscenity, harassment, child pornography and enticing minors into sexual activity.

As a father and a grandfather, I well appreciate the challenge of limiting a child's exposure to sexually inappropriate material. Yet, no legislation we could pass would be an effective substitute for parental involvement. We must be vigilant about feel-good efforts to involve government, either directly or indirectly, in regulating the content of the Internet.

For these reasons, the Enzi-Santorum amendment raises serious legal issues that mandate further exploration before a determination can be made on the proposed law's constitutional viability.

I look forward to continuing to work with the sponsors of the CAN SPAM Act on these issues as the bill proceeds to conference.

Ms. CANTWELL. Mr. President, I rise today in support of the Burns-Wyden CAN–SPAM Act, which would impose limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet.

I would like to thank my colleagues, Senators WYDEN and BURNS, for their leadership in tackling this problem which affects so many consumers in my State of Washington. Unsolicited commercial email or ''spam'' is a major irritant to consumers and businesses alike. Spam exposes computer users—often young children—to pornography, sexual predators, fraudulent schemes, and other unwanted or harmful messages. In addition, spam costs American business close to $10 billion each year in lost productivity, additional infrastructure costs, and legal fees—costs that are ultimately borne by consumers. By clogging our computers, spam threatens to deprive us of the tremendous benefits provided by the Internet.

This bill represents a crucial first step in combating the exponential increase in the volume of spam, which today accounts for half of all email messages. Because of the global nature of this problem and the anonymity that the Internet affords spammers, it is impossible for states or individuals alone to take meaningful steps to reduce the impact of this nuisance, and self-regulation is simply not an option. The overwhelming volume of sleazy and fraudulent solicitations originating from criminal organizations demands a tough response that imposes both civil and criminal penalties.

That is precisely why this bill is so necessary. To protect computer users in my State and across the country, we must take immediate steps to stem the mountain of spam hitting email inboxes every day.

The Burns-Wyden bill is a long-awaited step in the right direction. The bill has been carefully negotiated and improved. By allowing enforcement by State attorneys general and by Internet service providers, we have increased the odds of successful enforcement against the worst spammers. By prohibiting harvesting of email addresses, the use of technology to send thousands of spammed messages, and by prohibiting false and misleading message headers, the bill will send a clear message to the most abusive spammers that their practices will no longer be tolerated.

But enforcement will remain a challenge. Spammers have every incentive to increase the volume of their messages because the marginal cost of sending another message is virtually nothing. And because of the anonymity and global nature of the internet, spammers can hide their identity and move their operations offshore.

While the bill before us will finally put in place a Federal approach to the global problem of spam, there is no single solution to this complex problem. I am pleased that the bill will require the Federal Trade Commission to develop legislation to establish a national Do Not Email registry modeled on the Do Not Call registry, but I believe there may come a point at which additional protections are necessary to protect consumers and to protect the growth of the information economy.

I think we all recognize that we have much more work to do to solve this problem, but the Burns-Wyden bill is an excellent first step in addressing the problem, and I am pleased to help pass this important legislation.

Mr. MCCAIN. Mr. President, I suggest the absence of a quorum. Under the previous order, I believe the vote will start at 6:30.

The PRESIDING OFFICER. That is correct. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BURNS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Under the previous order, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The bill having been read the third time, the question is, Shall it pass?

Mr. BURNS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Hawaii (Mr. INOUYE), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''yea.''

The PRESIDING OFFICER (Mr. TALENT). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 404 Leg.]

YEAS—97

Akaka	Conrad	Hatch
Alexander	Cornyn	Hollings
Allard	Corzine	Hutchison
Allen	Craig	Inhofe
Baucus	Crapo	Jeffords
Bayh	Daschle	Johnson
Bennett	Dayton	Kennedy
Biden	DeWine	Kohl
Bingaman	Dodd	Kyl
Bond	Dole	Landrieu
Boxer	Domenici	Lautenberg
Breaux	Dorgan	Leahy
Brownback	Durbin	Levin
Bunning	Ensign	Lieberman
Burns	Enzi	Lincoln
Byrd	Feingold	Lott
Campbell	Feinstein	Lugar
Cantwell	Fitzgerald	McCain
Carper	Frist	McConnell
Chafee	Graham (FL)	Mikulski
Chambliss	Graham (SC)	Miller
Clinton	Grassley	Murkowski
Cochran	Gregg	Murray
Coleman	Hagel	Nelson (FL)
Collins	Harkin	Nelson (NE)

Nickles	Schumer	Sununu
Pryor	Sessions	Talent
Reed	Shelby	Thomas
Reid	Smith	Voinovich
Roberts	Snowe	Warner
Rockefeller	Specter	Wyden
Santorum	Stabenow	
Sarbanes	Stevens	

NOT VOTING—3

Edwards	Inouye	Kerry

The bill (S. 877), as amended, was passed, as follows:

Mr. DASCHLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask that there now be a period for morning business, with Senators speaking for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOMINATION OF THOMAS M. HARDIMAN

Mr. SPECTER. Mr. President, it is my understanding that the Senate will soon take up in executive session the nomination of Thomas M. Hardiman to be a judge on the U.S. District Court for the Western District of Pennsylvania, and I recommend to my colleagues that he be confirmed. He has an outstanding academic record.

Mr. Hardiman received his bachelor's degree, cum laude, from the University of Notre Dame in 1987. He received his law degree, cum laude again, from Georgetown University Law Center. He was notes and comments editor of the Georgetown Law Journal, which is an indication of academic achievement and legal excellence in writing. He has been admitted to the bars of Massachusetts, the District of Columbia, and the Commonwealth of Pennsylvania. He has been in the active practice of law since 1990. He currently is a partner in the prestigious Pittsburgh firm of Reed Smith.

He has been very active with professional affiliations as a Pennsylvania Young Lawyers Division delegate to the American Bar Association's House of Delegates. He served as a hearing officer for the Pennsylvania Disciplinary Board. He has been active in community affairs, president of Big Brothers Big Sisters of Greater Pittsburgh, and he currently serves as director of that organization. He was formerly an adjunct faculty member of LaRoche College.

As suggested by the dates of graduation, Mr. Hardiman is a young man, in his late thirties. I think he brings an element of diversity to the court, tempering some of the judges who are older. But starting at the age of 38 affords an opportunity to develop skills and expertise on the district court as a trial judge.

From what I know about him, and I have observed him over the better part of the past decade, he has the capability perhaps to become an appellate judge. That will depend upon the development of his skills and his professional accomplishments as a judge.

He was recommended by the nonpartisan nominating panel which Senator SANTORUM and I have. He is a vigorous young man. He has a family, a wife and three children, residing in Fox Chapel. I think he will make an outstanding addition to the United States District Court for the Western District of Pennsylvania.

IN MEMORY OF IRA PAULL

Mr. DODD. Mr. President, I rise to speak in memory of Ira Paull, who passed away suddenly on September 28 at the age of 52.

I was very fortunate to work with Ira during the 7 years he spent on Capitol Hill as a staff member on the Senate Banking Committee. He worked on the staff of Senators John Heinz, Jake Garn, and Alfonse D'Amato. Ira was an integral part of virtually every critical piece of legislation that came out of the Banking Committee. His knowledge was vast and his counsel well-respected by Senators on both sides of the aisle. I personally had the privilege of working with Ira in my capacity as chairman of the Securities Subcommittee. In particular, I have fond memories of Ira as he accompanied me, Senator Heinz, and my staff on a congressional delegation to Europe in 1990 looking into European Community Financial Services issues.

Ira's reputation on the Hill was that of a bright and talented lawyer, and also of an individual with a quick wit and a tremendous sense of humor. He became well-known for writing opening statements for committee hearings that were not only well-informed and comprehensive, but would even, on occasion, incorporate rhyme or poetry that would bring a smile to everyone's face.

Though his job on the committee was to provide counsel to Republican Senators, he earned a great deal of respect from Democrats as well. He formed deep and lasting friendships with staff members from both sides of the aisle, including my own staff, who valued his advice and counsel and cherished his friendship.

Ira Paull was a hard worker, a dedicated public servant, and a wonderful person who was taken from us far too soon. He will be greatly missed by everyone who had the opportunity to know him.

I offer my deepest sympathies to his brother Gerson, to his sisters, Susan, Leah, and Linda, and to his entire family.

I ask unanimous consent to print in the RECORD statements on Ira's passing submitted by former Senators Garn and D'Amato.

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

ON THE PASSING OF IRA PAULL

Senator Jake Garn

I first met Ira Paull in 1988 when he joined the staff of Senator John Heinz as his legislative assistant specializing in securities issues. A year later he joined the Banking Committee staff and I saw first hand how Ira's expertise in banking, securities and accounting made an invaluable contribution to the work of the Committee. Ira played a key role in all of the key significant legislation addressed by the Committee during my tenure as ranking member. Many of these laws were of critical importance to the financial stability of the United States, such as the legislation that resolved the savings and loan crisis and the law that restored the financial strength of the Federal Deposit Insurance Corporation. Ira's knowledge of accounting was especially crucial to the Committee's work on these measures, and the legislation adopted by the Congress reflects much of the input and advice we received from him.

Ira's intellect and technical expertise alone would have made him a wonderful asset to the Banking Committee staff. But Ira's contribution went well beyond that. Ira took it upon himself to share his knowledge and become an adviser to senior staff and a mentor to younger staff. He was universally respected for his personal integrity and strength of convictions. Ira had strong beliefs about Aright and wrong—and to his credit, never feared to express his views. He also had a remarkable sense of humor, and members of the Committee on both sides of the aisle enjoyed the statements Ira prepared. His sense of humor also served to keep staff morale high during the periods of high stress when staff was required to work long hours due to the press of the legislative schedule.

The passing of Ira Paull is a loss for all of us. He was a bright light that shone on many people, including myself. He will be missed by many, but forgotten by no one.

IN MEMORY OF IRA PAULL

Senator Alfonse M. D'Amato

It is with deep sadness that I submit this statement about the passing of former Senate Banking Committee staff person, Ira Paull.

Ira was a strong presence on the Committee staff for a number of years, staffing first Senator Heinz, then Senator Garn and finally me when he became the Deputy Staff Director under my Chairmanship.

No matter who Ira worked for at the time, though, we all looked to him for his quick and concise explanations—Ira could always cut to the chase. If any of us wanted something more than that, Ira could also spend days on the details. He was one of the few staff people that could actually do both. Whether the explanation was a few minutes or a few hours though, he was always passionate about whatever the Committee was doing.

In fact, few could show such passion as Ira about the Public Utility Holding Company Act of 1935 or the minutiae of thrift regulation. Ira's passion for the law showed no mercy for lobbyists or staff representing members with contrary positions to Ira's successive bosses. He was a strong advocate for his member and very effective at getting what his boss needed.

I remember one particular situation back when Congress passed FDICIA in 1991. It was

right around the time that a minority-owned New York bank, Freedom National Bank, had failed. They had all kinds of community funds commingled and when the bank failed, FDIC insurance would look at all of the accounts as one big, single account. My office had gotten dozens of calls from the Harlem community that stood to lose college scholarship funds and all kinds of community program money. During the conference, I explained the bank's predicament and got included in the bill an amendment to look at each account separately and basically cover all the deposits made by the community programs.

FDICIA had one of those conferences that finished at 3:00 am and when the bill was voted on by the House and Senate the next day, the Freedom National Bank amendment was nowhere to be found. Both Houses were set to adjourn right after the bill passed, but Ira worked Legislative Councils of both Houses, the Chairmen of the Committees, the staff people, and the Parliamentarians. With the usual Ira tenaciousness, he tracked down every person who could help—no matter where they were. Finally, Ira and I ran over to the House to do what couldn't be done over the telephone. We arrived on the floor, right as the House announced its adjournment sine die. Two minutes later, the House floor reopened, passed the Freedom National amendment, and readjourned.

That kind of dedication, that kind of passion and that kind of can do and do attitude is what I will always remember about Ira. The Freedom National Bank situation happened long before I was Chairman of Banking—at the time, I was third in seniority at the Committee. Ira was a pro and worked that issue as if it was his money at stake.

He was a wonderful person, with a great passion and a great way with words—drafting the most imaginative and creative statements which the Congressional Record will memorialize forever. And, of course, I will always remember Ira's laugh, the great guffaw.

I join my colleagues today to bid a fond farewell to Ira Paull and to thank him one last time for all he did during his time at the Senate.

PARTIAL BIRTH ABORTION BAN ACT

Ms. SNOWE. Mr. President, I am opposed to the conference report on S. 3, the Partial Birth Abortion Act.

In 1973—26 years ago now—the Supreme Court affirmed for the first time a woman's right to choose. This landmark decision was carefully crafted to be both balanced and responsible while holding the rights of women in America paramount in reproductive decisions. It is clear that the underlying Santorum bill does not hold the rights of women paramount—instead, it infringes on those rights in the most grievous of circumstances.

Indeed, S. 3 undermines basic tenets of Roe v. Wade, which maintained that women have a constitutional right to an abortion, but after viability—the time at which it first becomes realistically possible for fetal life to be maintained outside the women's body—States could ban abortions only if they also allowed exceptions for cases in which a woman's life or health is endangered. And the Supreme Court reaffirmed their support for exceptions for health of the mother just 3 years ago.

In Stenberg vs. Carhart, a case involving the constitutionality of Nebraska's partial birth abortion ban statute, the Supreme Court invalidated the Nebraska statute because it lacks an exception for the performance of the D & X dilation and extraction procedure when necessary to protect the health of the mother, and because it imposes an undue burden on a woman's ability to have an abortion. This case was representative of 21 cases throughout the Nation. Regrettably, however, Senator SANTORUM's legislation disregards both Supreme Court decisions by not providing an exception for the health of the mother and providing only a narrowly defined life exception.

And let there be no mistake I stand here today to reaffirm that no viable fetus should be aborted—by any method—unless it is absolutely necessary to protect the life or health of the mother. Period.

During the Senate consideration of this bill earlier this year, I once again cosponsored Senator DURBIN's amendment which specifies that postviability abortions would only be lawful if the physician performing the abortion and an independent physician certified in writing that continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health. It mirrors laws already on the books in 41 States, including my home State of Maine, which ban postviability abortions while at the same time including life and health exceptions mandated by the Supreme Court under Roe v. Wade.

This amendment, which was tabled during the Senate's debate, would have lowered the number of abortions because it bans all postviability abortions. S. 3, in contrast, will not prevent a single abortion. Sadly, it will force women to choose another potentially, more harmful procedure.

Is this what we really want? To put women's health and lives at risk? And shouldn't these most critical decisions be left to those with medical training—not politicians?

The findings in S. 3 would have you believe that this procedure is never necessary to preserve the life or health of the mother and that in fact it poses significant health risks to a woman. This is simply not true. Let me explain why there must be a health exception for ''grievous physical injury'' in two circumstances.

First, the language was to apply in those heart-wrenching cases where a wanted pregnancy seriously threatens the health of the mother. The language would allow a doctor in these tragic cases to perform an abortion because he or she believes it is critical to preserving the health of a woman facing: peripartal cardiomyopathy, a form of cardiac failure which is often caused by the pregnancy, which can result in death or untreatable heart disease; preeclampsia, or high blood pressure which is caused by a pregnancy, which can result in kidney failure, stroke or death; and uterine ruptures which could result in infertility.

Second, the language also applied when a woman has a life-threatening condition which requires life-saving treatment. It applies to those tragic cases, for example, when a woman needs chemotherapy when pregnant, so the families face the terrible choice of continuing the pregnancy or providing life-saving treatment. These conditions include: breast cancer; lymphoma, which has a 50 percent mortality rate if untreated; and primary pulmonary hypertension, which has a 50 percent maternal mortality rate.

Now, I ask my colleagues, who could seriously object under these circumstances?

I cosponsored this amendment because I believed that it was a commonsense approach to a serious problem for American women and a contentious issue for the United States Congress. Unfortunately, the omission of this or any other exemption from this ban in cases when the life of the mother is threatened poses a significant and likely a constitutional problem, and without such an exception, I could not support this conference report.

POST-ELECTION VIOLENCE IN AZERBAIJAN

Mr. MCCAIN. Mr. President, today Human Rights Watch released a statement condemning what it calls a ''brutal political crackdown'' in Azerbaijan following its flawed October 15 presidential elections. In the words of Peter Bouckaert of Human Rights Watch, ''Azerbaijan is going through its most serious human rights crisis of the past decade. If this crackdown continues, there won't be an opposition left in Azerbaijan by the end of the month.'' I direct my colleagues' attention to Human Rights Watch's disturbing conclusions and ask unanimous consent that its report be printed in the RECORD.

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

AZERBAIJAN: GOVERNMENT LAUNCHES CRACKDOWN AFTER ELECTION, HUNDREDS OF OPPOSITION MEMBERS ARRESTED

NEW YORK, October 22, 2003.—Azerbaijani authorities have unleashed a massive and brutal political crackdown, arresting hundreds of opposition leaders and activists since the October 15 presidential election, Human Rights Watch said today. Ilham Aliev, the son of the outgoing leader, was elected president in a vote that international and local observers said was marred by widespread fraud.

''The Azerbaijani authorities are using the post-election violence, an affair in which they themselves played a major role, to justify a massive crackdown on the opposition,'' said Peter Bouckaert, Human Rights Watch's senior emergencies researcher. ''Arbitrary arrests have to stop. Those arrested without cause must be released immediately, and those in custody should have access to an attorney.''

Human Rights Watch called on the government to publish a full list of all those arrested in the aftermath of the election, their

whereabouts and the charges against them. Human Rights Watch urged the international community to press the Azerbaijani government to launch an independent commission, with international participation, to investigate election fraud.

Almost immediately after the polls closed on October 15, violence erupted between opposition supporters and the police. Later that evening, Azerbaijani security forces attacked peaceful opposition supporters gathered outside the headquarters of the main opposition party, Musavat (''Equality''), injuring at least 50 protesters.

Most of the arrests have occurred since October 16, when attempts by the security forces to prevent a march organized by the opposition turned violent. For details, please see Human Rights Watch press release ''Azerbaijan: Post-Election Clashes Turn Deadly.''

Human Rights Watch has been able to confirm at least 190 arrests of opposition leaders and supporters, although the actual number of detainees is much higher. For example, the Minister of Interior stated on October 17 that 190 persons had been detained during the October 16 violence alone. Many of those arrested were beaten while being taken into custody.

The charges, if any, against those detained are unknown, as in many cases they have not had access to counsel.

Several national leaders of the opposition have been among those arrested, including Sardar Jalaloglu, secretary-general of the Azerbaijan Democratic Party (ADP), taken from his home on October 18 by armed masked men; Igbal Agazadeh, chair of the Umid (''Hope'') Party, arrested on October 17; Panah Huseinov, chair of the Khalq (''Nation'') Party, and a former prime minister of Azerbaijan, arrested on October 19; and Vagif Hajibeili, chair of the Ahrar party, arrested on October 17.

Most of the national leaders are being held at the Organized Crime Unit of the Ministry of Interior, a department that routinely uses torture and other physical abuse against detainees, according to Human Rights Watch research. For details, please see Human Rights Watch briefing paper ''Azerbaijan: Presidential Elections 2003.''

The main opposition leader and presidential contender Isa Gambar, chair of the Musavat party, is under house arrest, and his bodyguards have been detained. Several Musavat deputy chiefs have been arrested, including Sulheddin Akper, deputy chief for international affairs; Ibrahim Ibrahimli, deputy chief for humanitarian affairs; Arif Hajiev, deputy chief for organizational affairs; and Mirbaba Babaev, a member of the Musavat supreme council.

The campaign of arrest has also focused on members of the ''Our Azerbaijan'' bloc, including many civil society leaders, who supported the candidacy of Musavat leader Isa Gambar. Mehti Mehtiev, director of the Human Rights Resource Center, was arrested at his home on October 18. Itimar Asadov, chair of the Karabakh Invalids Association, was arrested on October 17. The security forces also attempted to arrest Ilgar Ibrahimoglu, a major religious leader and the head of the Center for the Protection of Conscience and Religious Freedom; he received refuge in the Norwegian Embassy after two of his associates, Azad Nazimanoglu and Najaf Allahverdiyev, were arrested on October 17.

The authorities have also detained local opposition activists in villages and towns throughout Azerbaijan. For example, on October 17, police in the town of Saatli arrested Agarza Miriev, the local Musavat chief; Beibala Akperov, his deputy; Mikhail Humbatov, chair of the local ADP branch; Chingiz Umudov, the local chief of the Liberal Party; and Fakhreddin Abdiev, the local chief of the Azerbaijan Popular Front Party (APFP).

Among other local leaders whose arrest Human Rights Watch has been able to confirm are: the chairs or deputy chairs of the Musavat party branches of Ali Bairamli, Gazakh, Gabala, Ismaili, and Jalilabad, Sumgait; the head of the ADP branches in Ali Bairamli, Imishli, and Zagatla; the chairs of the Azerbaijani National Independence Party (ANIP) branches in Ganja, Quba, and Shamkir; and the chairs of the APFP branches in Jalilabad and Siazan. Human Rights Watch also confirmed the arrest of the head of the Umid party in Ali Bairamli. All of their names are on file with Human Rights Watch.

In addition, the Azerbaijani authorities have arrested dozens of opposition members who served as observers and polling-station officials during the October 15 election because they refused to sign vote tallies from their polling stations that they believed were fraudulent. The tallies, known as protocols, require the signatures of polling-station officials. In the town of Ganja alone, Human Rights Watch has obtained the names of 32 opposition polling-station officials who are currently being detained for their refusal to sign fraudulent vote tallies.

International monitors from the Organization for Security and Cooperation in Europe (OSCE), the Council of Europe and the National Institute for Democracy (NDI) have confirmed widespread fraud on election day. According to many reports, the families of opposition election officials who refused to sign forged protocols have also come under pressure and been victims of intimidation from government officials, and in some cases have themselves been arrested.

Human Rights Watch calls on the Azerbaijani authorities to immediately end the crackdown against members of the opposition. Human Rights Watch further urged the Azerbaijani government to carry out a prompt, independent and impartial investigation into the violence plaguing the country prior and subsequent to the election, and to investigate and prosecute security officials and others implicated in abuses. Urgent international action is needed to prevent a further decline in human rights conditions in Azerbaijan, Human Rights Watch stressed.

Human Rights Watch also urges the Council of Europe and the OSCE, together with the United States and the European Union, to press the Aerbaijani government to form an independent commission to investigate election fraud. Election experts from the Council of Europe and OSCE should be part of this commission.

''Azerbaijan is giong through its most serious human rights crisis of the past decade,'' said Bouckaert. ''If this crackdown continues, there won't be an opposition left in Azerbaijan by the end of the month.''

STATUS OF ENERGY BILL CONFERENCE COMMITTEE NEGOTIATIONS

Mr. JOHNSON. Mr. President, yesterday, in a joint statement, Senator DOMENICI and Representative TAUZIN indicated that because of continued disagreements over energy tax provisions that additional conference meetings on comprehensive energy legislation will not occur this week. At the same time, Representative TAUZIN and Senator DOMENICI announced that final agreements had been reached on ethanol and electricity. I learned about these developments, as did my other Democratic colleagues who serve on the conference committee to the energy bill, not from meeting with the chairman of the conference, but through third-hand news accounts.

The exclusion of Democrats from the conference committee process is well known. Yesterday, Senator BINGAMAN, the ranking democrat on the Senate Energy Committee and one of the Senate's foremost experts on energy matters, raised these same points on the Senate floor. By choosing not to release to the public Republican-bargained agreements on ethanol and electricity, the Congress runs a substantial risk of harming South Dakota farmers and consumers, while failing to produce the long-term energy policy our country requires.

Implementing an aggressive renewable fuels standard that grows demand for ethanol is vitally important to the ethanol industry, American farmers, and our long-term energy security. South Dakota is at the forefront of expanding ethanol production with 1 of every 3 rows of corn in South Dakota devoted to ethanol production. Nearly 8,000 South Dakota farm families are connected to my State's nine ethanol facilities. Implementing a Renewable Fuels Standard, RFS, that significantly benefits this growing industry is more important than slapping together an agreement cut by a few Senators in order to grease the wheels for passage of a broader energy bill.

As I look at the list of Republican conferees serving on the energy conference, I am very concerned that by excluding Democrats, such as Senators DORGAN, DASCHLE, and BAUCUS, that the ethanol agreement constructed will not produce the long-term benefits South Dakota's member-owned ethanol facilities and farmers expect from this bill. This concern is not only shared by Senate Democrats, but many Republican Senators who want to grow ethanol production. Last Friday, 29 Senators wrote to Senator DOMENICI and Representative TAUZIN reiterating that the conference accept the Senate's ethanol agreement that passed on a bipartisan vote of 68 to 28. Unfortunately, opponents of renewable fuels appear to be prevailing within the conference. Therefore, I have great concerns with the decision by Senator DOMENICI not to release the ethanol and electricity agreements to the public so that it could be reviewed by all conferees.

By refusing to release the ethanol and electricity agreements, South Dakotans are deprived of the opportunity to understand how this bill will impact their pocketbook and livelihood. Notwithstanding a vague agreement to allow conferees to review the language 24 hours before a final vote, this closed process could ultimately produce a bill that hurts my constituents. The electricity provisions in this bill have a significant impact on the thousands of customers in my State served by rural

electric cooperatives, yet this complicated section that could easily comprise over 100 pages of text will be released only one day before a final vote. My concerns go far beyond procedural fairness but speak directly to what type of electricity market Congress envisions taking shape in the next decade, and how to ensure that markets do not disadvantage consumers. Will the authority over setting rates and ensuring the reliability of the power grid be handled primarily through individual States or the Federal Government? What incentives are contained in the bill to encourage utilities to serve less populated regions of the country and maintain the infrastructure needed for reliable and dependable service? The answers to these complicated questions lie within the closely guarded deals agreed to by a handful of Senators and Congressman.

It is very important that the conferees have access to these agreements as soon as possible so that conferees can share them with our constituents. The Senate has twice passed comprehensive energy legislation in the last 2 years because of an open and deliberative process that produced compromise and solutions on ethanol and electricity, as well as other contentious provisions. That same openness is needed at this time if we are to construct an energy policy that grows domestic energy sources and secures reliable and available supplies of energy.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred in Washington, D.C. On August 21, 2003, Aaryn Marshall, 25, was shot and killed. Mr. MARSHALL was a transgender individual, and dressed and lived as a woman. Police have classified the second-degree murder as a hate crime. Mr. MARSHALL was one of three transgendered residents shot in the city in a six-day period in August.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

ADDITIONAL STATEMENTS

TRIBUTE TO DANIEL W. McGINTY

● Mr. WARNER. Mr. President, I rise today to pay tribute to Daniel W. McGinty, upon his retirement from the Federal Government after 33 years of distinguished and dedicated service to our Nation and the Department of Defense.

Over the last 10 years, some of us in this Chamber have had dealings with Dan, as he carried out his responsibilities as the director of congressional and public affairs for the Defense Logistics Agency (DLA) and most recently with the Defense Contract Management Agency (DCMA). His frequent dealings with the staff of the Armed Services Committees of the Senate and House have been a paragon of professionalism, diplomacy, and conscientious service. With integrity and an engaging personal style, Dan consisently exercised a remarkable talent for reconciling divergent points of view, and doing so in a way that resulted in mutually acceptable outcome for all involved, be it in the arena of legislation or constituent services.

Dan's career journey began more than three decades ago. Upon his graduation from Eastern New Mexico University in 1970, he entered the Army as a counterintelligence agent at Ft. Ord, California. Following an honorable discharge in 1973, Dan began his Federal civilian career at Kirtland Air Force Base, NM, progressing through a variety of contract-management positions over the ensuing 10 years.

In the mid-1980s, Dan got his first taste of life in the Nation's Capital, serving as the strategic planning officer on the staff of the Commander, Air Force Systems Command. After 4 years in that position, he returned to Kirtland AFB to head up the resources-planning division. Then in 1989, upon the issuance of Defense Management Review Decision 916, which placed all Defense contract administration under DLA's Defense Contract Management Command, Dan returned to the Washington, DC, area to serve as the director of program and technical support for special programs at DCMC headquarters.

But all that was mere prelude to what Dan will best be remembered for—his proficiency, acumen, and credibility as the congressional affairs impresario for DLA and DCMA, two of the Defense Department's leading combat-support agencies. Since February 1994, he has been a highly effective ambassador to Capitol Hill, articulating agency programs and deftly conveying his agencies' perspective on emerging legislation.

Displaying an enviable blend of affability and sophistication, Dan established and enjoyed a marvelous rapport with Senate and House staff. Always responsive and informed, he consistently met the congressional and media demands placed on him while protecting and promoting the interests of the agencies he represented.

Whether he was contributing to the successful development of a classified weapons systems program, responding to pointed questions from reporters, or explaining contract-management initiatives to congressional staff, Dan McGinty carried out his pressure-packed responsibilities with unwavering diligence, integrity, and competence.

On the occasion of his retirement from Federal service, I offer my congratulations and thanks to this respected resident of northern Virginia, and wish him and his wife, Sue, well in their future pursuits.●

CELEBRATING WORLD CUP SPEEDSKATING IN MARQUETTE, MICHIGAN

● Ms. STABENOW. Mr. President, I call attention to a wonderful sporting event that will be held Friday, Saturday and Sunday in the city of Marquette in Michigan's Upper Peninsula.

On those days the United States Olympic Education Center will host World Cup speedskating at the Berry Events Center at Northern Michigan University.

I am sure you recall how short track speedskating suddenly became the sport of the hour during the 2002 Winter Olympics in Salt Lake City, as we all cheered on the American speedskating phenomenon Apolo Ohno. The excitement of this high-speed sport, where a slip and a fall always seems to be just a step away, became one of the most-talked about events of the games.

When the Olympic games were finished and Apolo left with his medals, I am afraid that for most viewers speedskating slipped back into the sports shadows. It was not likely to be a sport that would bump football, golf or NASCAR from the prime Sunday afternoon viewing slot.

Despite this media eclipse, however, speedskating remains as riveting as it was during the Olympics. Highly-trained athletes still challenge both gravity and centrifugal force on the razor edge of their skates. Strategists on the track still plot their pace, waiting for the right moment to begin a sprint or challenge for the lead. And 150 of the world's best speedskaters from more than 25 countries will thrill crowds of northern Michigan residents who know their winter sports, from dog-sledding to ski-jumping.

The event also promises an economic boost to an area that has been sustained many economic blows, and it will showcase Marquette, MI, an All-American community.

I have long supported the United States Olympic Education Center at Northern Michigan University, and I praise them for their successful effort in matching this world-class event to an area that I have always considered world-class in its natural beauty—Michigan's Upper Peninsula.●

IN RECOGNITION OF MONTGOMERY COUNTY HOUSING OPPORTUNITIES COMMISSION

● Mr. SARBANES. Mr. President, I wish to recognize the work of the Hous-

ing Opportunities Commission of Montgomery County, MD. Today, the Housing Opportunities Commission is celebrating the 10th anniversary of its Family Self Sufficiency, FSS, program, which helps low-income families with section 8 housing vouchers or living in public housing meet their educational and employment goals. The Housing Opportunities Commission has established a wonderful program that provides resources to low-income families to help them find and retain employment along with the opportunity for families to put away savings. These savings allow families to pay for educational opportunities, transportation or even the purchase of a home. While many housing authorities operate Family Self Sufficiency programs, I believe that the Housing Opportunities Commission has done an extraordinary job of helping its residents achieve economic independence.

In the 10 years that the Commission has operated the Family Self Sufficiency program, almost 350 people have graduated and are well on their way to financial independence. These families faced significant barriers to gaining employment—33 percent were on welfare or were unemployed, many had no high school degree and 95 percent are single parents. Despite these obstacles, all 347 graduates have been able to retain stable employment, and 25 percent of the FSS graduates have purchased their own homes, a remarkable achievement.

The Housing Opportunities Commission, HOC, has been committed to this important program for 10 years. By providing intensive case management, opportunities for education and job training and assistance in finding and paying for child care, HOC has ensured that the families enrolled in FSS can make the transition from welfare to work a successful one.

In addition to working to better the lives of Montgomery County residents, the Housing Opportunities Commission has been a strong advocate for the program, helping me and others in Congress fight to continue and even expand the FSS program. In 1998, my colleagues and I fought to keep this program and thankfully, we were able to strengthen it by requiring that certain increases in income were disregarded for purposes of determining the amount of rent a family pays. Families who take part in FSS and increase their incomes are able to save money in an escrow account instead of paying more in rent. This is a great encouragement for families to find better employment, and it ensures that funds are available when necessary for emergencies. In addition, last year, I introduced legislation which would expand the program so that families living in project-based section 8 developments could also benefit from a housing agency's self-sufficiency programs.

The Family Self Sufficiency program is one that changes lives for the better, and that is evident when looking at this year's participants in HOC's program. This year, 36 new families will graduate from the FSS program in Montgomery County, and I want to recognize the work that they have done to become self-sufficient. Ninety-two percent of these graduates have participated in education and/or job training courses and seven graduates have become homeowners.

These individuals are not only better positioned to participate in the job market, but they are providing stability for their families and models for their communities. The staff at HOC and the graduates of the FSS program, present, past, and future, are to be commended for their efforts.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MEASURES PLACED ON THE CALENDAR

The following bill and joint resolution were read the second time, and placed on the calendar:

H.R. 1446. An act to support the efforts of the California Missions Foundation to restore and repair the Spanish colonial and mission-era missions in the State of California and to preserve the artworks and artifacts of these missions, and for other purposes.

H.J. Res. 73. Joint resolution making further continuing appropriations for the fiscal year 2004, and for other purposes.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM304. A resolution adopted by the Senate of the Legislature of the State of Wisconsin relative to a tax on Internet access; to the Committee on Commerce, Science, and Transportation.

SENATE RESOLUTION NO. 18

Whereas, the emergence of the Internet as a means of communication has profoundly influenced our society and will pave the way for the global marketplace; and

Whereas, Wisconsin is one of only 8 states that imposes a sales tax on Internet access, thereby putting Wisconsin companies that conduct business over the Internet at a competitive disadvantage; and

Whereas, the U.S. Department of Commerce has estimated that wealthy Americans are 20 times more likely to have Internet access, while Hispanics and African Americans are far less likely to have Internet access; and

Whereas, there is a growing ''digital divide'' between those citizens able to access the technology of the new economy and those who cannot; and

Whereas, increased access to the Internet will create jobs and contribute to economic development; and

Whereas, taxing access to the Internet will make access to the Internet less affordable and therefore less available; and

Whereas, taxing Internet access contributes to this condition and unfairly burdens citizens who are least able to afford Internet access; and

Whereas, the Wisconsin legislature has previously voted to repeal the state's sales tax on Internet access thus demonstrating its commitment to making sure that Wisconsin is on the leading edge of this new technology and providing incentives for even more access and creative use of the Internet: Now, therefore, be it

Resolved by the Senate, That the members of the Wisconsin senate memorialize Congress to pass legislation that will immediately and permanently prohibit any state from imposing a tax on access to the Internet; and be it further

Resolved, That the Senate chief shall provide a copy of this resolution to the governor, to each member of the Wisconsin congressional delegation, to the president and vice president of the United States, to each member of the president's cabinet, and to the secretary of the U.S. Senate and clerk of the U.S. House of Representatives.

POM–305. A joint resolution adopted by the Legislature of the State of Maine relative to the Head Start Program; to the Committee on Health, Education, Labor, and Pensions.

POM–306. A concurrent resolution adopted by the House of Representatives of the General Assembly of the State of Ohio relative to the Human Cloning Prohibition Act of 2003; to the Committee on Health, Education, Labor, and Pensions.

HOUSE CONCURRENT RESOLUTION NO. 6

Whereas, the human embryo is a living organism of the species Homo sapiens at the earliest stages of development (including the single-celled stage), and human cloning a human being at the embryonic stage of life and grows this new human being solely to be exploited (''reproductive cloning) or destroyed (so-called ''therapeutic'' cloning) through nontherapeutic research and experimentation; and

Whereas, human cloning is a manufacturing process in which a human being is created in a laboratory; human cloning indicates a utilitarian view in which a human being is created merely for usefulness with no respect for the dignity of that human being; and human cloning creates a human being who is the twin of a parent, has no other biological parent, and is the child of the grandparents, thereby causing serious moral, social, and legal issues; and

Whereas, current human cloning attempts pose a substantial risk of producing human beings with unpredictable but potentially devastating health problems; and

Whereas, such human cloning attempts are grossly irresponsible and unethical; and

Whereas, the United States House of Representatives passed the Human Cloning Prohibition Act of 2001, a complete ban, and the President of the United States has called for a complete human cloning ban; and

Whereas, a complete human cloning ban is achieved by the passage of the Human Cloning Prohibition Act of 2003 as introduced in the United States Senate by Senator SAM

BROWNBACK (S. 245) and in the United States House of Representatives by Representative DAVE WELDON (H.R. 234) and is not achieved by the passage of other human cloning prohibition acts that allow the creation of human embryos by cloning so long as they are killed for research: Now, therefore, be it

Resolved, That the General Assembly of the State of Ohio urges the 108th Congress of the United States to pass and the President to sign the Human Cloning Prohibition Act of 2003; and be it further * * *

POM–307. A joint memorial adopted by the Legislature of the State of Washington relative to prescription drug prices; to the Committee on Health, Education, Labor, and Pensions.

SENATE JOINT MEMORIAL 8001

Whereas, thanks to significant investments in research and development by pharmaceutical manufacturers, prescription medications offer ever more safe, effective, and economical means of managing and treating a widening range of illnesses and conditions; and

Whereas, prescription medications are the most rapidly expanding component of health care in the Northwest and the United States; and

Whereas, the prices of most prescription medications developed and marketed in the United States are relatively high compared to the prices of these same medications in other countries and other markets; and

Whereas, expenditures on prescription medications for Medicaid recipients in Washington has risen substantially in recent years, placing severe strains on the operating budget of the department of social and health services; and

Whereas, the federal government, unlike its counterparts in other countries, applies neither its regulatory authority nor its purchasing power to the prices of prescription medication which consequently are markedly higher in the United States than in other countries; and

Whereas, the United States stands virtually alone among the major countries of the world in recognizing and protecting the legitimate patent rights of companies that develop new prescription medications yet places no reciprocal obligations on these companies to provide reasonable and affordable access to these patent medications; and

Whereas, the federal government, by legislating to ensure relatively low prices for prescription medications purchased by federal agencies like the Veterans' Administration and for federal programs taking similar measures, has exacerbated the impact of prescription medication prices on the citizens of the state; and

Whereas, the high prices of prescription medications weigh most heavily on the least fortunate and most vulnerable citizens, the uninsured and underinsured, as well as those stricken by serious and chronic illnesses and conditions requiring intensive and extensive treatment; and

Whereas, managing prices of prescription medications and expanding access to necessary medication will decrease the overall cost of health care by reducing the demand for hospital visits and emergency services and the need for surgical and other expensive procedures;

Now, therefore, your Memorialists respectfully pray that in seeking to ensure reasonable prescription medication prices for the citizens of Washington, the state of Washington, through its duly elected and appointed officials, should explore the possibility of acting in concert with other Northwest states to pursue this goal; and be it further

Resolved, That the Northwest states should consider cooperative strategies to address the challenge of the high cost of prescription medications, including;

(1) Model legislation to ensure citizens access to prescription medications at reasonable and affordable prices;

(2) Joint pricing and purchasing agreements for prescription medications;

(3) Programs to provide and facilitate access of qualified citizens to supplies of free and discounted prescription medications offered by pharmaceutical manufacturers; and

(4) Initiatives to encourage and ensure medications are prescribed in the most effective manner; and be it further

Resolved, That copies of this Memorial be immediately transmitted to the Honorable Governors of the States of Washington, Oregon, Idaho, Alaska, and Montana, and to the Honorable George W. Bush, President of the United States of America, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington.

POM–308. A joint memorial adopted by the Legislature of the State of Washington relative to developmentally delayed infants; to the Committee on Health, Education, Labor, and Pensions.

HOUSE JOINT MEMORIAL 4025

Whereas, infants and toddlers from birth to the age of three with developmental delays and special needs are our most vulnerable population; and

Whereas, research shows that early intervention to assess their needs and initiate intensive, effective therapy can change and improve such a child's ability to function throughout his or her life; and

Whereas, Washington State through research and demonstration at the University of Washington and the state's seventeen Neurodevelopmental Centers has been the leader in assessment and remediation for developmentally delayed infants and toddlers for more than forty years; and

Whereas, therapy before the age of three at one of Washington State's excellent Neurodevelopmental Centers results in a significant percentage of children who need no further intervention or special services provided at federal, state, local, and private expense; and

Whereas, basing early intervention services on an itinerant model will reduce the amount of specialized services for each child and family; and

Whereas, serving all developmentally delayed children outside of centers will more than double the cost to federal, state, local, and private sources; and

Whereas, inclusion for developmentally delayed children in their families, schools, and communities is now and has always been the goal of assessment and treatment for Washington State's seventeen Neurodevelopmental Centers; and

Whereas, support and education of parents, families, and caregivers has been a major component of treatment for children with developmental delays at Washington State's seventeen Neurodevelopmental Centers; and

Whereas, parent choice for the assessment and treatment of their children is an inalienable right; and

Whereas, wording for the original Education for All Act of 1975, now known as Individuals with Disabilities Education Act (IDEA), is taken directly from legislation enacted in Washington State in 1971 (HB 90); and

Whereas, wording in the amended IDEA takes away parent choice of assessment and treatment for their developmentally delayed children in Neurodevelopmental Centers such as the seventeen model Neurodevelopmental Centers in Washington State which have successfully served thousands of children for more than forty years with a constantly improving program;

Now, therefore, your Memorialists respectfully pray that Congress, through its process to reauthorize IDEA, modify the wording regarding ''natural environments'' to allow for parent choice for assessment and treatment of their developmentally delayed infants and toddlers at a Neurodevelopmental Center such as the seventeen outstanding Neurodevelopmental Centers serving children and families in Washington State.

Be it *Resolved,* That copies of this Memorial be immediately transmitted to the Honorable George W. Bush, President of the United States, the Secretary of the Department of Education, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington.

POM–309. A resolution adopted by the House of Representatives of the Legislature of the Commonwealth of Massachusetts relative to the Government Pension Offset Rule; to the Committee on Health, Education, Labor, and Pensions.

RESOLUTION

Whereas, the Government Pension Offset Rule of Title II of the Social Security Act, originally enacted in 1977, went into effect in 1983; and

Whereas, the Government Pension Offset Rule unfairly reduces Social Security benefits that a person receives as a spouse if he or she also has a Government Pension Based on work that was not covered by Social Security; and

Whereas, since its inception, the Government Pension Offset Rule has negatively and unfairly affected over 340,000 Federal, State, and local retirees; and

Whereas, Massachusetts is one of 15 States in which the Government Pension Offset Provision financially impacts Federal and State retirees particularly hard; and

Whereas, the Government Pensions Offset Provision is complicated and difficult to understand for many individuals affected by it; and

Whereas, the Government Pension Offset Rule has uneven results, especially for surviving spouses of low-paid workers; and

Whereas, as of December 2001, 349,000 Government annuitants had their Social Security spousal benefits affected by the Government Pension Offset Rule; and

Whereas, in December 1999, the average offset caused by the Government Pensions Offset Rule was $276 a month for men and $391 a month for women; and

Whereas, Massachusetts State employees, including teachers, do not pay into the Federal Social Security system and therefore, are unfairly penalized once they reach retirement by the Government Pension Offset Rule; and

Whereas, it is unlikely that people will turn to teaching professions at the end of their careers due to the loss of Social Security benefits they will endure once they leave private sector professions; and

Whereas, individuals who worked all their lives as public servants in teaching professions or social service professions are not eligible to receive Social Security widow's benefits as a result of the Government Pension Offset Rule and are thus unjustly penalized for choosing public sector careers; and

Whereas, the reforms that led to the Government Pension Offset Rule are over 20 years old and outdated; and

Whereas, over the past several years, more than 300 members of Congress have supported or co-sponsored legislation to amend

this provision in Title II of the Social Security Act; Therefore be it

Resolved, That the Massachusetts house of representatives respectfully requests the United States Congress to repeal the Government Pension Offset Rule of Title II of the Social Security Act; and be it further

Resolved, That a copy of these resolutions be forwarded by the clerk of the House of Representatives to the President of the United States, to the Presiding Officer of each branch of Congress and to the Members thereof from this commonwealth.

POM–310. A joint resolution adopted by the Assembly of the State of California relative to the Choinumni Tribe; to the Committee on Indian Affairs.

JOINT RESOLUTION NO. 8

Whereas, the Choinumni Tribe of Yokuts is a sovereign Indian Nation, located in Fresno County, California, consisting of 103 enrolled and documented members, with its tribal headquarters located approximately 15 miles from Choinumni State Park named in honor of and as recognition of, the Choinumni Tribe; and

Whereas, the leaders of the Choinumni Tribe met with representatives of the United States for treaty negotiations, and a treaty was signed by both the tribal leaders and the United States on April 29, 1851; and

Whereas, the Choinumni Tribe was thus recognized by the United States government as early as 1851; and

Whereas, the Choinumni Tribe signed the treaty, on April 29, 1851, with four other Indian tribes, Picaynue Rancheria, Table Mountain Rancheria, Santa Rosa Rancheria, and Big Sandy Rancheria, all of whom are currently fully federally recognized Indian tribes; and

Whereas, the Choinumni Tribe is the only tribe to have signed this treaty that has not yet been granted full federal recognition; and

Whereas, between 1851 and 1915, the United States government began an unwarranted, hostile relationship with the Choinumni Tribe that forced many of its members to flee into the hills; and

Whereas, around 1887, the United States government granted individual land allotments to some tribal members, but those allotments were devoid of any water or other vital natural resources, forcing surviving tribal members to move to the City of Fresno to seek economic sustainability; and

Whereas, the Congress of the United States has recognized the Choinumni Tribe pursuant to subchapter XXV (commencing with Section 651) of Chapter 14 of Title 25 of the United States Code, which recognition was judicially affirmed by the United States Court of Claims in the case of Indians of California v. United States (1942) 98 Ct.C1. 583; and

Whereas, since the Choinumni Tribe is not listed as an Indian tribe eligible to receive federal programs set aside for Native American tribes, the Choinumni Tribe cannot participate in health, education, and social programs provided by the Bureau of Indian Affairs and the Indian Health Service; and

Whereas, the Choinumni Tribe has long been in a position of poverty that can be corrected by federal recognition; and

Whereas, the Choinumni Tribe has been working since 1959 for federal recognition, including a 1987 application that is still pending; Now, therefore, be it

Resolved by the Assembly and senate of the State of California, jointly, That the Legislature respectfully memorializes the President and the Congress, and the Assistant Secretary for Indian Affairs in the United States Department of the Interior to grant the Choinumni Tribe full federal recognition and all the rights and privileges that arise from that declaration, including listing the tribe in the Federal Register under the relevant provisions of the Federally Recognized Indian Tribe List Act of 1994 (Public Law 103–454), Title I; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to each Senator and Representative from California in the Congress of the United States, and to the Assistant Secretary for Indian Affairs in the United States Department of the Interior.

POM–311. A resolution adopted by the House of Representatives of the General Assembly of the State of Ohio relative to establishing a National Funeral Service Education Week; to the Committee on the Judiciary.

HOUSE RESOLUTION NO. 131

Whereas, the well-planned, thoughtful funeral service, which formally commemorates and celebrates the life of a deceased person, often helps to comfort the person's family and to foster the family's healing process; and

Whereas, in the midst of the emotional distress and upheaval that may accompany the death of a loved one, bereaved families seek reassurance and consolation from funeral directors and morticians and may rely heavily on them for guidance in planning and implementing a meaningful funeral ceremony; and

Whereas, funeral service directors provide invaluable assistance to grieving families by assisting the families in making informed funeral service choices, providing them with information necessary to make funeral service arrangements, and orchestrating meaningful funeral services to memorialize their loved ones; and

Whereas, national funeral organizations have designated the week of September 21 through September 27, 2003, as National Funeral Service Education Week to reflect the efforts by funeral service directors and morticians to help grieving families to commemorate and celebrate the lives of their loved ones; and

Whereas, during the week of September 21 through September 27, 2003, funeral directors and consumer advocates will intensify their efforts to provide consumers with necessary information regarding funeral planning, the arrangement of funeral ceremonies, and the selection of funeral goods and services: Now, therefore, be it

Resolved, That we, the members of the House of Representatives of the 125th General Assembly of the State of Ohio, strongly encourage the Congress of the United States to support efforts to establish National Funeral Service Education Week; and be it further

* * *

POM–312. A joint resolution adopted by the Legislature of the State of Maine relative to Maine victims of the September 11th tragedy; to the Committee on the Judiciary.

H.P. 1542

Whereas, on September 11, 2001 thousands of innocent people from Maine and across the United States lost their lives and their loved ones or were injured in a shocking assault on the World Trade Center and the Pentagon; and

Whereas, on the same day an airplane hijacked as a part of those cowardly acts crashed in the countryside outside Pittsburgh, Pennsylvania, killing all aboard; and

Whereas, these losses were suffered by ordinary people as they were traveling or were working in buildings that had become symbols of America's extraordinary strength; and

Whereas, millions more people in this nation, and across the world, were sickened as they witnessed walls collapsing into rubble and faces collapsing into horror: Now, therefore, be it

Resolved, That We, the Members of the One Hundred and Twentieth Legislature now assembled in the Second Regular Session, join the citizens throughout Maine in acknowledging and expressing our sorrow to all those who have suffered loss through the deaths of loved ones or injury to themselves; and be it further

Resolved, That We, the Members of the One Hundred and Twentieth Legislature, believe that all those who participated in or sponsored these terrible crimes against humanity should be brought to justice without regard to region or border; and be it further

Resolved, That We, the Members of the One Hundred and Twentieth Legislature, avow and affirm our love for and belief in this country and its people and principles and its confidence in our President and leaders as they guide us through these difficult days; and be it further

Resolved, That We, the Members of the One Hundred and Twentieth Legislature, express the collective grief and anguish of our friends and neighbors throughout the nation and our allies in other countries who suffered loss in the aftermath of the appalling airplane hijackings and attacks on September 11, 2001 and pledge our prayers and our purpose in sustaining the strength and solidarity of this nation, our President and our leaders as we respond to this unprecedented attack on America; and be it further

Resolved, That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Honorable George W. Bush, President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, to the governors of the states of Maine and New York and the commonwealths of Pennsylvania and Virginia.

POM–313. A resolution adopted by the House of Representatives of the Legislature of the State of Texas relative to a constitutional amendment to prohibit courts from mandating states or political subdivisions to levy or increase taxes; to the Committee on the Judiciary.

HOUSE RESOLUTION NO. 526

Whereas, in 1990, the United States Supreme Court, in the case of Missouri, et al. v. Jenkins, et al. (495 U.S. 33), chose to disregard Article I, Section 8, of the United States Constitution, which reserves exclusively to the legislative branch of government the authority to tax the citizenry; and

Whereas, in drafting that constitutional section and allocating the power of taxation, the Founding Fathers drew upon the Petition of Right, an English law initiated by Sir Edward Coke, then approved by the British House of Commons and accepted by King Charles I on June 7, 1628, which states in pertinent part that ''. . . no man hereafter [may] be compelled to make or yield any . . . tax . . . without common consent by Act of Parliament . . .''; and

Whereas, in 1787, the framers of the United States Constitution reiterated that timetested principle of limited taxation, specifically vesting with the legislative branch alone the ''. . . Power To lay and collect Taxes, Duties, Imposts and Excises . . .''; and

Whereas, their intent is unambiguous, made clear by the analysis of James Madison, who observed in The Federalist No. 48

that ''. . . the legislative department alone has access to the pockets of the people . . .''; and

Whereas, the same view is expressed by Alexander Hamilton, who asked rhetorically in The Federalist No. 33, ''[w]hat is the power of laying and collecting taxes but a legislative power . . .?,'' and follows consistently in The Federalist No. 78, in which he argued that the judiciary should be the least dangerous branch of government inasmuch as judges would have ''. . . no influence over either the sword or the purse . . .''; and

Whereas, yet today, Hamilton's argument no longer rings true; through legal orders and the exercise of judicial threat and intimidation, federal courts have usurped the role of the legislative branch and have gone so far as to apply it even to non-federal levels of government, mandating state and local requirements that have the direct, or indirect, effect of imposing judicial taxes upon the states and their political subdivisions; and

Whereas, in so vesting itself by fiat with control of the public purse strings, the federal judiciary has contravened and overridden the constitutional separation of powers between the different branches—and levels—of government, threatening creation of a fiscal oligarchy unbeholden to influence by the electorate; and

Whereas, the states and Congress have too long ignored this self-proclamation and seizure of taxation prerogatives, and it behooves all Americans to preserve their rights by the adoption of an amendment to the Constitution of the United States, re-establishing the fundamental link between taxation and representation; and

Whereas, seeking to reverse the aforementioned Jenkins decision of 1990, lawmakers in 23 other States—and in two territories of the United States—beginning in 1993, have already adopted and transmitted to Congress memorials requesting that Congress propose an amendment to the United States Constitution, and those memorials have been entered in the Congressional Record as follows:

the Missouri General Assembly in 1993 (Senate Concurrent Resolution No. 9) designated as POM–175 in Volume 139 of the Congressional Record at page 14565;

the Colorado General Assembly in 1994 (Senate Joint Memorial No. 94–2) designated as POM–569 in Volume 140 of the Congressional Record at page 15070;

the New York Senate in 1994 (Senate No. 3352) designated as POM–578 in Volume 140 of the Congressional Record at page 15073;

the Tennessee General Assembly in 1994 (Senate Joint Resolution No. 372) designated as POM–580 in Volume 140 of the Congressional Record at page 15074;

the Arizona Legislature in 1995 (Senate Concurrent Resolution No. 1014) designated as POM–523 in Volume 142 of the Congressional Record at pages 6586 and 6587;

the Louisiana Legislature in 1995 (Senate Concurrent Resolution No. 11) designated as POM–525 in Volume 142 of the Congressional Record at page 6587;

the Massachusetts Senate in 1995 (unnumbered resolution) designated as POM–625 in Volume 142 of the Congressional Record at pages 14940 and 14941 and designated as POM–638 at page 15486;

the Nevada Legislature in 1995 (Senate Joint Resolution No. 2) designated as POM–287 in Volume 141 of the Congressional Record at page 22422;

the Alaska Legislature in both 1996 and 1998 (House Joint Resolution No. 30 in 1996) designated as POM–622 in Volume 142 of the Congressional Record at pages 14939 and 14940; (House Joint Resolution No. 57 in 1998) designated as POM–515 in Volume 144 of the Congressional Record at page S9042;

the Michigan Legislature in 1996 (Senate Concurrent Resolution No. 278) designated as POM–444 in Volume 144 of the Congressional Record at page S5515;

the South Dakota Legislature in 1996 (House Concurrent Resolution No. 1010) designated as POM–526 in Volume 142 of the Congressional Record at page 6587;

the Delaware General Assembly in 1997 (House Concurrent Resolution No. 6) designated as POM–20 in Volume 143 of the Congressional Record at page S5252;

the Alabama Legislature in 1998 (House Joint Resolution No. 261) designated as POM–416 in Volume 144 of the Congressional Record at page S9405;

the Oklahoma Legislature in 1998 (Senate Concurrent Resolution No. 50) designated as POM–479 in Volume 144 of the Congressional Record at pages S6404 and S6405;

the Illinois Senate in 1999 (Senate Resolution No. 216) designated as POM–449 in Volume 146 of the Congressional Record at page S1814 and designated as POM–512 at page S3611;

the Utah Legislature in 1999 (House Joint Resolution No. 5) designated as POM–285 in Volume 145 of the Congressional Record at page S9945;

the Kansas Legislature in 2000 (House Concurrent Resolution No. 5059) designated as POM–527 in Volume 146 of the Congressional Record at page S4378;

the New Hampshire General Court in 2000 (House Concurrent Resolution No. 27) designated as POM–531 in Volume 146 of the Congressional Record at page S6469;

the Pennsylvania General Assembly in 2000 (Senate Resolution No. 47) designated as POM–642 in Volume 146 of the Congressional Record at pages S11788 and S11789;

the South Carolina General Assembly in 2000 (House Concurrent Resolution No. 4434) designated as POM–641 in Volume 146 of the Congressional Record at page S11575;

the West Virginia Legislature in 2000 (House Concurrent Resolution No. 5) designated as POM–442 in Volume 146 of the Congressional Record at page S1669;

the House of Representatives of the Commonwealth of the Northern Mariana Islands—a territory of the United States—in 2000 (House Resolution No. 12–109) designated as Memorial No. 1 in Volume 147 of the Congressional Record at page H111; as well as the Senate of the Commonwealth of the Northern Mariana Islands, likewise in 2000 (Senate Resolution No. 12–33) designated as POM–46 in Volume 147 of the Congressional Record at page S4244;

the North Dakota Legislative Assembly in 2001 (House Concurrent Resolution No. 3031) designated as POM–7 in Volume 147 of the Congressional Record at pages S3704 and S3705;

the Legislature of the United States Territory of Guam in 2001 (Resolution No. 6) designated as POM–357 in Volume 148 of the Congressional Record at page S10570; and

the Wyoming Legislature in 2002 (Senate Joint Resolution No. SJ003, later styled Enrolled Joint Resolution No. 2) designated as POM–250 in Volume 148 of the Congressional Record at pages S5630 and S5631: Now, therefore, be it

Resolved, That the House of Representatives of the 78th Legislature of the State of Texas, Regular Session, 2003, hereby memorialize the United States Congress to propose and submit to the states for ratification an amendment to the United States Constitution to prohibit all federal courts from ordering or instructing any state or political subdivision thereof, or an official of any state or political subdivision, to levy or increase taxes; and be it further

Resolved, That the Congress be respectfully requested to entertain the following suggested text for such an amendment:

''Article Neither the Supreme Court nor any inferior court of the United States shall have the power to instruct or order a state or political subdivision thereof, or an official of such state or political subdivision, to levy or increase taxes''; and be it further

Resolved, That the chief clerk of the Texas House of Representatives forward official copies of this resolution to the vice president of the United States, to the speaker of the United States House of Representatives, and to all members of the Texas delegation to the Congress, with the request that this resolution be entered officially in the Congressional Record as a memorial to the Congress of the United States of America to propose for ratification a federal constitutional amendment to prohibit judicially imposed taxes.

POM–314. A resolution adopted by the House of Representatives of the Legislature of the State of Michigan relative to visas for temporary agricultural workers; to the Committee on the Judiciary.

HOUSE RESOLUTION NO. 314

Whereas, the tragic events of September 11, 2001, have caused us to reexamine a host of policies and practices to do all we can to increase the security of our state and nation. Because of the magnitude of the attacks and the fact that murderers plotted the attacks over a long period of time, we are now making greater efforts to address the issue of aliens who are here illegally; and

Whereas, as the issue of immigration is closely examined, it is imperative that our nation remember the vitally important role that law-abiding aliens play in our country. Temporary workers meet a necessary and productive need in many sectors of our economy. This is most apparent in the area of agriculture. Michigan, which benefits greatly from the efforts of seasonal agricultural workers, especially from Mexico, is keenly aware of how much these workers contribute to our state; and

Whereas, the country's policies toward temporary agricultural workers need to be assessed in the context of the importance of these people to our nation. The current number of visas for temporary agricultural workers may not be sufficient. If this number is too low, it may have the effect of increasing the number of aliens here without documentation, even though seasonal farm workers would rather be here by following all of the regulations. The current program used for temporary agricultural workers visa processing (H2A) should be reformed. Making the process of gaining the proper visa smoother and increasing the number of these workers who can be here lawfully may well benefit the economy as well as increase national security: Now, therefore, be it

Resolved by the house of representatives, That we memorialize the Congress of the United States and the Immigration and Naturalization Service to determine the appropriateness of increasing the number of visas for temporary agricultural workers, and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, the members of the Michigan congressional delegation, and the Immigration and Naturalization Service.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HATCH, from the Committee on the Judiciary:

Report to accompany S. 1293, A bill to criminalize the sending of predatory and abusive e-mail (Rept. No. 108–170).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Ms. COLLINS for the Committee on Governmental Affairs.

Joseph Michael Francis Ryan III, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for the term of fifteen years.

Jerry Stewart Byrd, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for the term of fifteen years.

Brian F. Holeman, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for the term of fifteen years.

Craig S. Iscoe, of the District of Columbia, to be Associate Judge of the Superior Court of the District of Columbia for the term of fifteen years.

*Dale Cabaniss, of Virginia, to be a Member of the Federal Labor Relations Authority for a term of five years expiring July 29, 2007.

By Mr. CAMPBELL for the Committee on Indian Affairs.

*David Wayne Anderson, of Minnesota, to be an Assistant Secretary of the Interior.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. SANTORUM (for himself and Mr. CARPER):

S. 1773. A bill to permit biomedical research corporations to engage in certain equity financings without incurring limitations on net operating loss carryforwards and certain built-in losses, and for other purposes; to the Committee on Finance.

By Mr. KENNEDY (for himself, Mrs. CLINTON, Mr. CORZINE, Mrs. FEINSTEIN, Mr. LAUTENBERG, Mr. LEVIN, Mr. REED, and Mr. SCHUMER):

S. 1774. A bill to repeal the sunset provisions in the Undetectable Firearms Act of 1988; to the Committee on the Judiciary.

By Mr. BOND (for himself, Mr. KENNEDY, Mr. BINGAMAN, Mr. GRAHAM of South Carolina, and Mr. TALENT):

S. 1775. A bill to make certain technical and conforming amendments to correct the Health Care Safety Net Amendments of 2002; to the Committee on Health, Education, Labor, and Pensions.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MILLER:

S. Res. 249. A resolution to strike paragraph 2 of rule XXII of the Standing Rules of the Senate, relating to cloture; to the Committee on Rules and Administration.

By Mrs. CLINTON (for herself, Mr. SHELBY, Mrs. LINCOLN, Mr. DEWINE, Mr. KENNEDY, Mr. LAUTENBERG, Mr. HAGEL, and Mr. MILLER):

S. Con. Res. 74. A concurrent resolution expressing the sense of the Congress that a postage stamp should be issued as a testimonial to the Nation's tireless commitment to reuniting America's missing children with their families, and to honor the memories of those children who were victims of abduction and murder; to the Committee on Governmental Affairs.

ADDITIONAL COSPONSORS

S. 286

At the request of Mr. BOND, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. 286, a bill to revise and extend the Birth Defects Prevention Act of 1998.

S. 392

At the request of Mr. REID, the names of the Senator from Connecticut (Mr. DODD) and the Senator from North Carolina (Mrs. DOLE) were added as cosponsors of S. 392, a bill to amend title 10, United States Code, to permit retired members of the Armed Forces who have a service-connected disability to receive both military retired pay by reason of their years of military service and disability compensation from the Department of Veterans Affairs for their disability.

S. 473

At the request of Mr. FEINGOLD, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 473, a bill to amend the Federal Water Pollution Control Act to clarify the jurisdiction of the United States over waters of the United States.

S. 478

At the request of Mr. SARBANES, the name of the Senator from Missouri (Mr. BOND) was added as a cosponsor of S. 478, a bill to grant a Federal charter Korean War Veterans Association, Incorporated, and for other purposes.

S. 816

At the request of Mr. CONRAD, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 816, a bill to amend title XVIII of the Social Security Act to protect and preserve access of medicare beneficiaries to health care provided by hospitals in rural areas, and for other purposes.

S. 877

At the request of Mr. PRYOR, his name was added as a cosponsor of S. 877, a bill to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet.

At the request of Mr. MCCAIN, his name and the name of the Senator from Illinois (Mr. FITZGERALD) were added as cosponsors of S. 877, supra.

S. 976

At the request of Mr. WARNER, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 976, a bill to provide for the issuance of a coin to commemorate the 400th anniversary of the Jamestown settlement.

S. 985

At the request of Mr. DODD, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 985, a bill to amend the Federal Law Enforcement Pay Reform Act of 1990 to adjust the percentage differentials payable to Federal law enforcement officers in certain high-cost areas, and for other purposes.

S. 1098

At the request of Mr. CONRAD, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1098, a bill to amend title XVIII of the Social Security Act to update the renal dialysis composite rate.

S. 1143

At the request of Mrs. HUTCHISON, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 1143, a bill to amend the Public Health Service Act to direct the Secretary of Health and Human Services to establish, promote, and support a comprehensive prevention, research, and medical management referral program for hepatitis C virus infection.

S. 1297

At the request of Mr. BUNNING, his name was added as a cosponsor of S. 1297, a bill to amend title 28, United States Code, with respect to the jurisdiction of Federal courts inferior to the Supreme Court over certain cases and controversies involving the Pledge of Allegiance to the Flag.

S. 1298

At the request of Mr. AKAKA, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 1298, a bill to amend the Farm Security and Rural Investment Act of 2002 to ensure the humane slaughter of non-ambulatory livestock, and for other purposes.

S. 1369

At the request of Mr. AKAKA, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 1369, a bill to ensure that prescription drug benefits offered to medicare eligible enrollees in the Federal Employees Health Benefits Program are at least equal to the actuarial value of the prescription drug benefits offered to enrollees under the plan generally.

S. 1379

At the request of Mr. JOHNSON, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1379, a bill to require the Secretary of the Treasury to mint coins in commemoration of veterans who became disabled for life while serving in the Armed Forces of the United States.

S. 1380

At the request of Mr. SMITH, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 1380, a bill to distribute universal

service support equitably throughout rural America, and for other purposes.

S. 1506

At the request of Mr. BUNNING, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S. 1506, a bill to amend the Internal Revenue Code of 1986 to allow distilled spirits wholesalers a credit against income tax for their cost of carrying Federal excise taxes prior to the sale of the product bearing the tax.

S. 1531

At the request of Mr. HATCH, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 1531, a bill to require the Secretary of the Treasury to mint coins in commemoration of Chief Justice John Marshall.

S. 1557

At the request of Mr. SARBANES, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 1557, a bill to authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of Armenia.

S. 1595

At the request of Mr. KERRY, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 1595, a bill to amend the Internal Revenue Code of 1986 to allow small business employers a credit against income tax with respect to employees who participate in the military reserve components and are called to active duty and with respect to replacement employees and to allow a comparable credit for activated military reservists who are self-employed individuals, and for other purposes.

S. 1612

At the request of Ms. COLLINS, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 1612, a bill to establish a technology, equipment, and information transfer within the Department of Homeland Security.

S. 1619

At the request of Mrs. MURRAY, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 1619, a bill to amend the Individuals with disabilities Education Act to ensure that children with disabilities who are homeless or are wards of the State have access to special education services, and for other purposes.

S. 1637

At the request of Mr. GRASSLEY, the name of the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S. 1637, a bill to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.

S. 1664

At the request of Mr. COCHRAN, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of S. 1664, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to provide for the enhanced review of covered pesticide products, to authorize fees for certain pesticide products, and to extend and improve the collection of maintenance fees.

S. 1686

At the request of Mr. GRASSLEY, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 1686, a bill to reauthorize the adoption incentive payments program under part E of title IV of the Social Security Act, and for other purposes.

S. 1708

At the request of Mr. KENNEDY, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 1708, a bill to provide extended unemployment benefits to displaced workers, and to make other improvements in the unemployment insurance system.

S. 1717

At the request of Mr. HATCH, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 1717, a bill to amend the Public Health Service Act to establish a National Cord Blood Stem Cell Bank Network to prepare, store, and distribute human umbilical cord blood stem cells for the treatment of patients and to support peer-reviewed research using such cells.

S. 1741

At the request of Ms. COLLINS, the names of the Senator from Washington (Mrs. MURRAY), the Senator from Hawaii (Mr. AKAKA), the Senator from Ohio (Mr. VOINOVICH), the Senator from Minnesota (Mr. COLEMAN) and the Senator from Arkansas (Mr. PRYOR) were added as cosponsors of S. 1741, a bill to provide a site for the National Women's History Museum in the District of Columbia.

S. 1751

At the request of Mr. GRASSLEY, the name of the Senator from Tennessee (Mr. ALEXANDER) was added as a cosponsor of S. 1751, a bill to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

At the request of Mr. HATCH, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. 1751, supra.

S. 1756

At the request of Mr. CONRAD, the names of the Senator from Virginia (Mr. ALLEN) and the Senator from Texas (Mrs. HUTCHISON) were added as cosponsors of S. 1756, a bill to amend the Internal Revenue Code of 1986 to protect the health benefits of retired miners and to restore stability and equity to the financing of the United Mine Workers of America Combined Benefit Fund by providing additional sources of revenue to the Fund, and for other purposes.

S. 1769

At the request of Mr. DORGAN, his name was added as a cosponsor of S. 1769, a bill to provide for class action reform, and for other purposes.

At the request of Mr. BREAUX, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 1769, supra.

S. CON. RES. 21

At the request of Mr. BUNNING, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. Con. Res. 21, a concurrent resolution expressing the sense of the Congress that community inclusion and enhanced lives for individuals with mental retardation or other developmental disabilities is at serious risk because of the crisis in recruiting and retaining direct support professionals, which impedes the availability of a stable, quality direct support workforce.

S. CON. RES. 58

At the request of Mr. DEWINE, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. Con. Res. 58, a concurrent resolution expressing the sense of Congress with respect to raising awareness and encouraging prevention of stalking in the United States and supporting the goals and ideals of National Stalking Awareness Month.

S. CON. RES. 73

At the request of Mrs. FEINSTEIN, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. Con. Res. 73, a concurrent resolution expressing the deep concern of Congress regarding the failure of the Islamic Republic of Iran to adhere to its obligations under a safeguards agreement with the International Atomic Energy Agency and the engagement by Iran in activities that appear to be designed to develop nuclear weapons.

S. RES. 202

At the request of Mr. CAMPBELL, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. Res. 202, a resolution expressing the sense of the Senate regarding the genocidal Ukraine Famine of 1932-33.

AMENDMENT NO. 1828

At the request of Mr. COCHRAN, the names of the Senator from Utah (Mr. BENNETT), the Senator from Georgia (Mr. CHAMBLISS) and the Senator from Utah (Mr. HATCH) were added as cosponsors of amendment No. 1828 intended to be proposed to H.R. 1904, a bill to improve the capacity of the Secretary of Agriculture and the Secretary of the Interior to plan and conduct hazardous fuels reduction projects on National Forest System lands and Bureau of Land Management lands aimed at protecting communities, watersheds, and certain other at-risk lands from catastrophic wildfire, to enhance efforts to protect watersheds and address threats to forest and rangeland health, including catastrophic wildfire, across the landscape, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SANTORUM (for himself and Mr. CARPER):

S. 1773. A bill to permit biomedical research corporations to engage in certain equity financings without incurring limitations on net operating loss carryforwards and certain built-in losses, and for other purposes; to the Committee on Finance.

Mr. SANTORUM. Mr. President, today, I am introducing the Biotechnology Future Investment Expansion Act of 2003. I am pleased that Senator CARPER is cosponsoring this important, bipartisan bill.

Biotechnology holds great promise for breakthroughs in health care, agriculture and defense against bioterrorism. However, recent years have seen promising biotech medical therapies endangered due to flawed tax treatment and a lack of willing capital. This legislation will level the playing field to encourage further investment and innovation in this vital sector of our economy.

The nearly 1,500 biotechnology companies in the U.S. have produced 130 FDA-approved products while another 350 biotech drug products and vaccines are currently in clinical trials. Most biotechnology researchers work in promising, but relatively narrow fields, and only a small number of their peers are qualified to evaluate the theoretical promise of any new idea. On average, it takes these researchers more than 10 years and $500 million to develop a new biotech therapy, and this highly capital-intensive research is more often done at small-to-medium-sized companies that are yet to market a saleable product.

These factors combine to create an industry structure that is unique in our economic history. Unfortunately, this unique structure prevents the biotechnology industry from utilizing research incentives intended to promote just the kind of research it engages in. Specifically, net operating loss carryforwards (NOLs), which are meant to allow research-intensive industries like biotechnology to apply current losses against future profits for tax purposes, are routinely made worthless to biotech companies due to an unintended consequence of the tax code. In fact, the current tax treatment of NOLs impairs, rather than fosters, biotechnology research. This is because rules designed to prevent abuse of NOLs through acquisition often inadvertently trigger restrictions on the use of a biotech firm's NOLs, rendering them useless in many cases, when all the company has done is raise more capital.

Section 382, which for the most part has proven to be an effective guard against tax abusive NOL trafficking, describes the many circumstances that can be classified as an ownership change. Unfortunately, those circumstances apply to and penalize the frequent biotech practice of raising equity in successive financing rounds. This practice is essential to successfully negotiating the long product development and Food and Drug Administration approval processes.

These limitations unintentionally discourage biotechnology research and leave the firms that would otherwise conduct that research in dire financial straits. Without these firms, the money that is being poured into research at the National Institutes of Health (NIH) and elsewhere to combat diseases such as cancer, AIDS, hepatitis, cardiovascular ailments, diabetes, and central nervous system disorders, as well as many rare diseases, will have a significantly reduced potential to lead to new cures. We may never know what cures will be lost without action.

Recognizing the unique structure of the biotech industry—a structure that the architects and stewards of the Tax Code likely never imagined—this legislation is narrowly drafted to exempt certain qualified investments in biotechnology from Section 382 restrictions. This change will spur investment in biotechnology, so we can continue the pursuit of innovative and life-saving therapies, all while continuing to prevent the fraudulent use of NOLs, as Section 382 intends.

I encourage all of my colleagues to join us in supporting this bill.

By Mr. KENNEDY (for himself, Mrs. CLINTON, Mr. CORZINE, Mrs. FEINSTEIN, Mr. LAUTENBERG, Mr. LEVIN, Mr. REED, and Mr. SCHUMER):

S. 1774. A bill to repeal the sunset provisions in the Undetectable Firearms Act of 1988; to the Committee on the Judiciary.

Mr. KENNEDY. Mr. President, it's a privilege to join my colleagues in introducing the Terrorist Firearms Detection Act of 2003.

Since the atrocities of September 11, Congress has acted with strong bipartisan support to win the war on terrorism and protect the country from future attacks. We've improved the security of our airports and our borders, strengthened our defenses against bioterrorism, and given law enforcement new powers to investigate terrorist threats and prevent terrorism.

But Congress has not yet acted to renew one of the Nation's most essential protections against terrorism. The Undetectable Firearms Act—also known as the ''plastic gun'' law—makes it illegal to manufacture, import, possess, or transfer a firearm that is not detectable by walk-through metal detectors or airport x-ray machines. Only firearms necessary for certain military and intelligence uses are exempt.

This law was first enacted in 1988, long before the attacks on 9/11, and it is more important than ever now. It has been extended once since it was first enacted, but it is now scheduled to expire on December 10. The administration has made no public statements on the need to renew it, and neither has the Republican leadership of the House or Senate. Unless Congress and the President act soon, Americans will find themselves needlessly vulnerable to terrorist attacks and other gun violence in airlines, airports, schools, and office buildings.

The gun industry clearly has the technology to manufacture firearms that cannot be detected by metal detectors and x-ray machines.

As early as 1986, Congress's Office of Technology Assessment found that ''technology does exist to manufacture certain firearms which would be completely or almost completely non-metallic,'' and that ''plastic handguns may be available on the commercial market quite soon.''

A 1985 report by the American Firearms Industry emphasized the profitability of plastic guns for the industry: ''The American plastic gun will shortly make its appearance. Plastic is the 'common' word, but it's really liquid crystal polymer. . . . [I]n the long run, if a 100% plastic gun works, this would be great for sales. What this does is make everything that has been produced in this century obsolete. That is exactly what our industry desperately needs. This will give us a whole new, and real reason to resell every hunter and shooter in America.''

In 1986, Libyan dictator Muammar Qaddafi tried to purchase more than 100 handguns produced in Austria and made almost entirely of hardened plastic.

The technology of gun manufacturers has clearly improved since the 1980's—and the desire of terrorists to attack Americans has soared. We know that terrorists are exploiting the weaknesses and loopholes in U.S. gun laws.

In 2000, a member of the Middle East terrorist group Hezbollah was convicted in Detroit on gun charges and conspiracy to ship guns and ammunition to Lebanon. He had bought many of those guns at gun shows in Michigan.

In 2001, American soldiers found a terrorist training manual entitled ''How Can I Train Myself for Jihad'' in a house in Afghanistan. It stated: ''In other countries, *e.g.,* some states of USA. . . . it is perfectly legal for members of the public to own certain types of firearms. If you live in such a country, obtain an assault rifle legally . . . learn how to use it properly and go and practice in the areas allowed for such training.''

What could be clearer? We know what's coming. Terrorists are eager to exploit weaknesses in our gun laws, and there is no doubt that Americans will be at much greater risk if Congress fails to renew the Undetectable Firearms Act.

Just last week, Admiral James M. Loy of the Transportation Security Administration testified that, according to U.S. intelligence, terrorists are more likely to try to hijack a commercial airliner than attempt to shoot

down an aircraft with shoulder-fired missiles. The December 2001 arrest of attempted ''shoe bomber'' Richard Reid showed just how committed terrorists are to smuggling undetectable plastic explosives onto airplanes. Reid was stopped at the last minute by alert passengers and crew, not by any detection machinery. The legalization of undetectable guns will clearly increase the danger to flight crews, passengers and other citizens exponentially.

The need for action is urgent. The Terrorist Firearms Detection Act will renew the Act and make it permanent. The danger to security from plastic firearms will not sunset, and the law that bans them shouldn't sunset either.

The Terrorist Firearms Detection Act is supported by Americans for Gun Safety, the Brady Campaign to Prevent Gun Violence United with the Million Mom March, the Coalition to Stop Gun Violence, and the Violence Policy Center. The only organization to have opposed the ban on plastic guns in the past is the National Rifle Association, and it's fair to ask, ''Whose side are they on?'' If they insist on another sunset, perhaps we can sunset the NRA instead.

The bill we are introducing today is only one of several steps that Congress should take to protect our people from gun violence. Senator LAUTENBERG's Homeland Security Gun Safety Act will close the loopholes in our gun laws that allow rogue gun dealers to evade the law and sell guns illegally to criminals and terrorists. That's how the D.C. snipers acquired their Bushmaster rifle.

Congress should also act to strengthen criminal background checks for gun purchases under the Brady Law, renew the assault weapons ban, and close the ''gun show loophole'' once and for all. Each of these gun-safety measures is needed to protect our people in communities across the country, and I urge my colleagues to support them.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 249—TO STRIKE PARAGRAPH 2 OF RULE XXII OF THE STANDING RULES OF THE SENATE, RELATING TO CLOTURE

Mr. MILLER submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 249

Resolved, That rule XXII of the Standing Rules of the Senate is amended by striking paragraph 2.

SENATE CONCURRENT RESOLUTION 74—EXPRESSING THE SENSE OF THE CONGRESS THAT A POSTAGE STAMP SHOULD BE ISSUED AS A TESTIMONIAL TO THE NATION'S TIRELESS COMMITMENT TO REUNITING AMERICA'S MISSING CHILDREN WITH THEIR FAMILIES, AND TO HONOR THE MEMORIES OF THOSE CHILDREN WHO WERE VICTIMS OF ABDUCTION AND MURDER

Mrs. CLINTON (for herself, Mr. SHELBY, Mrs. LINCOLN, Mr. DEWINE, Mr. KENNEDY, Mr. LAUTENBERG, Mr. HAGEL, and Mr. MILLER) submitted the following concurrent resolution; which was referred to the Committee on Governmental Affairs:

S. CON. RES. 74

Whereas there are reported missing in the United States approximately 2,000 children each day and up to 800,000 children each year;

Whereas the National Center for Missing and Exploited Children was established 19 years ago as the Nation's resource center and clearinghouse for information on America's missing children, and issued a national call to action requesting the participation of every citizen to assist in the search for the country's missing youth;

Whereas it is the collective responsibility of all Americans to better protect the Nation's children, as well as to assist in the search for those who are missing;

Whereas the issuance of a stamp bearing the image of a missing child sends a powerful message, both at its unveiling and on each letter on which it is sent, that Americans will neither tolerate the victimization of their children nor rest until each missing child is reunited with his or her family; and

Whereas the Missing Children's Stamp Committee, headquartered in New York State, has collected more than 26,000 letters from around the world in support of such a stamp: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that—

(1) a postage stamp should be issued by the United States Postal Service to honor all missing children; and

(2) the Citizens' Stamp Commission of the United States Postal Service should recommend to the Postmaster General that such a stamp be issued.

Mrs. CLINTON. Mr. President, I rise today with my colleague, Senator SHELBY, to submit a resolution to encourage the United States Postal Service Stamp Advisory Committee to issue the National Missing and Exploited Children's Postage Stamp. I am proud to join my colleague Congressman BOEHLERT, the champion of this legislation in the House, and am honored to be a part of this effort.

We introduce this resolution today on the 14th anniversary of the abduction of Jacob Wetterling. Jacob was only 11 years old when he was kidnapped at gunpoint while riding his bike on his way home from a convenience store in St. Joseph, MN. Though he was taken from his family and friends on this day his memory is still alive. With support from his community, Jacob's parents established the Jacob Wetterling Foundation, which has successfully advocated for local and national legislation to help prevent future abductions and to protect thousands of children from sexual predators.

There are 800,000 parents every year, like the Wetterlings, who endure the loss of a child and are struggling to come to terms with the helplessness, anger, and frustration that consume them during the ensuing weeks and months. Many of my colleagues know all too well the agony of losing a child. As parents, community members, legislators, we are all affected when a child goes missing.

I want to take this opportunity to recognize the important work of the National Center for Missing and Exploited Children (NCMEC). This organization was established by Congress in 1984 through the Missing Children's Assistance Act to carry out the mission of finding missing children, combating child sexual exploitation, and preventing child victimization. Through its partnership with 18,000 law enforcement agencies across the United States and abroad, NCMEC's is unparalleled in its commitment to this issue.

Last year, I was proud to submit the Code Adam Act, a resolution encouraging public places to employ a Code Adam protocol to thwart child abductions in commercial establishments. The Code Adam protocol was named in memory of 6-year-old Adam Walsh, the son of John Walsh, co-founder of the National Center for Missing and Exploited Children and host of ''America's Most Wanted.'' Adam was murdered after being kidnapped from a Florida shopping mall in 1981. The Code Adam Protocol requires store employees to announce a ''Code Adam'' alert over the public-address system when a customer reports a missing child. All designated employees receive a brief description of the child, immediately stop their normal work to search for that child, and monitor all exists to help prevent the child from leaving the store. The Code Adam Act was approved by Congress in April of this year as part of the PROTECT Act and was signed into law on April 30, 2003 by the President. It will undoubtedly play an important role in finding missing children and returning them safely to their homes.

I was also a proud cosponsor of the National AMBER Alert Network Act of 2003. This Act brings critical financial assistance to States to help them implement AMBER plans. It also creates an AMBER coordinator within the Department of Justice. AMBER, which stands for America's Missing: Broadcast Emergency Response was created in 1996 after the abduction and murder of Amber Hagerman in Texas. It's an emergency alert plan like that used in storm warnings that alerts a community about the recent disappearance of a child. With the help of the National Center of Missing and Exploited Children, the broadcast community, and members of law enforcement, the AMBER Alert helped find 105 children

across the country. Justice Department Statistics show that 74 percent of kidnapped children who are later found murdered are killed within the first 3 hours of their abduction. The National Amber Alert Network Act will help law enforcement, in those early critical hours, as they work hard to find a missing child. I am pleased that it was also approved by Congress and signed into law as part of the PROTECT Act.

Ten years ago, on August 18, 1993, Sara Ann Woods, a child of Herkimer County, NY, was abducted as she was riding home from her father's church in Litchfield, NY. After 3 years her kidnapper confessed to her murder, leaving the town devastated. Sara's death has been and continues to be the inspiration behind this legislation. I also want to mention Marc Klaas and John Walsh, the honorary co-chairmen of the Missing Children's Stamp Committee in Mohawk Valley, NY, and Herkimer County Legislator John Brezinski, who has worked tirelessly on this effort.

I am pleased to be joined in this effort with Senators SHELBY, DEWINE, LINCOLN, KENNEDY, LAUTENBERG, HAGEL and MILLER as original cosponsors.

According to a poll by Zogby, more than two out of every three Americans support a National Missing and Exploited Children's Postage Stamp. This commemorative stamp will help raise awareness and honor these missing children and their families. This stamp will reach individuals across geographic and socioeconomic spectrums, and we know that when it comes to combating these terrible crimes, awareness is crucial. I urge my colleagues to support this resolution. I believe that it will make a difference in protecting the lives of our children.

AMENDMENTS SUBMITTED & PROPOSED

SA 1891. Mr. WYDEN (for himself and Mr. BURNS) proposed an amendment to the bill S. 877, to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet.

SA 1892. Mr. SCHUMER (for himself, Mr. GRAHAM, of South Carolina, Mr. MCCAIN, and Mr. HOLLINGS) proposed an amendment to the bill S. 877, supra.

SA 1893. Mr. HATCH (for himself, Mr. LEAHY, Mr. NELSON, of Florida, and Mr. SCHUMER) proposed an amendment to the bill S. 877, supra.

SA 1894. Mr. MCCAIN (for Mr. ENZI (for himself, Mr. SANTORUM, and Mr. HATCH)) proposed an amendment to the bill S. 877, supra.

SA 1895. Mr. HARKIN proposed an amendment to the bill S. 877 , supra.

SA 1896. Mr. MCCAIN (for Mr. CORZINE (for himself and Mr. GRAHAM, of South Carolina)) proposed an amendment to the bill S. 877, supra.

SA 1897. Mr. FRIST (for Mr. BUNNING) proposed an amendment to the concurrent resolution S. Con. Res. 21, expressing the sense of the Congress that community inclusion and enhanced lives for individuals with mental retardation or other developmental disabilities is at serious risk because of the crisis in recruiting and retaining direct support professionals, which impedes the availability of a stable, quality direct support workforce.

SA 1898. Mr. FRIST (for Mr. BUNNING) proposed an amendment to the concurrent resolution S. Con. Res. 21, supra.

TEXT OF AMENDMENTS

SA 1891. Mr. WYDEN (for himself and Mr. BURNS) proposed an amendment to the bill S. 877, to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet; as follows:

On page 37, line 12, after the comma, insert ''whether or not not displayed,''.

On page 44, line 20, strike ''false or misleading.'' and insert ''materially false or materially misleading.''.

On page 45, line 2, strike ''misleading; and'' and insert ''materially misleading;''.

On page 45, line 5, strike ''false or misleading.'' and insert ''materially false or materially misleading; and''.

On page 45, between lines 5 and 6, insert the following:

''(C) if header information attached to a message fails to identify a protected computer used to initiate the message because the person initiating the message knowingly uses another protected computer to relay or retransmit the message for purposes of disguising its origin, then such header information shall be considered materially misleading.''.

On page 49, between lines 11 and 12, insert the following:

(6) Materiality defined.—For purposes of paragraph (1), an inaccuracy or omission in header information is material if it would materially impede the ability of a party seeking to allege a violation of this Act to locate the person who initiated the message or to investigate the alleged violation.

On page 50, beginning in line 24, strike ''establish'' and insert ''register for''.

On page 51, after line 22, insert the following:

''(d) SUPPLEMENTARY RULEMAKING AUTHORITY.—

The Commission may by rule—

''(1) modify the 10-business-day period under subsection (a)(4)(A) or subsection (a)(4)(B), or both, if the Commission determines that a different period would be more reasonable after taking into account—

''(A) the purposes of subsection (a);

''(B) the interests of recipients of commercial electronic mail; and

''(C) the burdens imposed on senders of lawful commercial electronic mail; and

''(2) specify additional activities or practices to which subsection (b) applies if the Commission determines that those activities or practices are contributing substantially to the proliferation of commercial electronic mail messages that are unlawful under subsection (a).''

On page 58, beginning in line 16, strike ''jurisdiction or in any other court of competent''.

On page 62, beginning in line 14, strike ''defendant, or in any other court of competent jurisdiction, to—'' and insert ''defendant—''.

On page 65, beginning in line 7, strike ''for any such statute, regulation, or rule that'' and insert ''to the extent that any such statute, regulation, or rule''.

On page 65, line 16, strike ''State laws'' and insert ''other State laws to the extent that those laws relate''.

SA 1892. Mr. SCHUMER (for himself, Mr. GRAHAM of South Carolina, Mr. MCCAIN, and Mr. HOLLINGS) proposed an amendment to the bill S. 877, to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet; as follows:

On page 66, strike lines 1 through 11 and insert the following:

SEC. 9. DO-NOT-E-MAIL REGISTRY.

(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Commission shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce a report that—

(1) sets forth a plan and timetable for establishing a nationwide marketing Do-Not-E-mail registry;

(2) includes an explanation of any practical, technical, security, privacy, enforceability, or other concerns that the Commission has regarding such a registry; and

(3) includes an explanation of how the registry would be applied with respect to children with e-mail accounts.

(b) AUTHORIZATION TO IMPLEMENT.—The Commission may establish and implement the plan, but not earlier than 9 months after the date of enactment of this Act.

SA 1893. Mr. HATCH (for himself, Mr. LEAHY, Mr. NELSON of Florida, and Mr. SCHUMER) proposed an amendment to the bill S. 877, to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet; as follows:

On page 43, beginning with line 11, strike through the matter appearing between lines 10 and 11 on page 44 and insert the following:

SEC. 4. PROHIBITION AGAINST PREDATORY AND ABUSIVE COMMERCIAL E-MAIL.

(a) OFFENSE.—

(1) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by adding at the end the following new section:

''§ 1037. Fraud and related activity in connection with electronic mail

''(a) IN GENERAL.—Whoever, in or affecting interstate or foreign commerce, knowingly—

''(1) accesses a protected computer without authorization, and intentionally initiates the transmission of multiple commercial electronic mail messages from or through such computer,

''(2) uses a protected computer to relay or retransmit multiple commercial electronic mail messages, with the intent to deceive or mislead recipients, or any Internet access service, as to the origin of such messages,

''(3) falsifies header information in multiple commercial electronic mail messages and intentionally initiates the transmission of such messages,

''(4) registers, using information that falsifies the identity of the actual registrant, for 5 or more electronic mail accounts or online user accounts or 2 or more domain names, and intentionally initiates the transmission of multiple commercial electronic mail messages from any combination of such accounts or domain names, or

''(5) falsely represents the right to use 5 or more Internet protocol addresses, and intentionally initiates the transmission of multiple commercial electronic mail messages from such addresses,

or conspires to do so, shall be punished as provided in subsection (b).

''(b) PENALTIES.—The punishment for an offense under subsection (a) is—

''(1) a fine under this title, imprisonment for more than 5 years, or both, if—

''(A) the offense is committed in furtherance of any felony under the laws of the United States or of any State; or

''(B) the defendant has previously been convicted under this section or section 1030, or under the law of any State for conduct involving the transmission of multiple commercial electronic mail messages or unauthorized access to a computer system;

''(2) a fine under this title, imprisonment for not more than 3 years, or both, if—

''(A) the offense is an offense under subsection (a)(1);

''(B) the offense is an offense under subsection (a)(4) and involved 20 or more falsified electronic mail or online user account registrations, or 10 or more falsified domain name registrations;

''(C) the volume of electronic mail messages transmitted in furtherance of the offense exceeded 2,500 during any 24-hour period, 25,000 during any 30-day period, or 250,000 during any 1-year period;

''(D) the offense caused loss to 1 or more persons aggregating $5,000 or more in value during any 1-year period;

''(E) as a result of the offense any individual committing the offense obtained anything of value aggregating $5,000 or more during any 1-year period; or

''(F) the offense was undertaken by the defendant in concert with 3 or more other persons with respect to whom the defendant occupied a position of organizer or leader; and

''(3) a fine under this title or imprisonment for not more than 1 year, or both, in any other case.

''(c) FORFEITURE.—

''(1) IN GENERAL.—The court, in imposing sentence on a person who is convicted of an offense under this section, shall order that the defendant forfeit to the United States—

''(A) any property, real or personal, constituting or traceable to gross proceeds obtained from such offense; and

''(B) any equipment, software, or other technology used or intended to be used to commit or to facilitate the commission of such offense.

''(2) PROCEDURES.—The procedures set forth in section 413 of the Controlled Substances Act (21 U.S.C. 853), other than subsection (d) of that section, and in Rule 32.2 of the Federal Rules of Criminal Procedure, shall apply to all stages of a criminal forfeiture proceeding under this section.

''(d) DEFINITIONS.—In this section:

''(1) LOSS.—The term 'loss' has the meaning given that term in section 1030(e) of this title.

''(2) MULTIPLE.—The term 'multiple' means more than 100 electronic mail messages during a 24-hour period, more than 1,000 electronic mail messages during a 30-day period, or more than 10,000 electronic mail messages during a 1-year period.

''(3) OTHER TERMS.—Any other term has the meaning given that term by section 3 of the CAN-SPAM Act of 2003.''.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 47 of title 18, United States Code, is amended by adding at the end the following:

''Sec. 1037. Fraud and related activity in connection with electronic mail.''.

(b) UNITED STATES SENTENCING COMMISSION.—

(1) DIRECTIVE.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the sentencing guidelines and policy statements to provide appropriate penalties for violations of section 1037 of title 18, United States Code, as added by this section, and other offenses that may be facilitated by the sending of large quantities of unsolicited electronic mail.

(2) REQUIREMENTS.—In carrying out this subsection, the Sentencing Commission shall consider providing sentencing enhancements for—

(A) those convicted under section 1037 of title 18, United States Code, who—

(i) obtained electronic mail addresses through improper means, including—

(I) harvesting electronic mail addresses of the users of a website, proprietary service, or other online public forum operated by another person, without the authorization of such person; and

(II) randomly generating electronic mail addresses by computer; or

(ii) knew that the commercial electronic mail messages involved in the offense contained or advertised an Internet domain for which the registrant of the domain had provided false registration information; and

(B) those convicted of other offenses, including offenses involving fraud, identity theft, obscenity, child pornography, and the sexual exploitation of children, if such offenses involved the sending of large quantities of unsolicited electronic mail.

(c) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) Spam has become the method of choice for those who distribute pornography, perpetrate fraudulent schemes, and introduce viruses, worms, and Trojan horses into personal and business computer systems; and

(2) the Department of Justice should use all existing law enforcement tools to investigate and prosecute those who send bulk commercial e-mail to facilitate the commission of Federal crimes, including the tools contained in chapters 47 and 63 of title 18, United States Code (relating to fraud and false statements); chapter 71 of title 18, United States Code (relating to obscenity); chapter 110 of title 18, United States Code (relating to the sexual exploitation of children); and chapter 95 of title 18, United States Code (relating to racketeering), as appropriate.

SA 1894. Mr. MCCAIN (for Mr. ENZI (for himself, Mr. SANTORUM, and Mr. HATCH)) proposed an amendment to the bill S. 877, to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet; as follows:

On page 51, after line 22, insert the following:

(d) REQUIREMENT TO PLACE WARNING LABELS ON COMMERCIAL ELECTRONIC MAIL CONTAINING SEXUALLY ORIENTED MATERIAL.—

(1) IN GENERAL.—No person may initiate in or affecting interstate commerce the transmission, to a protected computer, of any unsolicited commercial electronic mail message that includes sexually oriented material and—

(A) fail to include in subject heading for the electronic mail message the marks or notices prescribed by the Commission under this subsection; or

(B) fail to provide that the matter in the message that is initially viewable to the recipient, when the message is opened by any recipient and absent any further actions by the recipient, includes only—

(i) to the extent required or authorized pursuant to paragraph (2), any such marks or notices;

(ii) the information required to be included in the message pursuant to subsection (a)(5); and

(iii) instructions on how to access, or a mechanism to access, the sexually oriented material.

(2) PRESCRIPTION OF MARKS AND NOTICES.—Not later than 120 days after the date of the enactment of this Act, the Commission in consultation with the Attorney General shall prescribe clearly identifiable marks or notices to be included in or associated with unsolicited commercial electronic mail that contains sexually oriented material, in order to inform the recipient of that fact and to facilitate filtering of such electronic mail. The Commission shall publish in the Federal Register and provide notice to the public of the marks or notices prescribed under this paragraph.

(3) DEFINITION.—In this subsection, the term ''sexually oriented material'' means any material that depicts sexually explicit conduct (as that term is defined in section 2256 of title 18, United States Code), unless the depiction constitutes a small and insignificant part of the whole, the remainder of which is not primarily devoted to sexual matters.

(4) PENALTY.—A violation of paragraph (1) is punishable as if it were a violation of section 1037(a) of title 18, United States Code.

SA 1895. Mr. HARKIN proposed an amendment to the bill S. 877, to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet; as follows:

At the appropriate place add the following:

SECTION 1. SHORT TITLE.

This title may be cited as the ''Training for Realtime Writers Act of 2003''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) As directed by Congress in section 723 of the Communications Act of 1934 (47 U.S.C. 613), as added by section 305 of the Telecommunications Act of 1996 (Public Law 104–104; 110 Stat. 126), the Federal Communications Commission adopted rules requiring closed captioning of most television programming, which gradually require new video programming to be fully captioned beginning in 2006.

(2) More than 28,000,000 Americans, or 8 percent of the population, are considered deaf or hard of hearing, and many require captioning services to participate in mainstream activities.

(3) More than 24,000 children are born in the United States each year with some form of hearing loss.

(4) According to the Department of Health and Human Services and a study done by the National Council on Aging—

(A) 25 percent of Americans over 65 years old are hearing impaired;

(B) 33 percent of Americans over 70 years old are hearing impaired; and

(C) 41 percent of Americans over 75 years old are hearing impaired.

(5) The National Council on Aging study also found that depression in older adults may be directly related to hearing loss and disconnection with the spoken word.

(6) Empirical research demonstrates that captions improve the performance of individuals learning to read English and, according to numerous Federal agency statistics, could benefit—

(A) 3,700,000 remedial readers;

(B) 12,000,000 young children learning to read;

(C) 27,000,000 illiterate adults; and

(D) 30,000,000 people for whom English is a second language.

(7) Over the past 5 years, student enrollment in programs that train court reporters to become realtime writers has decreased significantly, causing such programs to close on many campuses.

SEC. 3. AUTHORIZATION OF GRANT PROGRAM TO PROMOTE TRAINING AND JOB PLACEMENT OF REALTIME WRITERS.

(a) IN GENERAL.—The National Telecommunications and Information Administration shall make competitive grants to eligible entities under subsection (b) to promote training and placement of individuals, including individuals who have completed a court reporting training program, as realtime writers in order to meet the requirements for closed captioning of video programming set forth in section 723 of the Communications Act of 1934 (47 U.S.C. 613) and the rules prescribed thereunder.

(b) ELIGIBLE ENTITIES.—For purposes of this Act, an eligible entity is a court reporting program that—

(1) can document and demonstrate to the Secretary of Commerce that it meets minimum standards of educational and financial accountability, with a curriculum capable of training realtime writers qualified to provide captioning services;

(2) is accredited by an accrediting agency recognized by the Department of Education; and

(3) is participating in student aid programs under title IV of the Higher Education Act of 1965.

(c) PRIORITY IN GRANTS.—In determining whether to make grants under this section, the Secretary of Commerce shall give a priority to eligible entities that, as determined by the Secretary of Commerce—

(1) possess the most substantial capability to increase their capacity to train realtime writers;

(2) demonstrate the most promising collaboration with local educational institutions, businesses, labor organizations, or other community groups having the potential to train or provide job placement assistance to realtime writers; or

(3) propose the most promising and innovative approaches for initiating or expanding training and job placement assistance efforts with respect to realtime writers.

(d) DURATION OF GRANT.—A grant under this section shall be for a period of two years.

(e) MAXIMUM AMOUNT OF GRANT.—The amount of a grant provided under subsection (a) to an entity eligible may not exceed $1,500,000 for the two-year period of the grant under subsection (d).

SEC. 4. APPLICATION.

(a) IN GENERAL.—To receive a grant under section 3, an eligible entity shall submit an application to the National Telecommunications and Information Administration at such time and in such manner as the Administration may require. The application shall contain the information set forth under subsection (b).

(b) INFORMATION.—Information in the application of an eligible entity under subsection (a) for a grant under section 3 shall include the following:

(1) A description of the training and assistance to be funded using the grant amount, including how such training and assistance will increase the number of realtime writers.

(2) A description of performance measures to be utilized to evaluate the progress of individuals receiving such training and assistance in matters relating to enrollment, completion of training, and job placement and retention.

(3) A description of the manner in which the eligible entity will ensure that recipients of scholarships, if any, funded by the grant will be employed and retained as realtime writers.

(4) A description of the manner in which the eligible entity intends to continue providing the training and assistance to be funded by the grant after the end of the grant period, including any partnerships or arrangements established for that purpose.

(5) A description of how the eligible entity will work with local workforce investment boards to ensure that training and assistance to be funded with the grant will further local workforce goals, including the creation of educational opportunities for individuals who are from economically disadvantaged backgrounds or are displaced workers.

(6) Additional information, if any, of the eligibility of the eligible entity for priority in the making of grants under section 3(c).

(7) Such other information as the Administration may require.

SEC. 5. USE OF FUNDS.

(a) IN GENERAL.—An eligible entity receiving a grant under section 3 shall use the grant amount for purposes relating to the recruitment, training and assistance, and job placement of individuals, including individuals who have completed a court reporting training program, as realtime writers, including—

(1) recruitment;

(2) subject to subsection (b), the provision of scholarships;

(3) distance learning;

(4) development of curriculum to more effectively train realtime writing skills, and education in the knowledge necessary for the delivery of high-quality closed captioning services;

(5) assistance in job placement for upcoming and recent graduates with all types of captioning employers;

(6) encouragement of individuals with disabilities to pursue a career in realtime writing; and

(7) the employment and payment of personnel for such purposes.

(b) SCHOLARSHIPS.—

(1) AMOUNT.—The amount of a scholarship under subsection (a)(2) shall be based on the amount of need of the recipient of the scholarship for financial assistance, and determined in accordance with part F of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087kk).

(2) AGREEMENT.—Each recipient of a scholarship under subsection (a)(2) shall enter into an agreement with the National Telecommunications and Information Administration to provide realtime writing services for a period of time (as determined by the Administration) that is appropriate (as so determined) for the amount of the scholarship received.

(3) COURSEWORK AND EMPLOYMENT.—The Administration shall establish requirements for coursework and employment for recipients of scholarships under subsection (a)(2), including requirements for repayment of scholarship amounts in the event of failure to meet such requirements for coursework and employment. Requirements for repayment of scholarship amounts shall take into account the effect of economic conditions on the capacity of scholarship recipients to find work as realtime writers.

(c) ADMINSTRATIVE COSTS.—The recipient of a grant under section 3 may not use more than 5 percent of the grant amount to pay administrative costs associated with activities funded by the grant.

(d) SUPPLEMENT NOT SUPPLANT.—Grants amounts under this Act shall supplement and not supplant other Federal or non-Federal funds of the grant recipient for purposes of promoting the training and placement of individuals as realtime writers.

SEC. 6. REPORTS.

(a) ANNUAL REPORTS.—Each eligible entity receiving a grant under section 3 shall submit to the National Telecommunications and Information Administration, at the end of each year of the grant period, a report on the activities of such entity with respect to the use of grant amounts during such year.

(b) REPORT INFORMATION.—

(1) IN GENERAL.—Each report of an entity for a year under subsection (a) shall include a description of the use of grant amounts by the entity during such year, including an assessment by the entity of the effectiveness of activities carried out using such funds in increasing the number of realtime writers. The assessment shall utilize the performance measures submitted by the entity in the application for the grant under section 4(b).

(2) FINAL REPORT.—The final report of an entity on a grant under subsection (a) shall include a description of the best practices identified by the entity as a result of the grant for increasing the number of individuals who are trained, employed, and retained in employment as realtime writers.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this Act, amounts as follows:

(1) $20,000,000 for each of fiscal years 2004, 2005, and 2006.

(2) Such sums as may be necessary for fiscal year 2007.

SA 1896. Mr. MCCAIN (for Mr. CORZINE (for himself and Mr. GRAHAM of South Carolina)) proposed an amendment to the bill S. 877, to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet; as follows:

At the appropriate place, insert the following:

SEC. ___. IMPROVING ENFORCEMENT BY PROVIDING REWARDS FOR INFORMATION ABOUT VIOLATIONS; LABELING.

(a) IN GENERAL.—The Commission shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce—

(1) a report, within 9 months after the date of enactment of this Act, that sets forth a system for rewarding those who supply information about violations of this Act, including—

(A) procedures for the Commission to grant a reward of not less than 20 percent of the total civil penalty collected for a violation of this Act to the first person that—

(i) identifies the person in violation of this Act; and

(ii) supplies information that leads to the successful collection of a civil penalty by the Commission; and

(B) procedures to minimize the burden of submitting a complaint to the Commission concerning violations of this Act, including procedures to allow the electronic submission of complaints to the Commission; and

(1) a report, within 18 months after the date of enactment of this Act, that sets forth a plan for requiring unsolicited commercial electronic mail to be identifiable from its subject line, by means of compliance with Internet Engineering Task Force standards, the use of the characters ''ADV'' in the subject line, or other comparable identifier, or an explanation of any concerns the Commission has that cause the Commission to recommend against the plan.

(b) IMPLEMENTATION OF REWARD SYSTEM.—The Commission may establish and implement the plan under subsection (a)(1), but not earlier than 12 months after the date of enactment of this Act.

SA 1897. Mr. FRIST (for Mr. BUNNING) proposed an amendment to

the concurrent resolution S. Con. Res. 21, expressing the sense of the Congress that community inclusion and enhanced lives for individuals with mental retardation or other developmental disabilities is at serious risk because of the crisis in recruiting and retaining direct support professionals, which impedes the availability of a stable, quality direct support workforce; as follows:

In section 2, strike ''ensure'' and insert ''promote''.

SA 1898. Mr. FRIST (for Mr. BUNNING) proposed an amendment to the concurrent resolution S. Con. Res. 21, expressing the sense of the Congress that community inclusion and enhanced lives for individuals with mental retardation or other development disabilities is at serious risk because of the crisis in recruiting and retaining direct support professionals, which impedes the availability of a stable, quality direct support workforce; as follows:

In the first whereas clause of the preamble, before the semicolon, insert '', including mental retardation, autism, cerebral palsy, Down syndrome, epilepsy, and other related conditions''.

Strike the second whereas clause of the preamble.

Strike the eighth whereas clause of the preamble.

Strike the ninth whereas clause of the preamble.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. CAMPBELL. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Wednesday, October 29, 2003 at 10 a.m. in Room ''TBA'' of the Senate Office Building to conduct a business meeting to consider pending committee business; to be followed immediately by a hearing on S. 1770, the Indian Money Account Claims Satisfaction Act of 2003.

Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on October 22, 2003, at 10 a.m. to conduct a hearing on ''Counterterror Initiatives in the Terror Finance Program.''

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

Mr. CORNYN. Mr. President: I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, October 22, 2003, at 9:30 am on the Federal Involvement in the Regulation of the Insurance Industry.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, October 22, 2003 at 2:30 p.m. to hold a hearing Anti-Semitism In Europe.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Wednesday, October 22, 2003 at 10:30 a.m. to hold a business meeting to consider pending Committed business.

AGENDA

LEGISLATION

1. S. 129, Federal Workforce Flexibility Act of 2003.
2. S. 1741, National Women's History Museum Act of 2003.
3. S. 1267, District of Columbia Budget Autonomy Act of 2003.
4. S. 1522, GAO Human Capital Reform Act of 2003.
5. S. 1561, a bill to preserve existing judgeships on the Superior Court of the District of Columbia.
6. S. 1567, Department of Homeland Security Financial Accountability Act.
7. S. 1612, Homeland Security Technology Improvement Act of 2003.
8. S. 1683, Federal Law Enforcement Pay and Benefits Parity Act of 2003.
9. H.R. 1416, Homeland Security Technical Corrections Act of 2003.
10. H.R. 3159, Government Network Security Act of 2003.

POST OFFICE NAMING BILLS

1. S. 1405, a bill to designate the facility of the United States Postal Service, located at 514 17th Street in Moline, Illinois, as the ''David Bybee Post Office Building.''
2. S. 1415, a bill to designate the facility of the United States Postal Service, located at 141 Weston Street in Hartford, Connecticut, as the ''Barbara B. Kennelly Post Office Building.''
3. S. 1590, a bill to designate the facility of the United States Postal Service, located at 315 Empire Boulevard in Crown Heights, Brooklyn, New York, as the ''James E. Davis Post Office Building.''
4. S. 1659, a bill to designate the facility of the United States Postal Service, located at 57 Old Tappan Road in Tappan, New York, as the ''John G. Dow Post Office Building.''
5. S. 1671, a bill to designate the facility of the United States Postal Service, located at 10701 Abercorn Street in Savannah, Georgia, as the ''J.C. Lewis, Jr., Post Office Building.''
6. S. 1692, a bill to designate the facility of the United States Postal Service, located at 38 Spring Street in Nashua, New Hampshire, as the ''Hugh Gregg Post Office Building.''
7. S. 1718, a bill to designate the facility of the United States Postal Service, located at 3710 West 73rd Terrace in Prairie Village, Kansas, as the ''Senator James B. Pearson Post Office Building.''
8. S. 1746, a bill to designate the facility of the United States Postal Service, located at 339 Hicksville Road in Bethpage, New York, as the ''Brian C. Hickey Post Office Building.''
9. H.R. 1610, to redesignate the facility of the United States Postal Service, located at 120 East Ritchie Avenue in Marceline, Missouri, as the ''Walt Disney Office Building.''
10. H.R. 1882, to designate the facility of the United States Postal Service, located at 440 South Orange Blossom Trail, in Orlando, Florida, as the ''Arthur 'Pappy' Kennedy Post Office Building.''
11. H.R. 1883, to designate the facility of the United States Postal Service, located at 1601–1 Main Street in Jacksonville, Florida, as the ''Eddie Mae Steward Post Office Building.''
12. H.R. 2075, to designate the facility of the United States Postal Service, located at 1905 West Blue Heron Boulevard in West Palm Beach, Florida, as the ''Judge Edward Rodgers Post Office Building.''
13. H.R. 2254, to designate the facility of the United States Postal Service, located at 1101 Colorado Street in Boulder City, Nevada, as the ''Bruce Woodbury Post Office Building.''
14. H.R. 2309, to designate the facility of the United States Postal Service, located at 2300 Redondo Avenue in Signal Hill, California, as the ''J. Stephen Horn Post Office Building.''
15. H.R. 2328, to designate the facility of the United States Postal Service, located at 2001 East Willard Street in Philadelphia, Pennsylvania, as the ''Robert A. Borski Post Office Building.''
16. H.R. 2396, to designate the facility of the United States Postal Service, located at 1210 Highland Avenue in Duarte, California, as the ''Francisco A. Martinez Flores Post Office Building.''
17. H.R. 2452, to designate the facility of the United States Postal Service, located at 339 Hicksville Road in Bethpage, New York, as the ''Brian C. Hickey Post Office Building.''
18. H.R. 2533, to designate the facility of the United States Postal Service, located at 10701 Abercorn Street in Savannah, Georgia, as the ''J.C. Lewis, Jr., Post Office Building.''
19. H.R. 2746, to designate the facility of the United States Postal Service, located at 141 Weston Street in Hartford, Connecticut, as the ''Barbara B. Kennelly Post Office Building.''
20. H.R. 3011, to designate the facility of the United States Postal Service, located at 135 East Olive Avenue in Burbank, California, as the ''Bob Hope Post Office Building.''

NOMINATIONS

1. Jerry S. Byrd to be an Associate Judge of the Superior Court of the District of Columbia (Family Court).
2. Joseph Michael Ryan to be an Associate Judge of the Superior Court of the District of Columbia (Family Court).
3. Dale Cabaniss to be Chairman, Federal Labor Relations Authority.
4. Brian F. Holeman to be an Associate Judge of the Superior Court of the District of Columbia.
5. Craig S. Iscoe to be an Associate Judge of the Superior Court of the District of Columbia.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mt. CORNYN. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, October 22, 2003 at 10 a.m. in room 106 of the Dirksen Senate Office Building to conduct a hearing on the nomination of Mr. David W. Anderson to be the Assistant

Secretary for Indian Affairs, U.S. Department of the Interior; to be followed immediately by a business meeting to consider pending committee business.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on Wednesday, October 22, 2003, at 10 a.m., on ''Judicial Nominations,'' in the Hart Senate Office Building room 216.

Witness List:

Panel I: Senators.

Panel II: Janice R. Brown to be United States Circuit Judge for the District of Columbia Circuit.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. CORNYN. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, October 22, 2003 at 2:30 p.m. to hold a closed hearing.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON OCEANS, FISHERIES, AND COAST GUARD

Mr. CORNYN. Mr. President: I ask unanimous consent that the Subcommittee on Oceans, Fisheries, and Coast Guard be authorized to meet on Wednesday, October 22, 2003, at 9:30 a.m., on Fisheries Oversight to be held in SR–428A.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGE OF THE FLOOR

Mr. HATCH. I ask unanimous consent that Sandra Wilkinson, a detailee to the Democratic staff and the Senate Judiciary Committee, be granted full floor privileges for the remainder of the debate on the CAN–SPAM Act of 2003.

UNANIMOUS CONSENT REQUEST—H.R. 7

Mr. FRIST. I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 7, the charitable choice bill. I further ask unanimous consent that all after the enacting clause be stricken, that the Snowe amendment and the Grassley-Baucus amendment, which are at the desk, be agreed to en bloc, that the substitute amendment, which is the text of S. 476, the Senate-passed version of the charitable choice bill as amended by the Snowe and Grassley-Baucus amendments be agreed to, that the bill, as amended, be read the third time and passed, that the motion to reconsider be laid upon the table; further, that the Senate insist upon its amendments and request a conference with the House, and last, that the Chair be authorized to appoint conferees with a ratio of 3 to 2, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, for the reasons previously stated in regard to this legislation at least on two or three separate occasions, I would reiterate those and object.

The PRESIDING OFFICER. Objection is heard. The majority leader.

WORK OF THE SENATE

Mr. FRIST. Mr. President, I wish to take a moment to congratulate Chairman MCCAIN and Senator BURNS and others who have fought so hard for the anti-spam legislation that passed not too long ago tonight.

Although I am disappointed we have not been able to proceed to conference on the CARE Act, I am very hopeful that ultimately we will be able to do that and I am very hopeful we will at some point receive unanimous consent to do just that.

Today's vote, 97 to 0, on the anti-spam legislation, reflects a lot of the hard, bipartisan work—both sides of the aisle—that was put into the anti-spam bill. I do thank all of our colleagues who have worked so diligently on this legislation.

We started on this bill about 2 o'clock today and we had final passage 4½ hours later. I am very hopeful we can continue with this sort of efficient movement on the floor of the Senate for the remaining issues we have this year.

We do continue to work toward an agreement on a range of issues. They include Healthy Forests and the Internet tax moratorium, which is currently being worked on.

The CARE Act, as my colleagues can tell, continues to be a challenge, but I hold out the hope that we will be able to send that bill to conference. Senator RICK SANTORUM has done just a superb job in shepherding that bill through the Senate. The companion bill has passed the House of Representatives, and indeed it is time to address it in the conference.

We are also looking toward an agreement on fair credit reporting which does have strong bipartisan support in this body. There are very few objections. I hope we can take care of that in short order. We will continue to push very hard for that particular bill.

Also today, we addressed an issue on which we can't give up. We can't really accept as the final punctuation mark the outcome of the vote today where we had 59 Senators say it is time for us to solve the class action challenge before this body. We didn't have 60 Senators. We had 59—1 short. If we had just one other colleague come forward and say, yes, this is a problem for the American people, it is a problem for our economy, it is a problem for our families, we would have been able to proceed with class action reform.

I want to take a couple of minutes and comment, because I didn't have the opportunity earlier today, on the importance of class action reform. I should preface that by saying that just yesterday I came to the floor to talk about my upbeat optimism for really the first time in the last several months with regard to our economy.

That is in part for having traveled around the country this past weekend and talked to a lot of people in various occupations and various jobs. You can just see and sense and you can feel that increased consumer optimism that is around the country.

Indeed, we had some very good economic numbers, some of which I mentioned yesterday. The Department of Commerce reported that consumption is strong in this third quarter. Consumption grew by an annualized rate of over 12 percent. Many economists say this third-quarter consumption may be the strongest in almost 4 years.

New housing starts are annualized to be about 1.9 million based on the results from last month. That is probably the highest in terms of housing starts in the last 17 years. Production from our factories increased 3.5 percent in this quarter. It had been negative the quarter before that. The Department of Labor also delivered the report that initial jobless claims are at their lowest levels since February and that in August the nonfarm sector employment rose by 57,000 jobs.

All of that I think is very encouraging news. As these economic indices continue to improve, with some lag time, that is translated into increased jobs. But that is not enough. We have a lot we can do and we should be doing on the floor of Senate. We need to have smart progrowth fiscal policies because we know that helps create jobs. It gives job security for those who are currently working.

I am optimistic that we are going to see this continued improvement in the economy, but equally importantly in job creation.

The sort of structural problems we need to address: Taking action on class action reform. Class action lawsuits are a problem. What makes it even more important for us to address now is it is a problem that is getting worse with time. A recent survey found that State court class action filings skyrocketed by 1,315 percent in just 10 years. The result of this glut of claims—many unnecessary, many frivolous claims—is that it clogs the State courts, it wastes taxpayer dollars, and it inhibits innovative in entrepreneurship that we all know is so crucial to job growth. All the purported victims ever get in this sordid process is a little coupon—a measly little coupon. I say that not just figuratively but literally.

A couple of examples:

In a suit against Blockbuster, plaintiffs' lawyers alleged that their clients were being fleeced by excessive late fees. They sued the video rental chain for restitution. The result was that each of their clients received a $1 coupon offer for future rentals while the

lawyers at the same time pocketed over $9 million. What is interesting is that, meanwhile, Blockbuster was allowed to continue that same late fee practice that the lawsuit was ostensibly launched to end—$9 million to the lawyers and a $1 coupon—but the practice continued.

You say that is outrageous and it couldn't be. It is a fact.

Another anecdote and equally outrageous had to do with Coca-Cola and apple juice. What happened a few years ago was the plaintiffs' lawyers charged that the Coca-Cola drink company was improperly adding sweeteners to its apple juice. These plaintiffs' lawyers, who were parading as vigilant deans of public health, managed to secure—yes, once again—a 50-cent coupon for the apple juice victims but the lawyers received $1.5 million.

If you think that is outrageous, in a class action suit against the Bank of Boston plaintiffs actually lost money when their accounts were drawn down to pay their lawyers $8.5 million in fees.

That is large business. Also, these large suits have a direct impact on small businesses. These small businesses get drawn into this feeding frenzy that is going on around the country. What happens is that in order to avoid going to Federal court, the class action legal team will rope in local small businesses in the area as codefendants in order to get that case decided in—it may be an adjacent county or an adjacent State—a favorable State. Once the window during which the real class action target can remove the case to the Federal court closes, that unlucky mom-and-pop shop that happened to be in the wrong county or the wrong town at the wrong time is dropped from the case, but not before they have had to invest considerable sums of money in this process of defending themselves.

Such lawsuits are frivolous. Such lawsuits are unnecessary. They are wasteful and they translate into a burden on our economy, a burden on our judicial system, a burden on taxpayers, and clearly a burden on the practice of law. Who can help but be cynical about a system which we have today that awards lawyers millions of dollars over an apple juice sweetener dispute?

So this can't go on. Too many of these lawsuits are little more than operations which shake down these small businesses or these large businesses.

Oftentimes the lawyers are counting on the company to pay a sizable settlement just to avoid that higher cost of going to court. Companies—whether big or small—should no longer be subjected to this blackmail, which is wrong and unfair. It needs to stop.

Today, we tried to take this issue to the floor of the Senate so it could, once and for all, be addressed. Indeed, a majority—it was a bipartisan majority—of Senators said, yes, it is a problem; yes, it deserves to be debated in the Senate; yes, several may have wanted to amend it; yes, it is time to address this issue which is a burden on the taxpayer. It is a burden on working men and women. It is a burden on small businesses. It is a burden on families.

That was a majority. But in this body it takes 60 votes, not just a majority, 60 of 100 Senators to say, yes, we are going to address that. We only had 59.

I hope my colleagues will come back to the table. As majority leader, I promise I will stay on this issue until we have it resolved. It may take constituents around the country saying, yes, it is important to call Senators, to talk to Senators and encourage Senators in town meetings, to say, yes, it is important to address this problem.

I hope my colleagues recognize the significance of this issue to our economy and to working families.

If one more person came forward, we would be able to address this once and for all. That would be good for the country. It would be good for the law. It would be good for the economy. And it is good for the legitimate claims that are out there and should be fairly and appropriately settled.

DIRECT SUPPORT PROFESSIONALS RECOGNITION

Mr. FRIST. I ask unanimous consent the HELP Committee be discharged from further action on S. Con. Res. 21 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 21) expressing the sense of the Congress that community inclusion and enhanced lives for individuals with mental retardation or other developmental disabilities is at serious risk because of the crisis in recruiting and retaining direct support professionals, which impedes the availability of a stable, quality direct support workforce.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. FRIST. I ask unanimous consent the amendment at the desk be agreed to, the concurrent resolution, as amended, be agreed to, the amendment to the preamble, which is at the desk, be agreed to, the preamble, as amended, be agreed to, the motion to reconsider be laid upon the table, and any statements regarding this matter be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 1897) was agreed to, as follows:

AMENDMENT NO. 1897

In section 2, strike ''ensure'' and insert ''promote''.

The concurrent resolution (S. Con. Res. 21), as amended, was agreed to.

The amendment (No. 1898) was agreed to, as follows:

AMENDMENT NO. 1898

In the first whereas clause of the preamble, before the semicolon, insert '', including mental retardation, autism, cerebral palsy, Down syndrome, epilepsy, and other related conditions''.

Strike the second whereas clause of the preamble.

Strike the eighth whereas clause of the preamble.

Strike the ninth whereas clause of the preamble.

The preamble, as amended, was agreed to.

The concurrent resolution, as amended, with its preamble, as amended, reads as follows:

S. CON. RES. 21

Whereas there are more than 8,000,000 Americans who have mental retardation or other developmental disabilities, including mental retardation, autism, cerebral palsy, Down syndrome, epilepsy, and other related conditions;

Whereas individuals with mental retardation or other developmental disabilities have substantial limitations on their functional capacities, including limitations in two or more of the areas of self-care, receptive and expressive language, learning, mobility, self-direction, independent living, and economic self-sufficiency, as well as the continuous need for individually planned and coordinated services;

Whereas for the past two decades individuals with mental retardation or other developmental disabilities and their families have increasingly expressed their desire to live and work in their communities, joining the mainstream of American life;

Whereas the Supreme Court, in its Olmstead decision, affirmed the right of individuals with mental retardation or other developmental disabilities to receive community-based services as an alternative to institutional care;

Whereas the demand for community supports and services is rapidly growing, as States comply with the Olmstead decision and continue to move more individuals from institutions into the community;

Whereas the demand will also continue to grow as family caregivers age, individuals with mental retardation or other developmental disabilities live longer, waiting lists grow, and services expand;

Whereas outside of families, private providers that employ direct support professionals deliver the majority of supports and services for individuals with mental retardation or other developmental disabilities in the community;

Whereas direct support professionals provide a wide range of supportive services to individuals with mental retardation or other developmental disabilities on a day-to-day basis, including habilitation, health needs, personal care and hygiene, employment, transportation, recreation, and housekeeping and other home management-related supports and services so that these individuals can live and work in their communities;

Whereas direct support professionals generally assist individuals with mental retardation or other developmental disabilities to lead a self-directed family, community, and social life;

Whereas private providers and the individuals for whom they provide supports and services are in jeopardy as a result of the growing crisis in recruiting and retaining a direct support workforce;

Whereas providers of supports and services to individuals with mental retardation or other developmental disabilities typically draw from a labor market that competes with other entry-level jobs that provide less physically and emotionally demanding work,

and higher pay and other benefits, and therefore these direct support jobs are not currently competitive in today's labor market;

Whereas annual turnover rates of direct support workers range from 40 to 75 percent;

Whereas high rates of employee vacancies and turnover threaten the ability of providers to achieve their core mission, which is the provision of safe and high-quality supports to individuals with mental retardation or other developmental disabilities;

Whereas direct support staff turnover is emotionally difficult for the individuals being served;

Whereas many parents are becoming increasingly afraid that there will be no one available to take care of their sons and daughters with mental retardation or other developmental disabilities who are living in the community; and

Whereas this workforce shortage is the most significant barrier to implementing the Olmstead decision and undermines the expansion of community integration as called for by President Bush's New Freedom Initiative, placing the community support infrastructure at risk: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring),

SECTION 1. SHORT TITLE.

This resolution may be cited as the ''Direct Support Professional Recognition Resolution''.

SEC. 2. SENSE OF CONGRESS REGARDING SERVICES OF DIRECT SUPPORT PROFESSIONALS TO INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES.

It is the sense of the Congress that the Federal Government and the States should make it a priority to promote a stable, quality direct support workforce for individuals with mental retardation or other developmental disabilities that advances our Nation's commitment to community integration for such individuals and to personal security for them and their families.

Mr. BUNNING. Mr. President, I am pleased the Senate has agreed to pass S. Con. Res. 21, the Direct Support Professional Recognition Resolution. Earlier this year, I introduced this bipartisan resolution with Senator LINCOLN. This resolution recognizes the importance of direct support professionals who are responsible for helping those with mental retardation and disabilities integrate into and excel in communities across the nation.

These professionals provide a wide range of supportive services to their clients on a daily basis, including habitation, health needs, personal care and hygiene, employment, transportation, recreation, housekeeping and other home management-related supports and services so that these individuals can live and work in their communities. These jobs are demanding both physically and emotionally, and these direct support professionals should be commended for the important work they do. This resolution and action by the Senate recognizes just how important they are to others in need.

The recruitment and retention of quality, trained direct support workers is critical to providing high-quality support and services to disabled individuals. Unfortunately, there is a crisis in the direct support field, particularly in finding and keeping quality direct support workers. In fact, the annual turnover rates of direct support workers range from 40 percent and 75 percent.

Several factors have contributed to this crisis, including a tightened labor market, growing demand for community-based care, and legal decisions supporting community integration. Unfortunately, many parents who rely on direct support professionals to help care for with disabled child in the community are becoming concerned that these professionals may not be available in the future. No parent should be faced with these types of worries.

This resolution draws much-needed attention to the problems surrounding the long-term care infrastructure for individuals with developmental disabilities who live in their communities. The resolution calls on the Federal and State governments to make it a priority to promote a quality, stable direct support workforce that advances this nation's commitment to community integration for individuals with mental retardation and other developmental disabilities.

Without well-trained and quality direct support professionals, many disabled individuals may find living in the community more difficult. We shouldn't let that happen, and I hope this resolution can help focus Congress's and the Nation's attention on this important matter.

I am grateful for the Senate's passage of this resolution and its concern for our direct support professionals and those individuals they care for.

MEASURES PLACED ON THE CALENDAR—H.J. RES. 73 AND H.R. 1446

Mr. FRIST. I understand there are two bills at the desk due for a second reading and I ask unanimous consent the bills be given a second reading en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 73) making further continuing appropriations for fiscal year 2004, and for other purposes;

A bill (H.R. 1446) to support the efforts of the California Missions Foundation to restore and repair the Spanish colonial and mission-era missions in the State of California and to preserve the artworks and artifacts of these missions, and for other purposes.

Mr. FRIST. I object to further proceedings to the measures en bloc at this time.

The PRESIDING OFFICER. The objection having been heard, the measures will be placed on the Calendar.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nomination on today's Executive Calendar, calendar No. 249. I further ask unanimous consent that the nomination be confirmed, the motion to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nomination considered and confirmed is as follows:

THE JUDICIARY

Thomas M. Hardiman, of Pennsylvania, to be United States District Judge for the Western District of Pennsylvania.

Mr. LEAHY. Mr. President, the Senate recently voted to confirm an outstanding district court nominee to the Western District of Pennsylvania named Kim Gibson. Today, the leadership has decided to bring up the nomination of Thomas Hardiman who happens to be nominated to the very same court.

Unfortunately, this nominee's suitability for the Federal bench pales in comparison to Judge Gibson. Judge Gibson came to us with judicial experience, a unanimous ''well qualified'' rating from the ABA, and the highest rating from his local bar association.

In contrast, Mr. Hardiman has no judicial experience, a relatively small amount of litigation experience and has been given very low peer-review ratings by the ABA and the same local bar association that ''highly recommended'' Judge Gibson. The Allegheny County Bar Association recently released its opinions about the three pending judicial nominees from their community. After their extensive review, the Bar Association determined that they could simply ''not recommend'' Mr. Hardiman for a lifetime appointment to their Federal trial court.

Although neither Bar Association explained precisely why Mr. Hardiman received such bad reviews, his communications with the Judiciary Committee potentially shed some light on their concerns.

Mr. Hardiman showed a lack of candor in describing the extent of his litigation experience. After reporting that he had tried 54 cases to judgment, he subsequently revised the number downward to 19, and then upon further review he explained that several of these 19 cases were not actually trials that resulted in a judgment.

In addition, opposing counsel contacted the committee to raise concerns about Mr. Hardiman's exceedingly narrow view of fair housing statutes and his questionable litigation tactics. Counsel in a housing discrimination case entitled, Alexander v. Riga, criticized Mr. Hardiman's conduct when he represented landlords who repeatedly refused to show African-American couples an apartment that was for rent. Despite a jury finding of discrimination, Mr. Hardiman argued that there was no resulting damage and the district court adopted his reasoning.

On appeal to the Third Circuit, Mr. Hardiman analogized the harm resulting from the racial discrimination at issue to running a red light. The Third Circuit criticized his dismissive analogy and found that his argument and the district court's adoption of it would undermine the Federal housing statutes. The Third Circuit rejected Mr. Hardiman's argument and reversed the trial court.

I am also troubled by Mr. Hardiman's discovery tactics. In answers to written committee questions, he admitted that in the Riga case he repeatedly violated the Federal Rules of Civil Procedure by issuing a subpoena to a nonparty without noticing opposing counsel in this case. After answering two rounds of written questions, Mr. Hardiman subsequently admitted that he had not even reviewed his Riga files before submitting his answers to the committee.

Even the trial judge criticized Mr. Hardiman's associate about their litigation strategy and tactics in this case, including the improper subpoenas. Significantly less troubling matters stalled many judicial nominees of President Clinton.

If this were anytime between 1995 and 2000 and this were a Clinton nominee, the Republican majority would never have accorded this type of nomination a vote. Recall the fate of Clarence Sundrum, Dolly Gee, the 8 district court nominees to vacancies in Pennsylvania and so many others blocked by Republicans from ever being considered.

The Senate has already confirmed 165 of this President's judicial nominees. The current pace of confirmation stands in stark contrast to what occurred with judicial nominees during the Clinton administration. It was not until well into the fourth year of President Clinton's second term, when Republicans controlled the Senate, before this many judicial nominees were confirmed.

It took President Reagan his entire first term to get this many judicial nominees confirmed, and that was with a Senate that was controlled by the same party.

It also took President George H.W. Bush well into his fourth year to get this many of his judicial nominees confirmed.

In contrast, today, with the shifts in Senate control, it has effectively taken a little more than 2 years of rapid Senate action to confirm 165 judicial nominees for this President, including 100 during Democratic control. This year alone the Senate has confirmed 65 judicial nominees, including 12 circuit court nominees in 2003. This includes more judicial confirmations in just 10 months than Republicans allowed for President Clinton in 1995, 1996, 1997, 1999, or 2000. Overall, we have confirmed 29 circuit court nominees of President Bush since July of 2001, which is more than were confirmed at this time in the third year of President Reagan's first term, President George H.W. Bush's term, or either of President Clinton's terms.

The Senate has held hearings for 13 Pennsylvania nominees of President Bush's to the Federal courts in Pennsylvania. While I was chairman, the Senate held hearings for and confirmed 10 nominees to the district courts in Pennsylvania, plus Judge D. Brooks Smith to the Third Circuit Court of Appeals. In total, we have already confirmed 13 of this President's judicial nominees to the Federal courts in the State of Pennsylvania. Five of these new judges have already been confirmed to the Western District of Pennsylvania.

A look at the Federal judiciary in Pennsylvania indicates that President Bush's nominees have been treated far better than President Clinton's. This treatment is in sharp contrast to the way vacancies in Pennsylvania were kept vacant during Republican control of the Senate when President Clinton was in the White House, particularly regarding nominees in the western half of the State.

Just a few months ago, on May 16, 2003, Jon Delano wrote in the Pittsburgh Business Times, an article titled ''Despite Bush Protests, Court Vacancies are Down,'' about how this President's nominees in the western part of Pennsylvania have been treated more fairly than President Clinton's nominees.

He wrote:

> Take the Western District of Pennsylvania, for example. During the years of the Santorum filibuster, that court of 10 judges had as many as five vacancies. Today, the Senate has confirmed four Bush appointees—Judges Joy Conti, David Cercone, Terry McVerry, and Art Schwab—and the fifth nomination, attorney Tom Hardiman, has just been sent to the Senate.
>
> With the elevation and confirmation of Judge Brooks Smith to the U.S. Court of Appeals, the president still needs to name one more judge to the local court, but once completed, Mr. Bush, with less than three years in office, will have named—and the Senate will have confirmed—six of the 10 judges on the local Federal court. That hardly sounds like obstructionism.

Despite the best efforts and diligence of the senior Senator from Pennsylvania, Senator SPECTER, to secure the confirmation of all of the judicial nominees from every part of his home State, there were 10 nominees by President Clinton to Pennsylvania vacancies who never got a vote: Patrick Toole, John Bingler, Robert Freedberg, Lynette Norton, Legrome Davis, David Fineman, David Cercone, Harry Litman, Stephen Lieberman, and Robert Cindrich to the Third Circuit.

Despite how well-qualified these nominees were, they were never considered by the Senate, many waited more than a year for action.

Unfortunately, Mr. Hardiman's record is similar to the record of far too many of President Bush's judicial nominees. Far too many of this President's judicial nominees have less courtroom experience than partisan experience.

In fact, 25 of this President's judicial nominees have earned partial or majority ''Not Qualified'' ratings from the ABA. In addition to the ABA's review, Mr. Hardiman was also ''not recommended'' by his county bar association.

Certainly, the citizens of Western Pennsylvania deserve a well-qualified judiciary to hear their important legal claims in Federal court.

I have great respect for the senior Senator from Pennsylvania. I appreciate his efforts to help shepherd the White House's nomination through the Senate.

After considering the negative impression Mr. Hardiman has made on his fellow Pennsylvanians regarding his suitability for this lifetime appointment and his conduct before the Judiciary Committee, I believe that this is among the weakest nominees we have considered.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

UNANIMOUS CONSENT AGREEMENT—H.R. 2989

Mr. FRIST. Mr. President, I ask unanimous consent that on Thursday, October 23, following the period of morning business, the Senate proceed to the consideration of calendar No. 279, H.R. 2989, the Transportation appropriations bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR THURSDAY, OCTOBER 23, 2003

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m., Thursday, October 23. I further ask consent that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then begin a period of morning business for 60 minutes, with the first 30 minutes under the control of the minority leader or his designee and the second 30 minutes under the control of Senator HUTCHISON or her designee; provided further, that following morning business, the Senate begin consideration of calendar No. 279, H.R. 2989, the Transportation appropriations bill, as provided under the previous order

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. FRIST. Mr. President, for the information of all Senators, tomorrow, following morning business, the Senate

will begin consideration of the Transportation appropriations bill. It is my hope we can complete action on this bill in an expedited manner, and the two managers will be here tomorrow morning to begin working through amendments to that bill. Senators should expect amendments to be offered and debated throughout the course of the day. Therefore, rollcall votes should be expected throughout the day as well. Senators will be notified when the first vote is scheduled.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. FRIST. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:09 p.m., adjourned until Thursday, October 23, 2003, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate October 22, 2003:

THE JUDICIARY

NEIL VINCENT WAKE, OF ARIZONA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA, VICE PAUL G. ROSENBLATT, RETIRING.

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR REAPPOINTMENT AS CHIEF OF NAVAL OPERATIONS, UNITED STATES NAVY, FOR AN ADDITIONAL TERM OF TWO YEARS, AND APPOINTMENT TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTIONS 601 AND 5033:

To be admiral

ADM. VERNON E. CLARK, 0000

CONFIRMATION

Executive nomination confirmed by the Senate October 22, 2003:

THE JUDICIARY

THOMAS M. HARDIMAN, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF PENNSYLVANIA.